

\$~11

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 30th November, 2016

+

ST.APPL. 46/2014

DCW LTD.

.....Appellant

Through: Mr. H. L. Taneja and Mr. Sunil Kumar
Batra, Advocates.

Versus

THE COMMISSIONER OF TRADE AND TAXES, DELHI

..... Respondent

Through: Mr. Satyakam, Additional Standing
Counsel for Govt. of NCT of Delhi
and Ms. Rakhi Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J. (Oral)

1. The question of law framed on 04.10.2016 is as follows:-

"Did the Appellate Tribunal fall into error in holding that the ST-1 forms used by the assessee were invalid and therefore could not be the basis of any benefit?"

2. The assessee/appellant, a registered Sales Tax dealer in Delhi, had entered into a transaction for purchase of goods, i.e., PVC resins. It sought to *inter alia* avail the benefit of Form ST-1 issued in respect of a transaction dated 23.11.1996; the sale was for ₹9,25,52,964/- and the selling dealer was M/s Geco Engineering Company. The Sales Tax Authorities declined to give the benefit and imposed the higher rate applicable for the transaction, discarding a declaration and the Form submitted for adjustments/deduction.

The dealer's appeal was rejected; it approached the Sales Tax Appellate Tribunal (for short 'Tribunal'). Its appeal was initially entertained when a direction to pre-deposit ₹3,00,000/- and waiving the rest was made. Subsequently, by the impugned order dated 25.06.2014, the Tribunal dismissed the appeal and upheld the demand for ₹1,41,64,613/- which included an interest component of ₹63,57,976/-.

3. The Tribunal's reasoning may be found in the following extracted portion:-

"7. Having heard the Ld. Counsel for the parties, record on the case file including the grounds of appeal, impugned order as also the relevant provisions of law have been perused carefully along with the authorities relied upon by the Ld. Counsel for the appellant. The claim of the appellant for deduction u/s 4(2)(a)(v) of the DST Act was disallowed basically on the ground that the form was issued for the Assessment Year 1994-95, but was used in the year 1996-97 by making cuttings in respect of the year as well as goods. Besides this, it was also alleged that the entries on the reverse side of the form have been over written and the date of issue has also been over written and the earlier dated of 31.03.93 has been cut and a new date 23.11.96 has been written without the counter signature of the issuing authority. There is also a variation on the description of goods/years. The earlier goods "PVC resin" was cut and replaced by the goods "Ball Bearings" and this second entry was also cut and replaced by the by goods "PVC resin". It would only be relevant here to refer to Section 4(2)(a)(v) dealing with deduction from turnover of a dealer, which reads as under:-

(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 t he Third Schedule, or newspaper,-

(1) *for sale by him inside Delhi;*

(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 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;*

Provided that no deduction in respect of any sale referred to in sub-clause (iv) shall be allowed unless the goods, in respect of which deduction is claimed, are proved to have been sold by the dealer within a period of twelve months from the date of his registration and the claim for such deduction is included in the return required to be furnished by the dealer in respect of the said sale:

Provided further that no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed

particulars in the prescribed form obtainable from the prescribed authority in the manner and subject to such conditions as may be prescribed is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods:

Provided also that where any goods are purchased by a registered dealer for any purposes mentioned in sub-clause (v), but are not so utilized by him, the price of the goods so purchased shall be allowed to be deducted from the turnover of the selling dealer but shall be included in the taxable turnover of the purchasing dealer;

8. *A plain reading of the above Section and provisions thereto would reveal that most of the restrictions are intended for the purchasing dealer and not for the selling dealer. The only restriction intended for the selling dealer is provided in the second proviso, which states that "no deduction in respect of any sale referred to in sub-clause (v) shall be allowed unless a true declaration duly filled and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars in the prescribed form obtainable from the prescribed authority in the manner and subject to such conditions as may be prescribed is furnished in the prescribed manner and within the prescribed time, by the dealer who sells the goods."*

4. The Tribunal discussed the decision of this Court in *Commissioner of Sales Tax, New Delhi Vs. M/s Milk Food Ltd.* (2013) 59 VST 1 (Delhi). The Tribunal also relied upon a circular pressed into service by the Revenue dated 23.06.1995, which directed as follows:-

"10. In respect of rule 8(3), reference was made on a specific query from this Tribunal as to whether there is any provision in the Act or Rule which prohibits a dealer from using a declaration form issued for an earlier year in the subsequent years, Ld. Counsel for Revenue produced a Circular issued

by the Commissioner, Sales Tax on 21.09.1994. A careful perusal of this Circular reveals that the very spirit of issuing this Circular was to simplify the procedure for issue of declaration forms. On the particular point of issue of declaration forms for a particular year, the Circular states as under:-

" All the statutory forms issued would be stamped for the particular year for which the transactions pertain. While issuing the forms it has to be ensured that the dealers/ name/ address & R.C No. are reflected thereon through a stamp & it is also stamped and signed by the Assessing Authority."

5. The Tribunal while doing so rejected the appellant's contention that the circulars were not binding and concluded that the concerned Authorities could issue directions by virtue of Section 4 (2)(a)(v) of the Delhi Sales Tax Act, 1975 (hereinafter to be referred as 'the Act') and Rules 8 of the Delhi Sales Tax Rules, 1975 prescribed thereunder.

6. The Tribunal distinguished the decision in *Commissioner of Income Tax, U.P. Vs. Indira Industries* (2001) 122 STC 100 from the present case. It was held therefore that the requisition account of the statutory forms is required along with the returns for each assessment year; and that a dealer has to apply for such forms whenever they are requested and that having regard to the circular and validity of the form, which was disclosed on the face of the ST-1 Form in question, the dealer could not have claimed the benefit.

7. The learned counsel for the appellant submits that three conditions are settled from virtually time immemorial in various judgments i.e. (i) the forms are obtained by the registered dealers from the prescribed authority;

(ii) such forms are duly filled and signed by the purchasing registered dealer; and (iii) goods sold to the purchasing dealers are covered by the registration certificates issued.

8. It is contended that the rejection of the Forms in this case was on two grounds, firstly, that there were interpolations in form of cuttings that substitute the goods as well as the date of the transactions and the value of the goods. Learned counsel submits that there is no controversy that the goods for which credit or benefits were claimed were covered with the registration issued to the selling dealer. In the circumstances, the cuttings or interpolations were insignificant; had the Sales Tax Authorities any doubt about the genuineness of the transaction, they should have directed their guns as it were against the selling dealer and not the purchasing dealer, who had merely obtained the forms and deposited the tax duly reflecting the enormity of the transaction i.e. ₹9.24 crores to claim the benefit of the Form. Having regard to the judgment of this Court in the case of *Swastik Industrial Powerline Ltd. Vs. Commissioner Trade & Taxes, Delhi*, 2014 DSTC J-262. and Milk Food's case (*supra*), the question of disputing the genuineness of the Form on account of their interpolations did not arise. Learned counsel also relied upon the judgment of the Allahabad High Court in *Apex Traders Vs. Commissioner of Sales Tax, U.P., Lucknow* (1988) 69 STC 261.

9. It is argued next that no provision under the Act nor Rules framed, prescribe that the validity of the forms per se and that the imposition of such condition with regard to the life span of every form, through circulars, is not in accordance with law. In this regard, learned counsel relied upon a

decision of the Supreme Court in *Commissioner of Sales Tax, UP Vs. Indira Industries*, (2001) 122 STC 100.

10. Mr. Satyakam, learned counsel for the Revenue relied upon Rule 7 of the Delhi Sales Tax Rules, 1975 (hereinafter to be referred as 'the Rules') and in particular emphasised upon second proviso to Rule 7 (1) thereof to say that even though not explicit, the law mandates that declarations have to be collected on yearly/annual basis. Elaborating further, it was submitted that in this case, it is quite evident that after the issuance of circular on 23.06.1995, the selling dealer resorted to interpolations in this case by striking off the real date of the transaction i.e. 31.03.1995 and instead inserting "23.11.1996". Counsel submitted that having regard to the declaration of law and to control abuse of the kind which this case has shown, the circular was issued. It was submitted that the circular is in consonance with the provisions of law and does not, in any manner, detract from the Act or any Rule. Therefore, they were not only binding upon the dealers but also upon the Sales Tax Administrators at the relevant point of time. Drawing a distinction between the circulars which are contrary to express provisions, which deal with matters that are not covered by such provisions, it was urged that the present circular dated 23.06.1995 was valid and consequently, the purchasing dealer could not seek benefits of adjustments/deductions, claimed by it.

11. It cannot be said from the above discussion that the transaction was in respect of the PVC resins. The Revenue/ Sales Tax Authorities have nowhere stated that the selling dealer was authorized to deal with and transact in PVC resin. Equally, it is not their case that the selling dealer was registered for sale and purchase of Ball Bearings. In the present case,

the Form records a transaction of sale dated 23.11.1996 for ₹9,25,52,964/- reported by the purchasing dealer. Undoubtedly, on the face of the Form, there are overwritings/corrections. At the same time, given the fact that the goods sold, which are reflected, are, in fact, those goods which the selling dealer was authorized to transact, the question of an interpolation at the behest or with the involvement of the purchasing dealer does not arise. Besides, the Form in this case was issued on 05.08.1994. The circular, as has been discussed previously, was issued on 23.06.1995. In the circumstances, *ex facie*, the circular could not have been operative.

12. As far as the question of the validity of the Form is concerned, the Revenue, in this case, relied upon second proviso to Rule 7 (1) of the Rules. The relevant part of Rule 7(1) reads as follows:-

“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 as 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 authorised 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. 5,00,000 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.”

13. The relevant Form/declaration adverted to i.e. Form ST-1 annexed to the Rules is as follows:-

FORMS

COUNTER FOIL			DUPLICATE/ORIGINAL		
FORM ST-1 <i>(See rule 7)</i> FORM OF DECLARATION FOR PURCHASES BY REGISTERED DEALERS			FORM ST-1 <i>(See rule 7)</i> FORM OF DECLARATION FOR PURCHASES BY REGISTERED DEALERS		
Seal of the issuing authority Serial No..... To(Seller)(Address)			Issued to holder of Serial No..... Registration Certificate Seal of the issuing No..... authority To(Seller)(Address)		
Declaration given against:			Certified that the goods purchased from you as per bill/cash memos stated below are covered by *my/our Registration Certificate No.....dated.....Which is valid with effect from.....and are for: *(i) Sale or resale *(ii) Use as raw materials *(iii) Packaging of goods in terms of section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975. * Strike out the words/expressions not applicable.		
Bill(s)/Cash memo(s) No. and date	Description of goods	Value of goods	Bill(s)/Cash memo(s) No. and date	Description of goods	Value of goods
Date.....		Signature.....	TOTAL.....		
			The above statements are true to the best of my		

	knowledge and belief. Date..... Signature..... Name of the person signing the declaration and his status in relation to the purchasing dealer. Name and address of the purchasing dealer.
--	---

14. From a combined reading of the Form and the Rules, it is quite evident that the declaration per se does not contain any provision limiting the date or dates or time period for which it is valid. All that proviso to Rule 7(1) of the Rules requires is that if transactions are concerned with the delivery of goods spreading over different years, it is necessary to furnish a separate declaration in respect of goods delivered in each year. We fail to understand how this provision would come to the aid of the Revenue in the circumstances of the case. The Form concededly was issued in August, 1994; there was absolutely no authority or warrant for the Revenue to stamp on it “1994-95”, to denote its validity- given that the circular was issued much later on 23.06.1995. The so-called validity of the Form, therefore, could not have bound either the selling or the purchasing dealer in the circumstances of this case.

15. It is further reaffirmed by Rule 8(9) of the Rules which specifically states that a registered dealer is bound to surrender to the appropriate Assessing Authority all unused declaration forms remaining in hand upon cancellation of his certificate. Thus, Forms once issued per se have validity in terms of the Rules. The reliance placed by the Revenue/respondent upon circular of 23.06.1995 is of no avail. In *Indira Industries's* case (*supra*), the Court had relied upon a previous ruling in *Bengal Iron Corporation Vs. Commercial Tax Officer* [1993] 90 STC 47 (SC), especially the following portion:-

“ So far as clarifications/circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law.”

16. In view of the above findings, we are of the opinion that the rejection of the Forms in the present case and claiming deduction on the basis thereof for the sale of PVC resins at ₹9,25,52,964/- was contrary to law. The findings of the Sales Tax Tribunal and the Authorities below are accordingly reversed. Appropriate relief shall be given to the dealer.

17. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 30, 2016

sb