

READ :-1) Appeal petition filed on 18-03-2011 by M/s. V. V. F . Ltd. holder of R. C. No.400022/S-4 & C-4 against assessment order dated 05-02-2011 passed by Astt. Commissioner of Sales Tax (C-472), Andheri Division, Mumbai for the period from 01-04-2004 to 31-03-2005 under the BST Act, 1959.

2) Assessment record submitted by Assessing Officer.

Heard : Shri Rajeev Chaubal, DGM.

ORDER

(U/sec. 55 of the Bombay Sales Tax Act, 1959)

No.DC/App/P-5/BA-795/10-11/ B - 37 Mumbai dt. 10/6/11

This is an appeal filed by M/s. V. V. F . Ltd. holder of Tin No.400022/S-4 & C-4 against the assessment order dated 05-02-2011 passed by Astt. Commissioner of Sales Tax (C-472), Andheri Division, Mumbai for the period from 01-04-2004 to 31-03-2005 under the BST Act, 1959 raising additional demand of Rs.50,63,561/- and Rs.3,27,99,838/- respectively.

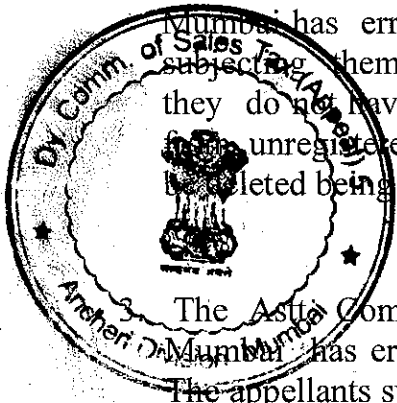
Being aggrieved by this order the appellant filed this appeal which was filed in time and was found in order hence admitted without part payment and posted for hearing.

Appellant raised following grounds of appeal in his appeal petition memo.

Under the BST Act

1. The Astt. Commissioner of Sales Tax (C-472), Andheri Division has erred in passing best judgment order u/sec. 33(4) of the BST Act for the year 2004-05 inspite of the fact that the appellants had produced all books of account alongwith necessary statements and documents. The appellants submit that he has erred in not allowing set off u/r. 41D fully/ inspite of producing purchases vouchers with N-31 forms wherever applicable, on his record. The appellants were registered at two places in the State of Maharashtra with separate registration Certificate No. 400022/S-4 and 410208/S/489 at Sion and Taloja respectively. They also held entitlement certificate with deferrel benefits at Taloja with a ceiling of Rs.2,91,66,667/-. They were granted the permission to have a single assessment for the whole year with the aforesaid assessing officer. The set off u/r 41D was claimed at

Rs.11,00,000/- in the annual return filed at Sion and at Rs.39,96,016/-at Taloja. The assessing officer allowed set off only at Rs.11,00,000/- based on the annual return at Sion and disregarding the facts and figures presented at the time of assessment. The appellants had submitted the details statement of purchase alongwith purchase vouchers on test check basis. In spite of that, the set off was purportedly not allowed on the ground that purchase vouchers with form N-31 etc. were not produced by the appellants. They submit that necessary purchase vouchers with Form No-31 etc. were already produced by them on the assessment record. The assessing officer had insisted on confirmation of payment of tax collected by the vendors which could not be done by the appellants. They submit that such confirmation is a part of duty of the sales tax department who has the necessary machinery for the same. These conditions imposed by the assessing officer have not been clearly spelled out in the assessment order but it is the major reason to disallow the set off. The appellants pray that the set off as claimed in the assessment and supported with documentary evidence may be allowed in full.



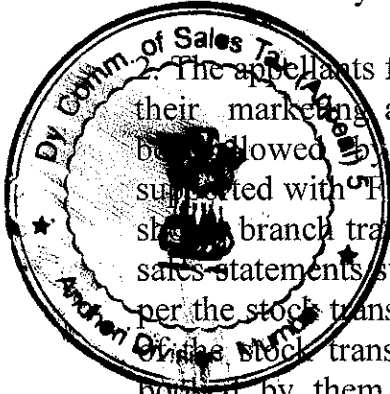
2. The Astt. Commissioner of Sales Tax (C-472), Andheri Division , Mumbai has erred in estimating URD purchases at Rs.10,00,000/- and subjecting them to purchase tax u/sec.13. The appellants submit that they do not have the policy of buying goods or incurring expenditure from unregistered dealers and therefore, the purchase tax u/sec.13 may be deleted being unwarranted.

3. The Astt. Commissioner of Sales Tax (C-472), Andheri Division, Mumbai has erred in levying interest u/sec.36(3) (b) at Rs.8,38,205/-. The appellants submit that the interest has been levied on the differential dues which have arisen due to wrong levy of purchase tax u/sec.13 and disallowance of set off u/r.41D. They are confident that there will not be any balance dues when the appeal is decided on the merits of the case. Therefore, they pray the interest u/sec.36(3)(b) may be deleted in toto having regard to the facts and circumstances of the case.

4. The Astt. Commissioner of Sales Tax (C-472), Andheri Division, Mumbai has erred in levying penalty u/sec. 36(2) (c) Expl.-1 at Rs.5,00,000/-. The appellants submit that the penalty has been levied without issuing any show-cause letter and wither hearing the appellants. The penalty so levied is against the principles of natural justice and therefore, may be set aside being bad in law.

Under the CST Act.

1. The Asstt. Commissioner of sales Tax (C-472), Andheri Division, Mumbai has erred in computing the taxable turnover of interstate sales. In particular, he has erred in disallowing the branch transfers of machinery from Sion Factory to Kutch and Navsari Factory. The appellants submit that they had transferred capital assets being machineries worth Rs.15,58,53,194/- from Sion to Kutch /Navsari during the year and received F forms No. 0JY 823083 for Rs.2,35,30,472/- and Y 878601 for Rs.13,23,22,722/- against the same. The movement of machineries is duly recorded in the fixed assets registered, the exact of which is produced on the record. The plant managers at Kutch and Navsari have duly certified with description of machineries that they had received them during the year 2004-05. The assessing officer ought not to have disregarded such evidence in order to allow branch transfers only on the ground that the dispatch proof such as lorry receipts etc. were not produced by the appellants. They further submit that the Hon'ble Tribunal has considered other documentary evidence including F forms confirming the receipts of the goods as a valid proof for allowing claim of branch transfers. Therefore, the appellants pray that the claim of branch transfers of machineries may be allowed in full.



2. The appellants further point out that the consignment transfers made to their marketing arm viz M/s. Synergy (I) Marketing Pvt. Ltd. Have not been allowed by the assessing officer on the ground that they were not supported with F forms. The appellants submit that they had inadvertently shown branch transfers to consignment agents at sale value based on the sales statements submitted by such agents instead of the transfer value as per the stock transfer notes. They were in possession of F forms in support of the stock transfer made to such consignment agents. The sales were booked by them based on sale statements. The assessing officer has wrongly considered consignment sales worth Rs.43,89,632/- shown during the assessment as consignment transfers and disallowed them as not being supported with F forms. Therefore, the appellants pray that the consignment sales effected in other states by the agent may be allowed as deduction without insisting of F forms.

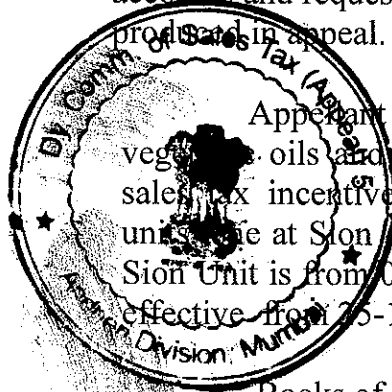
3. The Asstt. Commissioner of Sales Tax (C-472), Andheri Division, Mumbai has erred in levying interest u/sec. 36(3) (b) of the BST Act r/w. section 9(2) of CST Act, at Rs.58,40,094/-. The appellants submit that the differential dues have arisen on account of disallowance of claim of stock transfers. The appellants are confident that there will not be any balance dues when the appeal is decided on the merits of the case. Therefore, they

pray that the interest may be deleted in toto having regards to the facts and circumstances of the case.

4. The Asst. Commissioner of Sales Tax (c-472), Andheri Division, Mumbai has erred in not allowing sufficient time to produce wanting declarations in form C at the time of assessment. The appellants pray that they may be allowed to produce the requisite declarations at the time of hearing of the appeal.

5. The assessment Commissioner of Sales Tax (C-472), Andheri Division, Mumbai has erred in levying penalty u/sec.36(2) (c) Expl. I of the BST Act r/w. section 9(2) of the CST Act at Rs.10,00,000/-. The appellant submit that the penalty has been levied without issuing any show-cause letter and without hearing the appellants. The penalty so levied is against the principles of natural justice and therefore, may be set aside being bad in law.

It is observed from the assessment record that the assessing authority has passed exparte assessment order eventhough almost verification was completed. Appellant appeared and produced all books of accounts and requested to assess fresh on the basis of books of accounts produced in appeal.



Appellant is manufacturer in chemicals, oils and reseller in vegetable oils and holds certificate of entitlement. Monetary ceiling of sales tax incentive is fixed at Rs.2,91,66,667/-. The appellant has two units one at Sion and other at Talaja. Period of utilisation in respect of Sion Unit is from 01-06-2004 to 31-03-2005 and in respect of Talaja Unit effective from 25-11-2004.

Books of accounts produced are verified with following result.

Gross turnover of sales is determined at Rs.2,81,48,43,039/-. Deduction on account of turnover tax and surcharge is allowed at Rs. 61,70,584/-. Sales in the course of interstate trade and commerce is allowed at Rs.2,18,35,36,161/-.

Resale of mustard oils is allowed at Rs.13,09,23,192/- being corresponding purchases from registered dealer on identification basis.

Resale of car of Rs.12,95,216/- is allowed being corresponding purchases from registered dealers and subjected to resale tax at 0.5% which is worked out at Rs.6474/-.

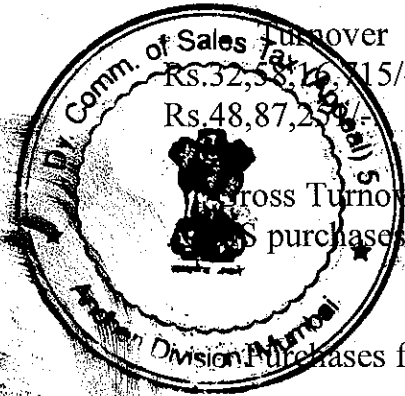
Sales duly supported by declarations in Form BC and Form 15EC are allowed at Rs.15,49,091/- and at Rs.11,72,736/- respectively.

Sales of Rs.16,68,47,296/- are taxed to S.T. @4% after allowing deduction u/R.46A being the goods covered by Schedule entry C-I-7 and C-I-29. Sales Tax payable is worked out at Rs.64,17,204/-.

Sales of Rs.32,17,51,426/- and taxed to Sales Tax at 4% after allowing deduction u/R.46A being the goods covered by Scheduled entry C-II-31. Sales Tax payable is worked out at Rs.1,23,75,055/-.

Miscellaneous sales of Rs.15662/- and Rs.15,81,675/- are taxed to Sales Tax @8% and 13% respectively after allowing deduction u/R.46A. Sales Tax payable is worked out at Rs.1160/- and Rs.1,81,963/- respectively.

Total sales Tax payable is assessed at Rs.1,89,81,856/-.



Turnover tax u/sec.9 on the turnover of sales of Rs.32,58,16,715/- is levied at 1.5%. which is worked out at Rs.48,87,258/-.

Gross Turnover of purchases is determined at Rs.3,09,33,10,400/- and purchases are allowed at Rs.2,31,90,42,262/-.

Purchases from RD's are allowed at Rs.77,41,68,138/-.

URD purchases of Rs.1,00,000/- are taxed to Purchase Tax u/sec.13 at 13% which comes to Rs.13000/-.

Purchases of C-I goods upto 30-06-2004 of Rs.13,55,833/- are taxed to P. T. u/sec.13AA at 2% which comes to Rs.27,117/-.

Surcharges u/sec.15-A-1 is levied at Rs.13,04,855/-.

Differal is allowed at Rs.1,99,71,751/-.

Set off u/R.41D is granted at Rs.3,49,24,360/-.

Appellant has paid Rs.14,17,897/- with returns.

Considering set off allowed and payments made the appellant is entitled for a refund of Rs.3,10,99,929/- out of which Rs.18,24,628/- are adjusted against CST dues.

Finally Rs.2,92,75,301/- is refundable to appellant.

Under CST Act, 1956 .

Interstate sales are determined at Rs.2,18,35,36,161/-. Export duly supported by relevant documents is allowed at Rs.1,72,95,56,185/-. Sales duly supported by declaration in Form 'H' is allowed at Rs.3,24,270/-. Stock transfer duly supported by declaration in Form 'F' is allowed at Rs.2,32,49,141/- Plant transferred from Sion to Kutch is allowed at Rs.15,58,53,195/- as it is book transfer entry.

Sales duly supported by declaration in Form 'C' worth Rs.26,37,18,960/- are taxed to CST @4% after allowing deduction u/sec.8A(1)(a). CST payable is worked out at Rs.1,01,43,037/-. 'C' of Sales disallowed at Rs.439009/- are taxed to CST after allowing deduction u/sec.8A(1) (a). CST payable is worked out at Rs.42212/-.

Declaration Forms 'F' and 'H' are disallowed at Rs.1,03,94,178/- and same are taxed to CST at 10% which comes to Rs.10,39,418/-.

Balance sales of Rs.1223/- are taxed to CST at 15.8% after allowing deduction u/sec.8A(1) (a). CST payable comes to Rs.167/-.

Total CST payable is assessed at Rs.1,12,24,834/-. Deferral is allowed at Rs.91,94,916/-.

Appellant has paid Rs.10,56,783/- with returns.

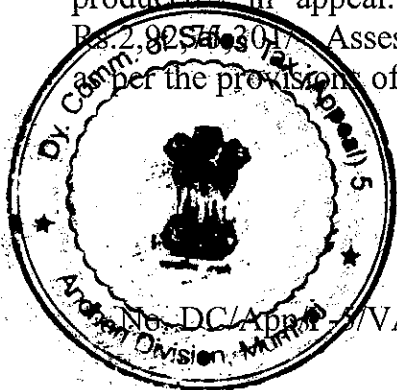
Balance payable remains at Rs.9,73,135/- of which interest u/sec.9(2A) of CST Act, 1956 read with section 36(3)(b) of BST Act, 1959 is levied at Rs.8,51,493/-.

Finally Rs.18,24,628/- are payable by the appellant which has been adjusted against BST refund for the same period.

In view of the above deliberations, I proceed to pass the following order,

ORDER

BST appeal No. 795 of 10-11 is allowed. Exparte assessment order passed by Astt. Commr. Of Sales Tax (C-472), Andheri Division, Mumbai for the period from 01-04-2004 to 31-03-2005 under the BST Act, 1959 is set aside and appellant is assessed fresh on the basis of books of accounts produced in appeal. As a result appellant is entitled for a refund of Rs. 2,82,54,30/- Assessing authority is directed to refund the same to appellant per the provisions of law.



(R. B. Chakre)
Dy. Commr. Of Sales Tax,
Appeal-V, Mumbai

No. DC/Appeal-V/VA-795/2010-11/B- 264
Andheri Division, Mumbai

Mumbai date: 10/6/16

Copy to :

1. M/s. V. V. F. Ltd.
Plot No.109, Sion (East),
Mumbai - 400 022.
2. Astt. Commissioner of Sales Tax (C-472),
Andheri Division, Mumbai alongwith case record.

ss.

CERTIFIED TRUE COPY.

RAMESH B. CHAKRE
Dy Comm. of Sales Tax (Appeal)
D-V Mumbai Divn - Mumbai