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KNOWLEDGE PARTNERS

B&B | BHATIA & BHATIA
ADVOCATES & SOLICITORS

FINTAX
Advisors and Consultants

+91-9811081159
+91-9711727711

vineet@bnblegal.in
deepali@bnblegal.in

CST ASSESSMENT ORDERS OF 2015-16-*ENMASSE* FINANCIAL SLAUGHTER BY DELHI VAT AUTHORITIES

By Adv. Vineet Bhatia

Introduction

We all are undergoing through a tough time and have been home-locked due to the pandemic COVID-19. The process started on 22nd March, 2020 when Janta curfew was requested and thereafter lock down was declared. However during this intervening period the officers of the Delhi VAT Department have framed assessment orders under the Delhi Value Added Tax Act,2004 (hereinafter referred as DVAT Act) and under the Central Sales Tax Act,1956 (CST Act) for the year 2015-16.

En-masse assessments have been framed under Section 32 of the DVAT Act read with Section 9 of the Central Sales Tax Act in the last week of March, 2020 because the limitation period for completing the assessments for the year 2015-16 was expiring on 31st March, 2020. One can understand that since the limitation period was expiring, the department had no other option, but to complete the assessment for the year 2015-16.

The matter for concern is not that assessment has been framed but the real matter for concern is the manner in which assessment has been framed. With all due regards, the manner in which these *en-block* assessments have been completed have left a lot of dealers appalled and astounded. All the settled principle have been thrown to winds, while framing the assessment for the year 2015-16. Even the departmental circulars have not been followed, thereby resulting in creation of illegal, unnecessary and unwarranted huge demands against thousands of dealers.

One such case, on account of which huge demand has been created against the dealer is non-consideration of the details of statutory forms furnished by the dealer in their Form 9. Thus, although the dealer had received statutory forms from their purchasing dealers and had also furnished the details thereof in Form 9, as mandated by law, in support of their claim of central sales at concessional rate, yet the same has not been considered and the Central Sales of the dealer have been taxed at full rate (in many cases even a wrong higher rate) along with interest. Needless to say that since there was a lock down situation no opportunity of being heard was granted to the dealers and even if such an opportunity would have been granted, it could not have been availed by the dealer due to the aforesaid prevailing situation. Such an action is indeed an arbitrary, whimsical and undoubtedly illegal action on the part of the State and Delhi Government.

Issue

In the present article we shall endeavour to examine as to what needs to be done by the State to rectify and remedy the chaos it has created and what are the options available with the dealers.

Legal Background

Before finding the solution to the present problem, we need to examine the legal position and the law governing the

furnishing of statutory forms. Section 8 of the Central Sales Tax Act, 1956 empowers every dealer to sell goods in the course of inter-state trade or commerce to another registered dealer at a concessional rate.

The benefit of concessional rate is available subject to certain conditions and one of the condition is that the selling dealer has to furnish, to the prescribed authority, in the prescribed manner a declaration duly filled and signed by the purchasing dealer containing the prescribed particulars in the prescribed form obtained from the prescribed authority.

Rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 prescribes different type of forms to be furnished for various types of transactions for example in case of sales to another registered dealer C-Form is to be furnished, for branch transfers F-Form has been prescribed and for penultimate sales to an exporter H-Form has been prescribed.

That earlier, for framing assessments, the assessing officer used to call for physical statutory forms and the same were furnished by the dealer at the time of assessment. However Government decided to dispense with the requirement of furnishing of physical statutory forms or to limit its furnishing only an exceptional cases and for these purposes **Central Sales (Delhi) Rules, 2005** was amended and **Rule 4** of the said Rules was amended. The amended rule reads as under:

Rule 4 Reconciliation Return:

(1) *In addition to the returns required under rule 3, every dealer shall also furnish to the Commissioner, a Reconciliation Return for a year in Form 9 relating to receipt of declarations / certificates (hereinafter referred to as 'statutory forms') within a period of six months from the end of the year to which it relates.* ***The return shall be filed electronically:***

PROVIDED that the return can be filed for a quarter or more than one quarter of the year, any time during the year but not later than the limitation period specified in sub-rule(1):

PROVIDED ALSO that provisions of sub-rule (5) of rule 5, clause (a) of sub rule (5) of rule 7, sub-rule (2) of rule 9, rule 6A and rule 6B shall not apply in so far as periodicity of filing of reconciliation return and furnishing of declaration(s) / certificate(s) is concerned.

(2) The statutory forms received in original, in lieu of concessional sale or stock transfer shall be retained by the dealer with him. *The Commissioner may direct the dealer to furnish such forms as and when required by him during a period of seven years from the end of the year to which the forms relate.*

(3) *The return in Form 9, may be revised by the end of the financial year next to which it relates:*

PROVIDED that the Commissioner may extend the period of revision by three months after end of the limitation period of revision.

PROVIDED FURTHER that notwithstanding anything contained in these rules or the DVAT Rules, 2005, no further extension in the time period for such revision shall be permissible.

Explanation - The word 'year' and 'quarter' for the purposes of these rules have the same meaning as defined in Delhi Value added Tax Act, 2004 and rules framed there under.

Perusal of the said rule shows that the periodicity of furnishing of declaration was also made non-applicable and the dealers were required to furnish an annual return

in Form 9, thereby containing the details of the statutory forms received by them, and the details of pending statutory forms. The furnishing of hard copy of statutory forms was dispensed with and a dealer was only required to retain the same for a specified period of 7 years. The commissioner was empowered to direct the dealer to furnish the same, as and when required by him. Thus non-furnishing of hard copy of statutory forms was the norm and furnishing thereof was an exception.

This view was reiterated by the department in **Circular 5 of 2014-15 dated 4th Aug. 2014** and was further reiterated vide a detailed **Circular No.38 of 2015-16 dated 18th Feb. 2016.** The relevant para of the said circular stated as under:

Circular No. 38 of 2015-16

Sub- Framing of central assessments

*All Assessing Authorities were advised from framing any assessment u/s 9(2) of Central Sales Tax Act, 1956 read with section 32 of Delhi Value Added Tax Act, 2004 necessitated for deficiency of central statutory forms as per instruction contained in circular no. 5 of 2014-15 dated 04-08-2014, **as filing of hard copy of said forms has since been dispensed with by prescribing return in Form 9** by suitably amending the Central Sales Tax (Delhi) Rules, 2005, however assessing authorities were also advised to frame such assessments if it is required to process refund cases only.*

2. Registered dealers who have made inter-state sales at concessional rates against 'C' forms or made stock transfers against 'F' Forms or made penultimate sale made against 'H' forms are required to file details of such forms in a reconciliation return (Form 9).

3. ……

*4. **In no case, hard copy of the statutory forms for which information has been filed in Form 9 or not may be accepted while framing the assessment**. Authenticity of the forms for which information has been filed in Form 9 can be verified from TINXSYS site if so required.*

Now from the above the legal position is clear that the dealer was not required to furnish hard copy of statutory forms but were required to furnish the details of statutory forms in Form 9 and the assessing authority was under a legal obligation to consider the said Form 9 and frame assessment based on said Form 9. Clearly this legal principle has not at all been followed and the instructions contained in the afore-stated circular has been completely flouted.

As stated above the assessment orders have been framed in complete defiance of various circulars. The issue that whether a circular is binding on the assessing officer or not is no longer *res-integra* and it is a settled law that circulars issued by the department, if in accordance with law, are binding on the assessing officer. it was held in the case of ***State of Tamil Nadu & Anr v/s India Cements Ltd & Anr [2011-TIOL-42-SC-CT]*** that circulars are binding on Revenue and department.

Now we proceed to examine as to what remedial action should be taken by the department or by the assesse to undo the wrong that has been done.

Section 74B of the Delhi Value Added Tax Act, 2004 provides for rectification of mistake apparent on record. The judiciary has time and again come to the rescue of the beleaguered assessees in according a just and fair interpretation to the terms mistake and apparent, so that the assessee is not exposed to post-assessment consequences, in the nature of appeal,

which could not only be harsh and uncertain, but also costly, time consuming and unwarranted, especially when the assessee does not have a natural right of appeal. The fact remains uncontested that the tax proceedings can be ruthlessly crucifying, than even the criminal proceedings. It is submitted that the judiciary has largely clarified the said terms mistake and apparent, and the heat and dust attendant there to seem to have largely settled. Hon'ble Supreme Court in the case of **Malabar Industrial Co Ltd v CIT (2000) 109 taxman 66 (SC)** held that *"An incorrect assumption of facts or **an incorrect application of law** will satisfy the requirement of the **order being erroneous"**.*

Thus in the opinion of author non following of a circular, to the prejudice of a dealer, while framing an assessment is definitely a mistake 'apparent from record' and is a rectifiable error. Hence the provisions of Section 74B can definitely be resorted to. It is pertinent to mention here that the VAT department has also been treating such a mistake as rectifiable mistake under Section 74B and has issued various circulars to this effect. Relevant sub-sections of Section 74B of the DVAT act 2004 reads as follows:

Sec 74B Rectification of mistakes and Review:

*(1) Notwithstanding anything contained to the contrary in section 34, the Commissioner may, at any time within four years from the end of the year in which any order passed by him has been served, **on his own motion**, **rectify any mistake apparent on record** and shall within the said period or thereafter rectify any such mistake which has been brought to his notice within the said period, by any person affected by such order.*

(2) The provisions of sub-section (1) shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority as they apply to the rectification of mistake by the Commissioner:

PROVIDED that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(3) ***Where any such rectification has the effect of reducing the amount of the tax or penalty or interest**, the Commissioner shall refund any amount due to such person in accordance with the provisions of this Act.*

Thus, it can be seen from Section 74B(1) that within four years from the end of the year in which any order has been passed, the commissioner can *suo-moto* on his own motion rectify any mistake apparent on record.

In the opinion of the author all such assessment orders where Form 9 was furnished it has not been considered while framing the assessment can be and should be *suo-moto* rectified by the commissioner under Section 74B(1) of the DVAT Act, 2005.

It is pertinent to mention here that even in the past department has taken a similar stand and has considered such cases fit for rectification/review under section 74B of the DVAT Act **(Refer Circular No. 1 of 2019-20, Circular No. 10 of 2018-19, Circular No. 10 of 2018-19 , Circular No. 6 of 2017-18).**

CONCLUSION

In the opinion of the author in all cases where assessment has been framed for the year 2015-16 and the only issue involved is non-consideration of Form 9, in all such cases the commissioner should *suo-moto* take cognizance of such *ex-parte* orders passed and should immediately issue a circular stating that such orders shall be rectified by the department on its own motion.

Since all legal action are time bound it is expected that the Delhi Government will be sensitive towards its tax payers and issue a circular at the earliest so as to bring clarity and certainty in the action which has to be taken by a dealer.

This will avoid unwanted, unnecessary litigation, which will only cause pain and agony to the tax-payer and no fruitful results to the revenue. In case a circular is not issued lacs of dealers in Delhi will be left with no other alternative but to furnish objections with the Objection Hearing Authority.

In case where other issues are also involved, in the opinion of the author, the objection under Section 74 or a review in Form 38B, as the case may be, should be filed by the dealers

CONTACT US

For any queries or clarifications find us at:

Address

A-2, Saraswati Vihar Pitampura, New Delhi-110034

N-144, G.K.-1, New Delhi-110044

Phone No.

+91-9811081159
+91-9711727711
011-42041267

E-mail

vineet@bnblegal.in
deepali@fintaxes.in

ABOUT THE AUTHOR

ADVOCATE VINEET BHATIA

Adv. Vineet Bhatia is a practicing lawyer with 29 years of experience in the field of indirect taxation. He specializes in GST. He runs a boutique law firm which specializes in providing holistic solutions on issues relating to Indirect Taxation. He has been the president of the Sales Tax Bar Association for many years. He is regularly advising corporates on complex issues and has argued many cases before various High Courts.