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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Appeal No : 74-79/ATVAT/2019-20
Date of Decision : 22/07/2021

M/s. Abhilasha Impex Pvt. Ltd.
House No. 4, Inder Enclave,
Paschim Vihar,
Delhi – 1100085.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. R.R. Singla
Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. This is second round of litigation which has brought the appellant company in appeal. Appellant company is registered under DVAT Act vide Tin No. 07480304497 (Ward No. 63). The company has filed the above captioned six appeals challenging the orders dated 25/7/2019 passed by learned Objection Hearing Authority (OHA). Vide impugned orders, the assessment regarding tax and interest for 2nd, 3rd & 4th quarter of the financial year 2013-14 and penalty imposed in respect of all the said three quarters by Assessing Officer have been affirmed.

Narinder Kumar
22/7/2021

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2. Admittedly, earlier assessment of tax and interest for the 2nd, 3rd & 4th quarter of the financial year 2013-14 made by the Assessing Officer vide order dated 15/6/2015 was challenged by the company by filing objections. Learned OHA, vide orders dated 10/2/2016 and 12/2/2016 upheld the levy of tax and interest and imposition of penalty. Said orders were challenged by way of appeals No. 7 to 12, before the Appellate Tribunal. The appeals were disposed of, and Appellate Tribunal vide judgment dated 14/7/2017 remanded the matter to the Assessing Officer-VATO, while setting aside the orders and observing in the manner as:

> "So far as the imposition of penalty is concerned, in our considered view it was also wrongly imposed. Firstly, on the ground that no notice of hearing was given as held by Hon'ble Delhi High Court in the case of Bansal Dyechem Pvt. Ltd. Vs. Commissioner Value Added Tax Delhi. Secondly, no finding in this regard has been given that on what basis the returns filed by the appellant have been deemed to be false, deceptive and misleading. Appellant in his returns claimed ITC on the basis of tax given by him to the selling dealers and accordingly paid the tax. On this basis, returns filed by the appellant cannot be said to be false, deceptive or misleading.
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> On the basis of above discussion, we find that the lower authorities wrongly denied ITC to the appellant without verifying from the selling dealer only on the basis of mismatch in annexure 2A filed by the appellant and the revised annexure 2B filed by the selling dealer though original 2B filed by the selling dealer matched with the annexure 2A filed by the appellant, hence in the interest of justice it would be appropriate to remand back the matter to the concerned VATO to

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reframe assessment regarding tax, interest and penalty afresh after giving an opportunity of hearing to the appellant and after verifying from the selling dealers whether they have deposited or adjusted output tax in these quarters. Accordingly, impugned order dated 12.02.2016 passed by OHA are hereby set aside. Appellant is directed to appear before the concerned VATO on 28.08.2017 who shall dispose of the matter in the light of observations made in these orders as soon as possible."

A perusal of para 14 of the judgment dated 14/7/2017 passed by the Tribunal would reveal that all the three orders regarding imposition of penalty earlier passed were set-aside while observing that the returns filed by the appellant could not be said to be false, deceptive or misleading. In view of the factum of setting aside of the penalty in respect of all the three quarters, it can safely be said that the matter was remanded only for afresh assessment of tax and interest if any and not in respect of penalty. Learned counsel for the Revenue is in agreement on this point. Accordingly, the three orders passed by the Assessing Officer imposing penalty for the three quarters and the three orders passed by learned OHA, affirming imposition of penalty are hereby set-aside.

3. The first contention raised by the learned counsel for the appellant is that in view of the orders of remand, learned SOHA should have entertained the objections for decision afresh, but the matter was taken up by the Assessing Officer – VATO, and as such there was illegality in making of the assessment and in imposition of penalty.

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4. A perusal of para 14 of the judgment dated 14/7/2017 passed by the Tribunal would reveal that all the three orders regarding imposition of penalty earlier passed were set-aside while observing that the returns filed by the appellant could not be said to be false, deceptive or misleading. In view of the factum of setting aside of the penalty in respect of all the three quarters, it can safely be said that the matter was remanded only for afresh assessment of tax and interest if any and not in respect of penalty. Learned counsel for the Revenue is in agreement on this point. Accordingly, the three orders passed by the Assessing Officer imposing penalty for the three quarters and the three orders passed by learned OHA, affirming imposition of penalty are hereby set-aside.

5. As regards, the authority which was to considered the matter for fresh assessment as regards tax and interest if any, it appears from para 15 of the judgment dated 14/7/2017 passed by the Appellate Tribunal that the matter was remanded to concern VATO and not to the OHA or SOHA. Therefore, there is no merit in the contention raised by the learned counsel for the appellant that on remand, the matter should have been entertained by OHA.

6. So far as levy of tax and interest is concerned, the Appellate Tribunal, vide judgment dated 14/7/2017 remanded the matter to concerned VATO for reassessment, after giving an opportunity of hearing to the appellant and after verifying from selling dealers whether they had deposited or adjusted output tax in the said three quarters.

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7. Learned counsel for the appellant does not dispute that the Assessing Officer, on remand of the matter, issued notices to the selling dealer, but the contention of the learned counsel is that the selling dealer was issued notice only once and that the Assessing Officer should have taken coercive steps to secure presence of the selling dealer.

8. From the orders dated 9/7/2018 passed by the Assessing Officer, it becomes obvious that notice was issued by the Assessing Officer to the selling dealers not only once. Rather, repeated notices were sent to the selling dealers but the same were received back with the report that the selling dealers were not functioning at the given addresses. Furthermore, registration all the firms stood cancelled as per information available on DVAT system and all the said firms had shown GTO as Nil, in their returns for the tax period 2013-14 (3rd quarter) and also shown the local purchase as Nil. As further observed by the Assessing Officer, neither dealers nor representative appeared before him.

9. While hearing objections, learned OHA also took into consideration the reports available on the notices sent to the selling dealers and the fact that the notices were received back with the report that the firms were not functioning at the given addresses.

10. When we have enquired from learned counsel for the appellant, if any application was ever moved by the appellant – objector before the Assessing Officer for coercive steps to secure

presence of the selling dealers, alleging that the selling dealers were intentionally were not appearing or that they were evading service, learned counsel submits that no such application was filed. Even otherwise, in view of the reports on the notices sent to the selling dealers that the firms were found not existing at the given addresses, no coercive steps could be taken by the Assessing Officer. Burden to prove that there was no mismatch, was on the appellant, in view of the provisions of section 78 of DVAT Act. The fact remains that the appellant failed to discharge this burden.

11. In the given circumstances, having record to the mismatching noticed in 2A & 2B, the Assessing Officer was justified in levying tax and interest and for the same reasons the learned OHA was justified in affirming the assessment as regards tax and interest, in respect of turnover of all the said 3 quarters i.e. 2nd, 3rd & 4th quarter of the financial year 2013-14.

No other argument was advanced by learned counsel for the appellant.

12. In view of the above discussion, the appeals challenging the order regarding penalty are allowed and the orders of penalty in respect of 3 quarters i.e. 2nd, 3rd & 4th quarter of the financial year 2013-14 are set-aside.

13. As regards, levy of tax and interest in respect of the aforesaid 3 quarters of the financial year 2013-14, the appeals are hereby dismissed.

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14. File be consigned to the record room. Copy of the order be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 22/07/2021

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(Rakesh Bali)
Member (A)

(Narinder Kumar)
Member (J)

Appeal No. ~~74-79~~/175/VAT/19-20/600-607 Dated: 26/7/21

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(4) Secretary (Sales Tax Bar Association)
(5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch.
(6) Dealer
(7) Guard File
(8) VATO (L&J)

~~PS~~/ PA to Member (A)