

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (Judicial)

Appeal No. 71/ATVAT/23
Date of Judgement: **03/08/2023**

M/s Med-Aid (India)
M-1 Raja House,
30-31 Nehru Place,
New Delhi-110019

.....Appellant

v.

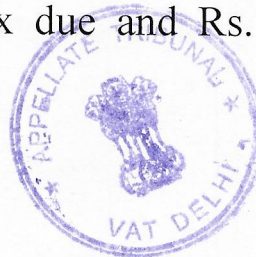
Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Pradeep Dhariwal.
Counsel representing the Respondent : Sh. P. Tara.

Judgement

1. On 29/03/2017, Assessing Authority- AVATO (ward-89) framed default assessment of tax and interest, for tax period- Annual 2012, whereby dealer-appellant was directed to pay a sum of Rs. 1,91,847/- i.e. Rs. 1,20,679/- by way of additional tax due and Rs. 71,168/- towards interest.



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2. Assessment was framed due to the reason that in respect of inter-state sales, during the above said tax period, assessee failed to produce statutory forms and other documents for the purpose of assessment.
3. Feeling aggrieved by the default assessment, assessee challenged the same by filing objections u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act).
4. On 10/04/2023, learned SOHA disposed of the objections thereby granting exemption from tax on the basis of value of 3 'C' forms and 5 'H' forms produced by the dealer before him for the first time, and as such, the demand towards tax and interest of Rs. 1,94,397/- was reduced.
5. Still feeling aggrieved by the impugned order, assessee has filed present appeal u/s 76 of DVAT Act.
6. Vide order dated 05/07/2023, application u/s 76(4) of the Act was disposed of and appellant was directed to deposit 20% of the disputed demand of tax and interest.

Dealer has complied with the said order.

7. Arguments heard. File perused.
8. In the appeal, appellant has averred that it had already received one 'H' form to the tune of Rs. 6,24,330/- and



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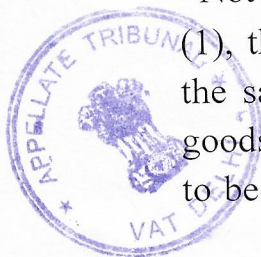
that the same has been attached with the memorandum of appeal.

Available on record is one Form 'H' with date of issuance as 11/06/2013. Same pertains to 3rd Quarter of the year 2012. The assessment pertains to tax period- Annual 2012. The form relates to transaction to the tune of Rs. 6,29,000/-. Form 'H' is of the value of Rs. 6,24,330/-.

In support of the transaction of form 'H', appellant has also submitted scanned copy of Bill of lading/Airway bill.

9. No other document has been filed by the appellant despite opportunity, in respect of above said transaction.
10. Counsel for the respondent has contended that this is a case where appellant is not entitled to any exemption from tax on the basis of said form 'H' under the law, as herein provisions of section 5 (3) of CST Act are not attracted, for want of any document to prove that last sale or purchase had taken place after, and was for the purpose of complying with any order, in relation to such export.
11. Sub-section (3) of section 5 of CST Act reads as under:

“Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or



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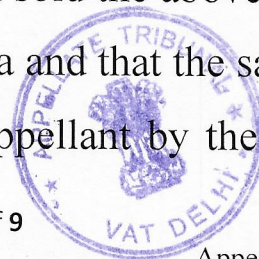
purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.”

12. In view of the above provision, the last sale or purchase of goods preceding the sale or purchase occasioning the export of the goods beyond India shall be deemed to be in the course of export if the transaction of such last sale or purchase had taken place after the agreement or order or in relation to such export, and further that said last sale or purchase was for the purpose of complying with agreement or order or in relation to such export.

Herein, as per Form ‘H’, it was certified that the goods specified in item 1 and 2 of the schedule appended thereto, were supplied in pursuance of purchase order no. 1593 dated 05/11/2012 placed by Puja International Export Solution, Darya Ganj, Delhi.

As further certified in the said form, the above said goods were purchased by the above named exporter from dealer-appellant herein as per bill no. 17 dated 15/11/2012, to the tune of Rs. 6,29,000/-.

In the same Form, it has been certified that Puja International Export Solution sold the above said goods, in course of export beyond India and that the said goods were purchased from the dealer-appellant by the said exporter,



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and for the purpose of complying with the agreement or order no. 1534 dated 19/11/2012, for or in relation to such export.

13. Herein, purchase order placed by the exporter with the appellant is dated 05/11/2012, whereas, the export is stated to have been made for the purpose of compliance with the order dated 19/11/2012 i.e. the one placed after 05/11/2012, and not before that. In other words, the dealer-appellant would have been entitled to avail concession of Form 'H', in case the exporter would have received order prior to its placing purchase order dated 05/11/2012 with the dealer.

In view of the certificates available in Form 'H', it can safely be said that this is a case where provisions of sub-section (3) of section 5 of CST Act do not come to the aid of the dealer-appellant.

14. Counsel for the appellant has contended that Form 'H' was issued by Department of Trade & Taxes, Government of NCT, Delhi, and that on its basis, the dealer – appellant is entitled to the concession under sub-section (3) of section 5 of CST.

Counsel for the respondent has submitted that statutory Form 'H' is created by the system on the basis of particulars furnished by the party itself, and as such there

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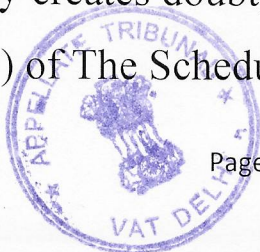
is no merit in the contention raised on behalf of the appellant that the Form having been issued by department, appellant is entitled to concession on its basis.

Counsel for the appellant has not disputed that statutory Form 'H' is created by the system on the basis of particulars furnished by the party itself. Therefore, there is no merit in the contention raised by counsel for the appellant that in any eventuality, the dealer-appellant is entitled to avail concession of Form 'H', simply because the same has been issued by the department.

15. Even otherwise, record reveals that dealer-appellant has not furnished convincing material in support of data/particulars furnished in Form 'H'. Copy of the Airway Bill issued by Qatar Airways, subsequently submitted on behalf of the appellant on 05/07/2023, is a scanned document. But, as per Column 4 of The Schedule appended to Form 'H' words "Delhi Airline" were furnished as name of the Airline as means of transport for export of the items.

In the course of arguments, counsel for the appellant has not been able to put forth any explanation to satisfy this discrepancy relating to the name of the Airline. The discrepancy creates doubt, if any of the items mentioned in Column (1) of The Schedule was exported.

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16. Column No. (5) of the Schedule, appended to Form 'H' pertains to number and date of airway bill etc. Against this column, number and date of the Airway Bill stand recorded as 126864 and dated 21/11/2012.

A perusal of the above referred to scanned copy of Airway Bill issued by Qatar Airways does not bear any such number. In the course of arguments, counsel for the appellant has admitted that said number mentioned in Column (5) of the Schedule does not find mention in the scanned Airway Bill. This fact also creates doubt if any such goods were exported, as claimed by the appellant.

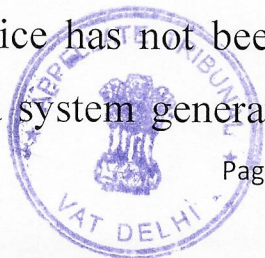
17. As per scanned copy of Airway Bill in the Column meant for (nature and quality of goods), invoice number stands recorded as:

“PIES/In/1022/2012-13 dated 21/11/2012. IEC No. 510022685.”

Despite, repeated queries, counsel for the appellant has not been able to show any such invoice.

Today, in the course of arguments, counsel for the appellant has presented photocopy of bill No. 17 dated 15/11/2012 purported to have been issued by the appellant to exporter i.e. M/s Pooja International Export Solution.

This invoice has not been signed as a true copy. This is also not a system generated invoice. Rather, all the items



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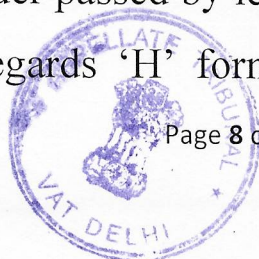
appear to have been typed on letterhead of the appellant to give it a shape of retail invoice/ bill.

Whenever goods are dispatched by the seller to the buyer, various documents including GR ^{are} ~~is~~ also produced in proof of the dispatch of the goods sold. Here, photocopy of the invoice, submitted today, [✓] does not bear any GR number under the Column "Mode of goods sent". No copy of GR has been submitted by counsel for the appellant to support the contents of this invoice.

This fact also creates doubt if any of the items mentioned in this bill was ever sent by the appellant to the exporter for exports.

18. In view of the above discussion, when dealer-appellant has failed to explain the discrepancies noticed above and also failed to produce any cogent and convincing evidence regarding dispatch of the goods to the exporter, vide bill No.17 dated 15/11/2012, and when this is a case where [✓] provisions of sub-section (3) of section 5 do not come to the aid of the appellant, the appellant is not entitled to any concession on the basis of Form 'H' purported to have been issued on 11/06/2013 in respect of 3rd Quarter 2012.
19. Consequently, this appeal is hereby dismissed and the impugned order passed by learned OHA upholding tax and interest as regards 'H' form (inadvertently typed as 'C'

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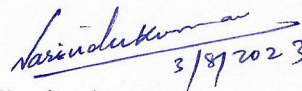


form[✓] in the impugned order) of the value of Rs. 6,24,330/- is upheld.

20. Copy of the judgement be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 03/08/2023.


(Narinder Kumar)
Member (J)

