

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 28.08.2015

+ **ST.APPL. 25/2013**

SWASTIK INDUSTRIAL POWERLINE LTD

..... Appellant

versus

COMMISSIONER TRADE & TAXES DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr. Rajesh Mahna with Mr. Ramanand Roy,
Advocates.

For the Respondent :Mr. Peeyoosh Kalra, Additional Standing
Counsel with Mr. G. Jain, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. This is an appeal preferred by the Assessee under Section 81 of the Delhi Value Added Tax Act, 2004 (hereafter 'DVAT Act') impugning a common order dated 19th March, 2013 passed by the Appellate Tribunal, Value Added Tax, Delhi (hereafter 'the Tribunal') in Appeal Nos. 877-878/ATVAT/09-10 emanating from proceedings relating to the assessment year 1983-84. This Court admitted the present appeal on 1st November, 2013 and framed the following questions of law for consideration:-

“Whether the order of the Appellate Tribunal, Value Added Tax, Delhi holding that ST-I Forms should be ignored, is perverse and does not deal with several factual aspects relevant for consideration.”

2. The Appellant/Assessee is aggrieved on account of being denied deduction in respect of sales made by the Appellant to registered dealers against ST-1 Forms. The Assessing Authority (hereafter ‘AA’) had found that the relevant account (ST-2 account) filed by certain dealers (hereafter referred to as ‘purchasing dealers’) who were stated to have purchased goods from the Appellant against the ST-1 Forms, had reflected the ST-1 Forms to have been issued to persons other than the Appellant. Both in the initial round of assessment as well as in the remand proceedings, the AA was of the view that the Appellant could not substantiate its claim with regard to the movement of goods sold and thus, concluded that the appellant had colluded with the purchasing dealers to arrange the ST-1 forms and consequently disallowed the exemption claimed by the Appellant in respect of the sales made against ST-1 forms. According to the Assessee, it had discharged its burden of proof for claiming deduction from its taxable turnover and the AA has wrongly disallowed the same.

3. Briefly stated, the relevant facts for addressing the issue involved in the present appeal are as under:-

3.1 The Appellant is engaged in the business of manufacture and sale of copper wire. During the period relevant to the assessment year 1983-84, the Appellant had claimed that a part of its sales turnover included sales made to registered dealers against the declaration issued by the said dealers in ST-1 Form and accordingly, such sales were liable to be deducted from the taxable turnover. The Assessee filed ST-1 Forms – 90 in number – in support of its claim. The AA took up 63 ST-1 Forms for cross-verification with the accounts furnished by the purchasing dealers (i.e. ST-2 Account). The AA obtained verification reports in respect of ST-1 Forms where a single transaction exceeded Rs.1 lac. On verification, it was found that 9 ST-1 Forms did not reconcile with the ST-2 Accounts furnished by the purchasing dealers.

3.2 The Appellant was confronted with the discrepancies and a show-cause notice was issued as to why deductions claimed against the ST-1 Forms should not be disallowed and penal proceedings initiated. The Assessee produced the books of accounts as well as the photocopies of the ledger accounts pertaining to the purchasing dealers. The Assessee claimed

that the sales had been made in good faith to purchasing dealers who were duly registered with the concerned department and thus, the Assessee could not be held responsible for any discrepancy or any delinquency on the part of the purchasing dealers.

3.3 The AA passed an Assessment Order dated 18th March, 1988 rejecting the Assessee's contention. The AA held that the Assessee could not substantiate its claim with reference to the movement of goods and concluded that the sales had, in fact, been made to unregistered dealer(s)/customer(s) and the declarations in ST-1 Forms had been arranged from the purchasing dealers in collusion.

3.4 The Assessee preferred an appeal before the Deputy Commissioner (Appeals) vide Appeal No.185/88-89. The Deputy Commissioner (Appeals) disposed of the appeals by an order dated 31st March, 1989 and remanded the matter back to the AA. The Appellate Order dated 31st March, 1989 is not on record, however, the assessment order framed subsequently indicates that the matter was remanded back with the direction to re-examine the ST-1 Forms received by the Assessee.

3.5 Pursuant to the remand, the AA called upon the Assessee to prove the genuineness of the sales amounting to Rs. 13,40,735/- against 7 ST-1

Forms which remained unverified because the concerned purchasing dealers had shown the said forms to be issued to persons other than the Assessee. The Assessee was also asked to produce documentary proof of the transfer of property in goods and to produce the concerned purchasing dealers with their Books of Accounts. The AA also issued notices to the concerned purchasing dealers, however, none of those dealers were found to be in existence at the material time. The Assessee reiterated its stand that it had received payments through bank drafts and cheques but could not produce the purchasing dealers or their books of accounts. The AA, further, passed an Assessment Order dated 28th March, 1993 (hereafter referred to as 'remand assessment order') disallowing deduction of sales of Rs.13,40,735/- from the taxable turnover of the Assessee. The particulars of the said disallowances are as under:-

S. No	ST-1 No.	Form issued to:-	Amt. As per ST-1 Form	As per ST-2 a/c	Form issued to: -
1.	A/5 541089	M/s Simple Traders (Wards-42)	Rs.2,00,323/-	Rs.82,535.71/-	M/s Nirmal Metal Inds.
2.	A/5 390986	M/s Metal & Metal Inds. (Wards – 42)	Rs.1,76,245/-	Rs.96,278.00/-	Chandra Steel Wazirpur
3.	A/5 541119	M/s R. K. Traders	Rs.2,00,755/-	Rs.14,747.60/-	National Metal Inds.

4.	A/6 145285	M/s Capital Agencies (Ward-42)	Rs.2,00,846/-	Rs.1,79,568.3 2/-	Metal Indl. Co.
5.	A/5 340952	M/s Metal Crafts	Rs.1,90,905/-	Rs.1,00,208.0 0/-	UniBros(P) Ltd.
6.	A/5 281533	M/s M.M. Industries	Rs.1,86,306/-	Rs. 29,289.00/-	Raj Metal Inds.
7.	A/5 281532	M/s M.M. Industries	Rs.1,85,355/-	Rs.28,552.00/-	Popular Inds.
		Total Sales as per ST-1 Form/(Disallo wances) :-	Rs.13,40,735/-		

3.6 The Assessee appealed against the remand assessment order before the First Appellate Authority (hereafter 'FAA'), which was rejected by an order dated 24th September, 2004; the FAA holding that the Assessee had failed to prove the genuineness of the sales in question and upheld the remand assessment order.

3.7 Being dissatisfied with the order dated 24th September, 2004 of the FAA, the Assessee sought a review of the said order by filing a review petition. The Assessee contended that it had placed the deposit slips, bank statements, ledger accounts and duly receipted invoices on record to show the genuineness of the sales transactions in question. It was once again contended that the Assessee could not be held responsible for the misuse of

the statutory declarations (ST-1 Forms) by the purchasing dealers. However, the petitioner's contentions were not accepted and the review petition was also rejected by an order dated 3rd February, 2010.

3.8 The Assessee preferred two appeals before the Tribunal – Appeal No.877 impugning the order dated 24th September, 2004 passed by the FAA and Appeal No.878 against the order dated 3rd February, 2010, whereby, the Review Petition preferred by the Assessee was dismissed.

3.9 The said appeals were disallowed by the Tribunal by a common order dated 19th March, 2013 which is impugned for the present appeal.

4. Mr. Mahna, learned counsel for the Assessee contended that the Tribunal and the Authorities below failed to consider the scheme of the Delhi Sales Tax Act, 1975 (hereafter 'Act') as was in force at the material time. He submitted that there was no dispute that the ST-1 Forms were genuine and had been issued by the Sales Tax Department to the purchasing dealers. He further submitted that it was not in dispute that the purchasing dealers were registered with the Sales Tax Department in respect of the goods sold by the petitioner. Mr. Mahna submitted that in view of the above, the Assessee being the selling dealer was not required to carry out any further investigation and in any event, was not responsible for any of

the acts of the purchasing dealers including the ST-2 Account submitted by them. He referred to the recent decisions of this Court in **Milk Food Ltd. v. Commissioner, VAT & Ors.:(2013) 59 VST 1 (Delhi)** and **Powerlite Electricals India P Ltd vs. Commissioner Trade and Taxes Delhi: St. Appl. 78/2012, decided on 23rd March, 2015** in support of his contentions.

5. Mr. Peeyoosh Kalra, Addl. Standing Counsel for the Revenue submitted that there was no dispute as to the obligations of the dealer making sales against receipt of ST-1 Forms. He, however, emphasized that the present case was not one where the Assessee was being faulted for any defect in the Accounts maintained by the purchasing dealers or mis-utilisation of goods purchased by them, but the sales made by the Assessee were itself questioned. He drew the attention of this Court to the findings of the AA and the Tribunal and contended that the authorities had concluded that no sales had been made by the Assessee to the purchasing dealers in question as the Assessee had failed to substantiate the transfer of property in favour of the purchasing dealers.

6. Before proceeding further to consider the rival contentions, it would be relevant to refer to the relevant provisions of the Delhi Sales Tax Act, 1975 as were enforced at the material time.

7. Section 4 of Act provides for the levy of Sales Tax on the taxable turnover of an assessee. The expression “turnover” is defined under Section 2(o) of the Act as under:-

“(o) "turnover" means the aggregate of the amounts of sale price receivable, or, if a dealer so elects, actually received by the dealer, in respect of any sale of goods, made during prescribed period in any year after deducting the amount of sale price, if any, refunded by the dealer to a purchaser in respect of any goods purchased and returned by the purchaser within the prescribed period:

Provided that an election as aforesaid once made shall not be altered except with the permission of the Commissioner and on such terms and conditions as he may think fit to impose.”

8. Sub-section (2) of Section 4 of the Act provides for certain deductions from the dealer’s turnover to arrive at the “taxable turnover” for the purposes of the Act. Section 4(2)(a)(v) of the Act provides for exclusion of certain sales made by a registered dealer to another registered dealer from the “taxable turnover” of the selling dealer. Section 4(2)(a)(v) of the Act reads as under :-

“4. **Rate of Tax** –

(1) xxxx xxxx xxxx xxxx xxxx

(2) For the purposes of this Act, "taxable turnover" means that part of a dealer's turnover during the prescribed period in any year which remains after deducting therefrom,--

(a) his turnover during that period on –

XXXX XXXX XXXX XXXX XXXX

(v) sale to a registered dealer—

(A) of goods of the class or classes specified in the certificate of registration of such dealer, as being intended for use by him as raw materials in the manufacture in Delhi of any goods, other than goods specified in the Third Schedule or newspapers,--

(1) for sale by him inside Delhi; or

(2) for sale by him in the course of inter-State trade or commerce, being a sale occasioning, or effected by transfer of documents of title to such goods during the movement of such goods from Delhi; or

(3) for sale by him in the course of export outside India being a sale occasioning the movement of such goods from Delhi, or a sale effected by transfer of documents of title to such goods effected during the movement of such goods from Delhi, to a place outside India and after the goods have crossed the customs frontiers of India; or

(B) of goods of the class or classes specified in the certificate of registration of such dealer as being intended for resale by him in Delhi, or for sale by him in the course of inter-State trade or commerce or in the course of export outside India in the manner specified in sub-item (2) or sub-item (3) of item (A), as the case may be; and

(C) of containers or other materials, used for the packing of goods, of the class or classes specified in the certificate of registration of such dealer, other than goods specified in the Third Schedule, intended for sale or resale;”

9. Rule 7 of the Delhi Sales Tax Rules, 1975 (hereinafter referred to as 'the Rules') specifies the conditions subject to which a dealer may claim deduction from his turnover on account of sales made to a registered dealer.

The relevant extract of Rule 7(1) of the Rules is quoted below:-

“7. Conditions subject to which a dealer may claim deduction from his turnover on account of sales to registered dealers.-(1) A dealer who wishes to deduct from his turnover the amount in respect of sales on the ground that he is entitled to make such deduction under the provisions of sub-clause (v) of clause (a) of sub-section (2) of section 4, shall produce-

- (a) copies of the relevant cash memos or bills according at the sales are cash sales or sales on credit; and
- (b) a declaration in Form ST-1 duly filled in and signed by the purchasing dealer or a person authorized by him in writing:

Provided that no single declaration in Form ST-1 shall cover more than one transaction of sale except in cases where the total amount of sales made in a year covered by one declaration is equal to or less than Rs.50,00,000/- or such other amount as the Commissioner may, from time to time, specify in this behalf in the Official Gazette:

Provided further that where, in the case of any transaction of sales, the delivery of goods is spread over different years it shall be necessary to furnish a separate declaration in respect of goods as delivered in each year.”

10. Rule 8 of the Rules mandate that the declaration referred to in the second proviso to clause 4(2)(a) of the Act should be in 'Form ST-1' which

would be printed under the Authority of the Commissioner and could be obtained from the appropriate Assessing Authority by a registered dealer intending to purchase goods on the strength of his certificate of registration.

The relevant extract of Rule 8 of the Rules is quoted below:-

“8. Authority from whom the declaration form may be obtained, and use, custody and maintenance of records of such forms and matters incidental thereto.-

(1) The declaration referred to in the second proviso to clause (a) of sub-section (2) of section 4 shall be in Form ST-1 which shall be printed under the authority of the Commissioner and shall be obtained from the appropriate assessing authority by the registered dealer intending to purchase goods on the strength of his certificate of registration.

(2) No selling dealer shall accept any declaration from a purchasing registered dealer unless it is furnished in Form ST-1 and not declared invalid or obsolete by the Commissioner:

Provided that the declaration Form ST-1 issued to a dealer before the 1st February, 1978 and remaining unused shall become invalid and obsolete except for the purpose of a transaction of sale effected before the 31st January, 1978:

Provided further that all invalid and obsolete Form ST-1 covered by the foregoing proviso shall be surrendered by the registered dealer to the appropriate assessing authority upto the 31st March, 1979 with an up to date account of the forms received, used and surrendered.

(2A) If the space provided in Form ST-1 is not sufficient for making the entries, the particulars specified in the said form may be given in a separate annexure attached to that form so long as it is indicated in the form that the annexure forms part

thereof and such annexure is also signed by the person signing the declaration in Form ST-1.

(3) For obtaining declaration Form ST-1, a registered dealer-

(i) shall submit a Requisition Account of statutory form in Form ST-2A together with his last return in each assessment year; and

(ii) shall apply for issue of forms to appropriate assessing authority in Form ST-2C, whenever such forms are required.

(4)(a) If, for reasons to be recorded in writing the appropriate assessing authority is satisfied that the declaration forms have not been used *bona fide* by the applicant or that he does not require such forms *bona fide*, the appropriate assessing authority may reject the application or it may issue such lesser number of forms as it may consider necessary.

(b) If the applicant for declaration forms has, at the time of making the application, failed to comply with an order demanding security from him under sub-section (1) of section 18, the appropriate assessing authority shall reject the application.

(c) If applicant for declaration forms has, at the time of making application—

(i) defaulted in furnishing any return or returns in accordance with the provisions of the Act or these rules, or in payment of tax due according to such return or returns; or

(ii) defaulted in making the payment of the amount of tax assessed or penalty imposed by assessing authority, in respect of which no orders for

instalments/stay have been obtained from the competent authority under the provisions of law; or

(iia) not filed proper Requisition Account of the declaration forms required by him; or

(iib) not filed proper utilization account in Form ST-2B of forms issued to him in advance together with the returns for the period during which the form were utilized; or

(iii) been found by an appropriate assessing authority having some adverse material against him, suggesting any concealment of sale or purchase or of furnishing inaccurate particulars in the returns,

the appropriate assessing authority shall, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, the issue of declaration forms to him and the appropriate assessing authority shall make a report to the Commissioner about such withholding within a period of three days from the date of its order.”

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“(d) Where the appropriate assessing authority does not proceed under clause (a), clause (b), or clause (c), it shall issue the requisite number of declaration forms to the applicant.

(5) The counterfoil of the form shall be retained by the purchasing dealer and the other two portions marked ‘original’ and ‘duplicate’ shall be made over to the selling dealer.”

11. A bare perusal of Form ST-1 indicates that it is in two parts; while one part is marked as duplicate the other part is marked as original. The

portion marked as 'Original' is issued by the purchasing dealer to the selling dealer and the counterfoil is retained by the purchasing dealer.

12. In the present case, it is not disputed that the Assessee had produced the declarations made by the purchasing dealer in the prescribed form (ST-1 Form). The genuineness of the form is also not disputed by the Sales Tax Authorities. In addition, it is also not disputed that the purchasing dealers were registered with the Sales Tax Department in respect of copper wires i.e. the goods claimed to have been sold by the Assessee to the purchasing dealers.

13. The obligations of a registered dealer selling goods to another registered dealer against a declaration in the prescribed form (ST-1 Form) is no longer *res integra*. The Supreme Court in the case of **State of Madras v. M/s. Radio and Electricals Ltd. & Anr.:(1996) 18 STC 222** had observed as under:-

“The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on to the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has, provided in respect of sales of declared goods which have special importance in inter-State trade or

commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation, when transactions take place in the course of inter-State trade or commerce. Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are specified in his certificate: but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form 'C' the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under s. 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer....”

(underlining added)

14. The aforesaid decision was rendered in the context of Central Sales Tax Act and the sales made by the purchasing dealers against declarations in Form-C. However, the ratio of the said decision would be equally applicable to sales made against ST-1 Form. The aforesaid decision has also been followed by this Court in *Powerlite Electricals India P. Ltd.* (*supra*) and *Milk Food Ltd.* (*supra*).

15. In view of the above, it is well established that a selling dealer would have no duty to examine the correctness of the Form ST-1 submitted; the

selling dealer would also not be responsible for any misapplication of goods by the purchasing dealer or failure on the part of the purchasing dealer to maintain the correct records. Clearly, the Assessee could not be held responsible for any discrepancy in the ST-2 Account furnished by the purchasing dealer to the Sales Tax Authorities. The Assessee had produced the original portion of ST-1 Forms which were duly addressed to the Assessee and, further, also mentioned the invoice numbers, invoice value as well as the description of the goods. In the circumstances, undisputedly, the Assessee was not obliged to make any further enquiries or compliance with regard to the goods sold to the purchasing dealers. The Assessment Order as well as the remand assessment order indicates that the AA had concluded that the Assessee had not been able to substantiate its claim regarding transfer of goods to the purchasing dealer. The remand assessment order had been upheld by the FAA. The Tribunal had also accepted the Revenue's contention that the genuineness of the sales claimed to have been made by the Assessee were not established.

16. In the aforesaid context, it would be important to note the documents produced by the Assessee in support of its claim. The Assessee had produced the ST-1 Forms issued by the Department to the purchasing

dealer. There is no dispute as to the genuineness of these forms. The ST-1 Forms also bore the noting of the purchasing dealer with regard to the receipt of goods. The Assessee produced certain deposit slips indicating the deposit of the consideration received from the purchasing dealers, the bank statement evidencing receipt of consideration for sales made by bank drafts and cheques, ledger accounts of the purchasing dealers, which also indicate the receipt of consideration from the respective purchasing dealers and duly receipted invoices. The Order dated 3rd February, 2010 dismissing the Review Petition filed by the Assessee indicates that the aforesaid documents were referred to by the Assessee.

17. The AA had passed the remand assessment order concluding that the sales were not genuine, principally, for the reason that the Assessee had been unable to produce the purchasing dealers and according to the AA, it had also not established the transfer of property in goods.

18. In our view, the aforesaid reasons would not be sustainable in light of the fact that the Assessee had produced documents for the sale of goods and the duly receipted invoices along with original ST-1 Forms coupled with receipt of consideration through bank drafts and cheques that would clearly establish the transactions claimed by the Assessee. The AA was unduly

influenced by the ST-2 Account filed by the purchasing dealer and the fact that the purchasing dealers were not found in existence at the time of making the remand assessment order. Insofar as the ST-2 Account furnished by the purchasing dealer is concerned, it is well established that the Assessee cannot be held responsible for any discrepancy in that regard. As indicated above, the originals of ST-1 Forms in the name of the Assessee had been produced and the Assessee could not be penalised for any contrary return filed by the purchasing dealers. As regards the existence of the purchasing dealers is concerned, there is no dispute that the said dealers were in existence when the transactions had been effected; admittedly, the ST-1 Forms had been issued by the Commissioner to such dealers. It is relevant to note that ST-1 Forms are printed under the Authority of the Commissioner and are issued by the Assessing Authority to a registered dealer on an application made by the said dealer. The Assessment Order dated 18th March, 1988 also does not indicate that the existence of purchasing dealers was doubted at that time. Clearly, if the purchasing dealers were not found in existence almost a decade after the transactions in question had been completed, the Assessee cannot be held responsible on that count. Particularly, when there is no dispute that such

dealers were registered by the Department at the relevant time and, therefore, their existence at the material time cannot be questioned by the Department, unless on investigation, it is found that ST-1 Forms itself had been fraudulently issued/procured from the Sales Tax Department.

19. In the proceedings before the Tribunal, the Assessee had referred to the invoice, deposit slips as well as the ledger accounts of various purchasing dealers. The Tribunal rejected the aforesaid evidence by holding that in certain cases, cheques received from the purchasing dealers were in advance of the invoice raised and that the amount of cheques did not tally with the date of the invoice. The fact that the ledger account of the purchasing dealer indicated that in some cases, advance payments had been received prior to the dates of invoice, in our view, could not possibly lead to the conclusion that the transactions were not genuine. Photocopies of ledger accounts of two purchasing dealers, which were handed across by Mr. Mahna indicate that bulk of the amounts had been received in advance and only small amounts - in one case Rs.323.00 - had been received after the date of invoice. The Tribunal assumed that it was the trade practice to sell goods on credit and, thus, receiving advances against the sales indicated that the transactions were not genuine and were contrary to the

trade practice. We are hard pressed to find any material on record, which would indicate that it was the established trade practice in the copper wire industry to sell goods on credit. Concededly, there was no material before the Tribunal, which would support this view. In the circumstances, the decision of the Tribunal, which is based on such an assumption would be wholly perverse and bereft of merits.

20. The Tribunal had further concluded that the transfer of property in goods had not been established. We find the aforesaid conclusion to be unmerited in view of the fact that the Assessee had produced invoices which were duly receipted by the purchasing dealers. The ST-1 Forms, in addition to the other particulars, also specifically recorded the receipt of goods by the purchasing dealer. In addition, the receipt of consideration for the sale of goods had been established by showing (a) deposit slips in certain cases; the bank statement (which was not noted by the Tribunal); and the ledger account of the purchasing dealers, which also noted the particulars of the cheques received from the purchasing dealers in consideration of the sale.

21. It is also relevant to note that the department had no other evidence/material apart from the ST-2 Account submitted by the

purchasing dealers to doubt the sales made by the Assessee against ST-1 Forms. No investigations had been conducted by the AA at the material time on the purchasing dealers – the Assessment Order had been passed without summoning the purchasing dealers or making any further enquiries as to the correctness of the ST-2 Account submitted by them.

22. In view of the above, we find it difficult to sustain the denial of deduction claimed by the Assessee for the sales made against ST-1 Forms.

23. Under Rule 7(1) of the Rules, the Assessee is required to produce only the copies of the relevant cash memos or bills and a declaration in Form ST-1 duly filled and signed by the purchasing dealers to claim deduction from its taxable turnover. These conditions had been met by the Assessee.

24. The facts in **Milk Food Ltd.** (*supra*) are somewhat similar to the facts of the present case. In that case, the Department had denied the exemption claimed by the Assessee therein against certain ST-1 Forms, *inter alia*, on the ground that the payments made by the purchasing dealer were not by cheque and the Assessee had not produced any proofs of delivery. In that case the Court framed the following question for consideration:-

“Whether the Tribunal was right in law in placing the burden upon the dealer to show that the forms issued by the registered purchasing dealers in ST-1 were genuine and in consequently upholding the assessment and the appellate orders refusing to allow deduction of the sales made by the appellant to them under section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975?”

25. The Court took note of the provisions of Rule 7 of the Rules and concluded that since conditions prescribed under Rule 7 of the Rules had been met, the Assessee was entitled to deduction of sales made against ST-1 Forms from the taxable turnover. The Court held that “*in our opinion the Tribunal appears to have placed the burden wrongly upon the appellant-dealer.*” In our view, the decision in ***Milk Food Ltd.*** (*supra*) is squarely applicable in the facts of the present case.

26. In view of the aforesaid, the question of law framed is answered in the affirmative; that is, in favour of the Assessee and against the Revenue. The order dated 24th September, 2004 passed by the FAA and the order dated 19th March, 2013 passed by the Tribunal are set aside. The remand assessment order to the extent that it denies the Assessee a deduction in respect of sales worth Rs.13,40,735/- and raises a consequential demand, is set aside.

27. The appeal is, accordingly, allowed. No order as to costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

AUGUST 28, 2015
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