

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 15.05.2013

+ STA 22/2013

INDIAN OIL CORPORATION LIMITED

..... Appellant

versus

COMMISSIONER, VAT, DELHI

..... Respondent

AND

+ STA 23/2013

INDIAN OIL CORPORATION LIMITED

..... Appellant

versus

COMMISSIONER, VAT, DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rajeev K. Virmani, Sr. Advocate with Mr Ashok K. Bhardwaj and Mr Manish Hirani, Advocates

For the Respondent : Mr Sushil Dutt Salwan, ASC

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. These appeals under Section 81 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as "the said Act") are directed against the order dated 18.02.2013 passed by the Appellate Tribunal, Value Added Tax in two appeals being Appeal Nos. 1106-1107/ATVAT/12-13 relating

to the assessment period 2007-08. The appellant, before us, had filed those appeals before the Tribunal being aggrieved by the orders passed by the Special Commissioner-I (Appeals) whereby an additional demand of ₹ 7,21,35,255/- was raised and penalties totaling ₹ 9,26,86,645/- had been imposed. One appeal was in respect of the additional demand and the other appeal was in respect of the penalties.

2. By virtue of the impugned order passed under Section 76(4) of the said Act, the Tribunal has directed the appellant to deposit 20% of the disputed amount as a pre-condition for hearing the appeals. The learned counsel for the appellant pointed out that if 20% of the disputed amount was to be deposited, it would translate to approximately ₹ 1.85 crores insofar as the penalties are concerned and ₹ 1.44 crores insofar as the tax demand is concerned. He submitted that this would cast an unnecessary and onerous burden on the appellant, particularly, when the appellant has an excellent *prima-facie* case.

3. The learned counsel for the appellant submitted that the only dispute in the present case is with regard to the rate of tax which is to be applied to Paraffin wax which is manufactured and sold by the appellant. It is the contention of the appellant that Paraffin wax is specifically mentioned in Entry No. 120 of the Third Schedule and, therefore, the rate of tax should be 4% (which was the rate applicable during the year 2007-08). On the other hand, the contention of the revenue is that the rate of tax should be 20% inasmuch as paraffin wax would be covered by Entry No. 1 (ix) of the Fourth Schedule. The relevant entries are set out below:-

“The Fourth Schedule
(See Section 4)

List of Goods Taxed at 20%

Sl. No.	COMMODITY
1	Petroleum Products other than liquid petroleum gas, Piped Natural Gas, Compressed Natural Gas and Kerosene such as (i) Naphtha; (ii) Aviation Turbine Fuel; (iii) Spirit; (iv) Gasoline; (v) Omitted w.e.f 20th July, 2010; (vi) Furnace Oil; (vii) Omitted w.e.f 11th May, 2005 (viii) Omitted w.e.f 11th May, 2005 (ix) Wax (except Petroleum wax used for manufacture of candles); (x) Mixture and combination of above products

The Third Schedule

(See Section 4)

List of Goods Taxed at 4%

Sl. No.	COMMODITY
1	
	

120	Paraffin wax of all grades/standards other than food grade standards including standard wax and slack wax.”
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4. It is the contention of the appellant that Entry No. 120 of the Third Schedule was introduced with effect from 11.05.2005. Prior to that there was no specific Entry with regard to Paraffin wax. As such, prior to 11.05.2005, Paraffin wax was covered under the general Entry No. 1(ix) of the Fourth Schedule which dealt with wax in general. On and from 11.05.2005, since there was a specific Entry with regard to Paraffin wax, the rate of tax applicable was 4% and not 20%, which was the rate of tax when the said Paraffin wax was covered under the general Entry No. 1(ix) of the Fourth Schedule.

5. The learned counsel for the appellant drew our attention to the impugned order dated 18.02.2013 and, in particular, to paragraph 6 thereof, where this plea had been specifically taken. It was also pointed out that the counsel for the appellant had submitted that there were three types of petroleum based wax – (1) Paraffin wax; (2) Microcrystalline wax; and (3) Slack wax as recognized by the Central Excise Tariff in Chapter 27 under the heading 2712. The learned counsel for the appellant also drew our attention to the Indian Standard with regard to Paraffin wax. A copy of the said Indian Standard (Second Revision) has been placed on record at pages 28 to 30. The Indian Standard prescribed to Paraffin wax is IS 4654:1993. As per paragraph 4.1 of the said Standard which gives a description of Paraffin wax, it is evident that Paraffin wax is a product of petroleum. This is apparent from the said paragraph 4.1 which reads as under:-

“4.1 Description

The material shall essentially be solid saturated hydrocarbons from petroleum, homogenous in appearance and free from any foreign matter, objectionable odour and taste. It may contain only minimum specified liquid hydrocarbon and shall give on melting, a clear liquid free from water, dirt and other visible impurities.”

6. On the contrary, the learned counsel for the respondent submitted that only Paraffin wax which is used for the manufacture of candles would fall within Entry No. 120 of the Third Schedule. Since the appellant was not able to demonstrate before the Tribunal that the Paraffin wax produced by it and sold by it was exclusively for the purpose of manufacture of candles, the appellant cannot take advantage of Entry No. 120 of the Third Schedule. It was, therefore, contended by the learned counsel for the respondent that the appellant's product Paraffin wax was clearly covered under Entry No. 1(ix) of the Fourth Schedule. Therefore, the revenue contended that rate of tax would be 20% and not 4%.

7. We also note from the impugned order that the Tribunal came to a *prima-facie* view against the appellant in the following manner:-

“We have heard the Ld. Counsel for the parties and have also gone through the record on file. We have also considered the judgments relied upon by the parties. It is a fact that both the parties have admitted that the product in question is a petroleum product. Entry No.1 of Fourth Schedule of the Act specifically covers all petroleum products which are taxable @ 20% including wax. This

would include wax of all of all types, standards and grades including paraffin wax. Whereas, Entry No.120 of Third Schedule covers certain grades/standards of paraffin wax. Further, paraffin wax is used in the manufacture of many items like polish, cosmetics, electric insulations match sticks etc. The appellant, so far, could not prove that the product sold by them are used exclusively for manufacture of candles, which is the only exception attracting 4% tax. Even the appellant himself had paid tax @ 20% in some tax periods. In view of these facts, the case of the appellant, prima facie, does not appear to be on a sound footing. However, all these aspects will be considered in greater detail when the appeals are taken up on merit and the observations made above do not tantamount to our expression on merits of the case. Considering these aspects and the fact that appeal is not an absolute right, but it depends upon fulfilling the condition to be prescribed by the Tribunal; and also taking into consideration of the interest of Revenue, we are of the considered view that ends of justice will be fully met if the appellant is directed to deposit 20% of the amount in dispute in each of the appeals as condition precedent for hearing the appeals on merit. Appellant is directed accordingly. Appellant shall deposit the amount within a period of 30 days; and on showing proof of compliance thereof to the Registry, appeals shall be listed to be heard on merit on 28.03.2013.”

(underlining added)

On going through the above extract, we are, *prima-facie*, of the view that the Tribunal has committed an error. This is so because the Tribunal took the *prima-facie* view that Entry No. 120 of the Third Schedule covers only 'certain grades / standards' of Paraffin wax, whereas, the Entry clearly refers to 'Paraffin wax of all grades / standards' except Food Grade Standard and includes the standard wax and slack wax.

8. The admitted position is that the appellant manufactures and sells Paraffin wax. It is also an admitted position that the Paraffin wax manufactured and sold by the appellant is of a standard other than the Food Grade Standard. Therefore, *prima-faice*, the Paraffin wax manufactured and sold by the appellant would fall under Entry No. 120 of the Third Schedule. In this context the learned counsel for the appellant submitted that when a particular product falls under a specific Entry as well as under a General Entry, it is the specific Entry which will govern. Since Entry No. 120 of the Third Schedule is a specific Entry and Entry No. 1(ix) of the Fourth Scheule is a general Entry, it is the former Entry which would cover the case of the appellant and therefore, the rate of tax would be 4%.

9. *Prima-facie*, we are in agreement with the view expounded by the learned counsel for the appellant. The main issue and question of law that arises for our consideration in this case is when there is a divergence of views with regard to the applicability of a particular Entry, would the benefit of doubt, even at the *prima-facie* stage, go to the assessee or to the revenue. Unfortunately, we find that this aspect of the matter which is certainly a substantial issue of law, has been not adequately dealt by the Tribunal inasmuch as when there was an element of doubt with regard to which Entry would cover the case of the appellant, the benefit of that

doubt ought to have been given to the assessee. Thus taking a *prima-facie* view of the matter and giving the benefit of doubt to the assessee at this stage, we feel that the Tribunal ought not to have directed the appellant to deposit any amount out of the tax demanded as also the penalty levied as a condition for hearing the appeals. Consequently, we set aside the impugned order dated 18.02.2013.

10. Counsel on both sides have requested this court to issue a direction for expediting the appeals. Since the point in issue is short, we feel that the Tribunal may be in a position to expedite the hearing of the appeals. Consequently, we direct that the Tribunal should dispose of the appeals as expeditiously as possible and preferably within 6 weeks.

11. Any observations that we have made on the merits of the matter are only *prima-facie* observations and shall not be looked into by the Tribunal at the time of deciding the appeals. The parties shall appear before the Tribunal in the first instance on 20.05.2013. The appeals are disposed of.

12. Dasti.

BADAR DURREZ AHMED, J

VIBHU BAKHRU, J

MAY 15, 2013

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