

(2000) 09 DEL CK 0133

In the Delhi High Court

Case No : Civil Writ Petition No. 5144 of 2000 and C.M. No. 7930 of 2000

DCW Limited

APPELLANT

Vs

Appellate Tribunal, Sales Tax and Another

RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:

Delhi Sales Tax Act, 1975 — Section 43
Delhi Sales Tax Rules, 1975 — Rule 7(2)

Citation : (2002) 126 STC 29

Hon'ble Judges : Dr. Arijit Pasayat, C.J;D.K. Jain, J

Bench : Division Bench

Advocate : K.D. Tripathi, for the Appellant; Vasudev Lalwani, for the Respondent

Judgement

1. Challenge in this writ petition is to the order passed by the Appellate Tribunal, Sales Tax, Delhi, in appeal No. 44/STT/2000-2001. The said appeal relates to the assessment year 1992-93. An extra demand of Rs. 2,70,917 was raised on account of the petitioner's failure to produce statutory forms in respect of sales, claimed to have been made to registered dealers. The quantum of transactions covered by the forms which were required to be produced was Rs. 38,70,235. An appeal was filed before the Deputy Commissioner, Sales Tax, Appeal I. In view of the submission made by the petitioner that he had procured some of the requisite forms and some more were to be obtained, appeal was admitted subject to deposit of Rs. 30,000 which amount was deposited. But when the appeal was taken up, first appellate authority found that the declaration forms, which were produced, were in fact obtained after the date of order passed in the stay application. It was, Therefore, construed that by making a wrong statement, petitioner had obtained an advantage which was not otherwise available to it. Accordingly, without examining the correctness or acceptability of the forms, the appeal was dismissed. Matter was carried in further appeal before the Tribunal and prayer for stay of disputed demand was made. Tribunal noticed that the conduct of the petitioner was not above board. In fact it had made wrong statement before the first appellate authority. Considering the same, the Tribunal

directed deposit of Rs. 1.5 lakhs by September 11, 2000, while noticing that requisite forms were claimed to be in possession of the petitioner. Tribunal felt with the acceptability of the forms will be examined while the appeal is taken up; but with a view to discourage assessee's making inaccurate statements before the other authority, it was necessary to impose stringent conditions.

2. Learned counsel for the petitioner stated that though as a fact wrong statements were made, which are contrary to fact, yet no mala fide was involved. In fact the requisite forms are available presently and the authorities can verify them to determine their acceptability. They were also produced before first appellate authority. The stringent condition put by the Tribunal is highly disproportionate to the remiss, if any, made by the petitioner. Learned counsel for the revenue on the other hand submitted that both first appellate authority and Tribunal took note of the fact that petitioner obtained an advantage by making a wrong statement and, Therefore, stringent action was necessary.

3. It is undisputed that a wrong statement was made before the first appellate authority about the possession of forms at the time the stay application was taken up. But we feel that should not have been taken to be the determinative factor regarding crucial question as to whether the forms produced were acceptable or not. It is true as contended by learned counsel for revenue that forms produced at a later stage cannot be accepted as a matter of course. Such a question has to be examined by the appellate authority on the factual position of each case. As the forms are in the possession of the petitioner, in the circumstances, we feel that the appeal should be heard by the Tribunal without insisting on further deposit being made in respect of the disputed demands particularly when the amount directed to be deposited by the first appellate authority has been deposited. We make it clear that order in the present case shall not be construed to be expression of opinion about acceptability of forms by the Tribunal, Petition stands disposed of.