

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

Appeal No. 340-342/ATVAT/2017
Date of Judgment: 05th August 2021

M/s. TIM Delhi Airport Advertising Pvt. Ltd.
202, G-5, Building , Parking Complex,
IGI Airport, New Delhi

..... Appellant

Versus

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel for the Appellant
Counsel for the Revenue

: Sh.Nand Kishore
: Sh. P.Tara

JUDGMENT

1. Presently three appeals have been filed against order dated 30/10/17 passed by Special Commissioner-I, - Learned OHA. The prayer in the appeals is that the impugned order be set-aside and the objections filed by the objector – appellant before Ld. OHA for the relevant period shall be deemed to have been allowed in terms of Section 74(9) of Delhi Value Added Tax (here-in-after referred to as DVAT Act).

Narinder Kumar
5/8/2021



2. The matter pertains to assessment year 2010-11, 2011-12 and 2012-13.
3. Case of appellant is that vide order 5/8/2013, Assessing Officer – learned VATO issued notice of default assessment of tax and interest u/s 32 of DVAT Act and notice for assessment of penalty under section 33 of DVAT Act for the relevant period confirming the tax liability alongwith interest and penalty.
4. Further it is case of the appellant that it filed objections dated 7/10/2013 before the Special Commissioner challenging the assessments made vide orders dated 5/8/2013.
5. It is also case of the appellant that on 21/10/2013, the appellant was issued another notice for assessment for the year 2012-13, u/s 59 of the DVAT Act. The appellant filed detailed reply dated 18/11/2013 and 16/12/2013. Ultimately, on 31/8/2016, the appellant issued a letter to the respondent requesting for an early hearing on disposal of objections for the relevant period and 2011-12 in light of the decision of this Hon'ble Court dated 2/5/2016.
6. Vide assessment order dated 8/11/2016, learned VATO is stated to have made assessment for the AY 2012-13. It led to filing of objections on 9/1/17.

22/5/18

5/18



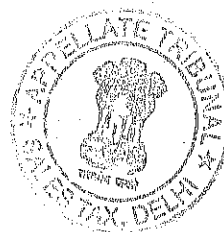
7. Further it is case of appellant that on 28/9/2017, the appellant appeared before the learned OHA and filed preliminary objections as to the hearing notice, on the ground that the objections raised by the appellant for the relevant period i.e. 2010-11 & 2011-12 shall be deemed to have been allowed in light of the provisions section 74(9) of DVAT Act.

8. Vide impugned order dated 30/10/17, Ld. OHA dealt with the preliminary objections and the letter dated 31/8/2016 submitted by the appellant, during pendency of its main objections, and rejected the preliminary objections. Extract of the observations of learned OHA made, while rejecting the preliminary objections, reads as under:-

“It is observed that DVAT 41 contains following essential ingredients:-

- i) Indication of delay in deciding objection within time specified in Section 74(7) of Delhi Value Added Tax Act.
- ii) Request to OHA to consider the matter and communicate the decision of the instant objection within a period of 15 days from the date of receipt of notice.

Further, Rule 56 imposes conditions that notice u/s 74(8) shall be Form DVAT 41, signed by authorized signatory



and shall be served in person to the OHA.

It is also observed that letter dated 31/08/2017 (alleged notice) is request for granting early hearing of the objections filed by the objector and further requests to conclude the assessment for the year 2010-11 in the light of the order of the Hon'ble High Court in Writ Petition (Civil) No.1625 of 2014. It nowhere mentions that:-

1. That this is a notice u/s 74(8)
2. That there is a delay in deciding objection U/s. 74(7) of DVAT Act.
3. Requests that the matter may be decided within 15 days from the letter (alleged notice).
4. Further, the letter dated 31/08/16 seems to have been received in the dairy section of the then Special Commissioner by diarist and not served in person to the OHA as stipulated in Rule 56 of DVAT Rules, 2005.

The aforesaid discussion concludes that the letter dated 31/08/2016 does not fulfill any of the aforesaid necessary ingredients required for serving the notice u/s 74(8). In view of the clear directions under the Rules as well as the format prescribed, the preliminary objections filed by the objector for



the year Asst. Years 2010-11 & 2011-12 holds no ground and are therefore not tenable. Further, in view of the clear directions available in the DVAT Act/Rules, there is no necessity to discuss the plethora of case law furnished by the objector in support of his preliminary objections/ rejoinder.

In view of the above, the preliminary objection of the objector for the Asst. years 2010-11 and 2011-12 are not acceptable and therefore rejected. Since, the preliminary objections for the Asst. Year 2012-13 were based on the probable result of the preliminary objections in respect of 2010-11 & 2011-12, the preliminary objection for the Asst. Year 2012-13 is also not acceptable and rejected.

Accordingly, the next and final date of hearing on merits is fixed for 28/11/2017 for all the Asst. Years 2010-11, 2011-12 & 2012-13."

Arguments heard. File perused.

Is it a case of a notice under Section 74(8) of DVAT Act?

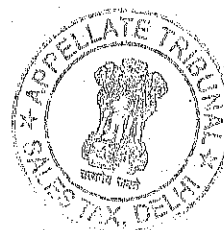
9. Learned OHA has observed in the impugned order that in the letter dated 31/08/16, that the appellant did not mention that this letter was a notice u/s 74(8) of DVAT Act for decision on the main objections within 15 days period. Learned Counsel has



submitted that letter dated 31/08/16 bears signatures of the authorized signatory of the appellant/objector, and that in view of the request for early hearing of the objections and to consider the same in light of the decision of Hon'ble Court dated 2/5/2016, the request should have been considered as notice u/s 74(8) of the Act. Ld. Counsel for the appellant has further contended that even DVAT Form 41 does not require to specify that the same is u/s 74(8). In support of this contention, learned counsel has referred to the provisions of provisions of Section 74 (7), 74(8), DVAT Form 41 and Rule 56 of the DVAT Rules, 2005 and following decisions:

1. Commissioner of Sales Tax v. Behl Construction 2009 (162) ECR110 (Delhi);
2. Combined Traders v. Commissioner Trade & Taxes (supra), W. P. (C) 1397/2019, decided by our own Hon'ble High Court on 24.07.2019

10. Learned Counsel for the Revenue has also referred to provisions of Section 74 (8), DVAT Form 41 and Rule 56 of the DVAT Rules, 2005 and submitted that this letter dated 31/08/16 has rightly not been accepted by the Learned OHA, as a notice u/s 74(8) of the Act, for the reasons given in the impugned order. Ld. Counsel has further submitted that had the appellant served



prescribed notice in DVAT 41 and that too, to the Special Commissioner, then it would have been a different matter. So, the contention is that since the letter dated 31/08/16 submitted by the appellant to the Ld. OHA did not meet with requirements of Section 74 (8) of the Act, Ld. OHA has rightly rejected the preliminary objections of the appellant-Objector.

11. In order to appreciate the respective contentions, and for adjudication of the point involved and for ready reference, the relevant provisions of the Act on this point are reproduced hereunder:

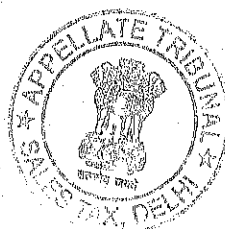
“74 (8). Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days.

74(9). If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.”

“Rule 56 (1). A notice for the purpose of sub-section (8) of section 74 shall be in Form DVAT-41.

Handwritten signature/initials.

Handwritten signature/initials.



(2) The notice shall be signed by the person making the objection or his authorised signatory and shall be served in person on the Commissioner or the Value Added Tax Authority deciding the objection.

12. Undisputedly, format of notice in form DVAT-41 has been framed in view of the provisions of the Rule 56 and provisions of Section 74(8) of the Act. This format reads as under :-

“Dear Sir/Madam,

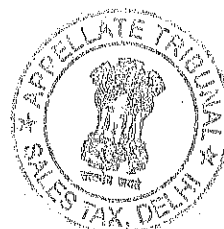
Sub: Delay in deciding objection within time specified in section 74 (7) of Delhi Value Added Tax Act, 2004.

This is with reference to Objection No. _____ dated _____ filed by the undersigned (copy enclosed) with you for the tax period specify the tax period. We have not yet received any communication/order/decision in respect of the instant objection, although the time period specified in section 74(7) of Delhi Value Added Tax Act, 2004 has elapsed on _____.

We thus request you to kindly consider the matter and communicate the decision of the instant objection to us within a period of 15 days from the date of receipt of this notice.

12/8

12/8



(Name of the dealer)”

To find out, if the letter dated 31/8/2016 submitted by the appellant, is actually a notice under section 74(8) of the Act, its contents are required to be reproduced. Its relevant portion reads as under:

Sub: Regarding objections filed for the year 2011-12 in M/s TIM Delhi Airport Advertising Pvt. Ltd.

Ref: Order under F. No. F.743/T&T/SCTT-1/OBJ/2013/2525-2525 dated 7th February, 2014 read with Order under F.743/T&T/SCTT-1/OBJ/2013/2574-2576 dated 13th February, 2014 directing to deposit Rs.3,14,00,000.

We, M/s. TIM Delhi Airport Advertising Pvt. Ltd., (hereinafter referred to as ‘TIMDAA’/ ‘Notice’/ ‘the company’/ ‘we’) are engaged in ‘selling of space or time slots for advertisements’ at the sites located at Indira Gandhi International Airport, New Delhi under a License from Delhi International Airport Limited (‘DIAL’).

We had filed a Writ Petition (Civil) titled TIM Delhi Airport Advertising Pvt. Ltd. Vs. Special Commissioner, Trade & Taxes No.1625 of 2014 before the Delhi High Court against the captioned order dated 13th February 2014 directing to pre-



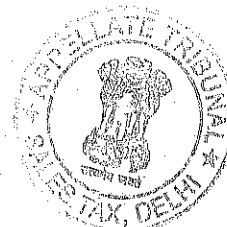
deposit of Rs. 3,14,00,000/- before hearing of objections filed by us against the assessment order for the year 2011-12.

In this regard, the Hon'ble Delhi High Court vide its order dated 2nd May, 2016 has directed the VAT authorities to complete the assessment proceedings in light of the observations made under the order dated 2nd May, 2016. The relevant para of the Order dated 2nd May, 2016 is reproduced below for your ready reference-

In this regard, the Hon'ble Delhi High Court vide its order dated 2nd May, 2016 has directed the VAT authorities to complete the assessment proceedings in light of the observations made under the order dated 2nd May, 2016. The relevant para of the Order dated 2nd May, 2016 is reproduced below for your ready reference-

“38. In the given facts of this case, we modify the order dated 7th February, 2014 (as rectified by the order dated 13th February, 2014) and direct the Special Commissioner consider the objection filed by the Petitioner in light of the observations made in this order without insisting on pre-deposit of any amount.

39. with regard to the impugned notice under section 59 of the DVAT Act dated 8th May, 2013 and 21st October 2013



requiring the petitioner to produce documents stated therein for the period of 2012-13, the court directs the assessment to be completed in view of the observations made in this order."

Therefore, in view of the aforementioned observations of the Hon'ble Delhi High Court, we request you to kindly grand us an early hearing of the objections filed before your good~~s~~^{self} against the assessment for the year 2011-12.

We further request you to kindly conclude the assessment for the year 2011-12 in light of the order of the Hon'ble Delhi High Court in Writ Petition (Civil) No. 1625 of 2014. A copy of the said order dated 2nd May, 2016 is enclosed hereto for your kind perusal."

Admissions on behalf of the appellant

13. In the course of arguments, learned counsel for the appellant has admitted that no notice under section 74(8) of DVAT Act in form DVAT 41 was served by the appellant on the Commissioner; that in the letter dated 31/08/16 there is no mention that it was being served by way of notice under section 74(8) of the Act; and that there is no mention in it that the Commissioner was asked to decide the main objections within



15 days; and that it was also not mentioned anywhere that on failure of decision of main objections within 15 days, the objections shall be deemed to have been allowed. On the basis of these admissions, it can safely be said that the Learned OHA rightly dismissed the preliminary objections of the appellant.

14. Even otherwise, on perusal of the above letter, we are of the considered view that the same cannot be termed to be a notice under section 74(8) of DVAT Act.

15. In case of Behl Construction and Aravali Aluminium Pvt. Ltd (supra), while dealing with the provisions of Section 74 (7) and (8) of DVAT Act, our own Hon'ble High Court observed that if the applicable time limit expires and no order is passed by the commissioner then the objector may issue a notice calling upon the commissioner to pass the order within 15 days, and further that, *it is only if such notice is issued* and if no order is passed within the stipulated period of 15 days that the objector's objections would be deemed to have been accepted, and not otherwise.

16. Admittedly, no notice in the form of DVAT 41 was ever served by the appellant. Learned counsel for appellant submits that no notice in form DVAT 41 is required to be served.

17. But, in view of the provisions of Rule 56 of the Rules, there is no merit in the contention of learned counsel for the appellant that



notice is not required to be served in the form of DVAT 41.

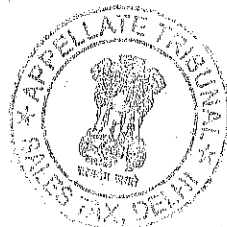
18. For want of service of notice in the form of DVAT 41, and only from delivery of letter dated 31/08/16 praying for an early hearing of the objections and to conclude the assessment in light of the order of the Hon'ble Delhi High Court in Writ Petition (Civil) No. 1625 of 2014, it cannot be said by any stretch of imagination that the appellant expressed to the Special Commissioner or the Learned OHA that the appellant wanted disposal of the objections within 15 days as provided under section 74(8) of DVAT Act and in case of non disposal of the objections within the stipulated time, it wanted that its objections shall be deemed to have been allowed within the meaning of section 74(9) of the Act.

19. As regards delivery of letter in the Dak Section of the office of Special Commissioner, it cannot be said that the same was not delivered to the Special Commissioner or Learned OHA. In *Combined Traders v. Commissioner Trade & Taxes (supra)*, when it was submitted on behalf of the petitioner therein that ultimately notice under DVAT-41 was served on the Commissioner, Hon'ble High Court observed that as per general practice in Government offices where services of notice upon public officials are usually done at one desk where the offices are located. It was further observed that there is a clerk who



usually received[✓] all notices and gives an acknowledgement, and accordingly rejected[✓] the contention raised on behalf of the revenue that[✓] was a case of non compliance with section 74 (8) of DVAT Act read with Rules 56 of DVAT Rules.

20. However, the fact remains that the appellant so delivered to the Special Commissioner only a letter. What was required to be delivered was a notice in the form of DVAT 41. Admittedly, no notice in the form of DVAT-41 was delivered. Therefore, delivery of letter to the Special Commissioner does not help the case of the appellant.
21. Undisputedly, the appellant filed W.P.(C) 1625/2014 & CM 3374/2014, before the Hon'ble High Court challenging notices of default assessment dated 5th August, 2013 whereby the Petitioner's entire turnover for the period 2010-11 and 2011-12 has been assessed to Value Added Tax (VAT) and penalty and interest has also been levied in addition to the tax assessed and appellant also impugned an order dated 7th February, 2014 as rectified by an order dated 13th February, 2014 passed by the Special Commissioner (VAT) directing a deposit of Rs. 3,14,00,000/- being 20% of the disputed demand of VAT and interest for the period 2011-12, in addition to a ruling dated 6th April 2011 made by the Commissioner (VAT) under section 85 of the Act, and also notices under section 59 of DVAT Act



issued on 8.5.2013 & 21.10.2013. Hon'ble High Court disposed off the said petition on 2.5.2016 with direction to the Special Commissioner to consider the objections filed by the Petitioner in light of the observations made in this order without insisting on pre-deposit of any amount. These directions also do not come to the aid of the appellant, the reason being that it was for the appellant to serve requisite notice under section 74(8) of DVAT Act to take benefit of the provisions of section 74(9) of the Act, but he never served such a notice.

Whether adjournment of the main objections is not legal?

22. Another argument advanced by learned counsel for the appellant is that while dismissing the preliminary objections, the Learned OHA has adjourned the objections, even when the period of 3 months as provided under section 74(7) of the Act has already expired. The contention is that learned OHA could not adjourn the objections on expiry of 3 months period as provided under section 74(7) of the Act.

Learned counsel for the Revenue has opposed this contention by placing reliance on the observations in Behl Construction's case.

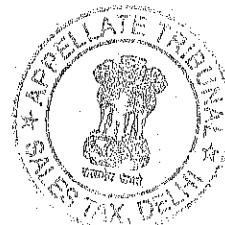
In case of Commissioner of Sales Tax v. Behl Construction and Aravali Aluminum Pvt. Ltd., (supra), while dealing with the provisions of Section 74 (7) and (8) of DVAT Act, our own



Hon'ble High Court observed that if the applicable time limit expires and no order is passed by the Commissioner then the objector may issue a notice calling upon the Commissioner to pass the order within 15 days. Hon'ble Court further observed that the time limits of three (3) months, five (5) months, six (6) months or eight (8) months are merely directory. However, if such time limit expires and the notice under section 74(8) of the said Act is issued then the period of 15 days would be mandatory. Hon'ble High Court further held that an objection pending before the Commissioner cannot be deemed to have been accepted simply because of the fact that the time specified in Section 74 (7) of the Delhi Value Added Tax Act, 2004 has expired and the Commissioner has not exercised either of the options set out in Section 74 (7) (a) or 74 (7) (b).

23. Herein, as held above, no notice under section 74(8) of the Act was issued by the appellant. Therefore, there is no merit in the contention of learned counsel for the appellant.

24. In view of the above discussion, we do not find any merit in appeals No. 340-342/ATVAT/17-18 Learned Objector Hearing Authority has rightly rejected the preliminary objections for want of service of any notice in form DVAT 41 as prescribed under rule 56 of the Rules and Section 74(8) of the Act, and by holding that the letter dated 31/08/16 was not a notice under



section 74(8) of the Act.


25. As a result, these two appeals No 340-341/ATVAT/17 are hereby dismissed.

26. As regards third appeal No 342/ATVAT/17-18, admittedly, neither objections under section 74 of DVAT Act were pending before Learned OHA, as regards assessment year 2012-13 nor any letter or notice was issued by the appellant to the Special Commissioner. Therefore, the third appeal No 342/ATVAT/17 is hereby dismissed being not maintainable.

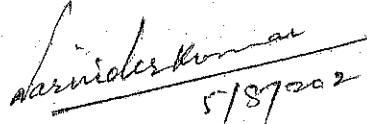
27. File be consigned to the record room. Copy of the order be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 05/08/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 340-342/ATVAT/2017/712-719

Dated: 6/8/2021

Copy to:-

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| (1) VATO (Ward- ^{Special zone}) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) VATO (L&J) |
| (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. | |



Pratap
PS/ PA to Member (A)