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

Appeal No : 298-305/ATVAT/2018
Date of Decision : 16/8/2021

M/s. B.D.R. Products (India) Pvt. Ltd.,
4864, Bara Tooti Chowk,
Sadar Bazar.
Delhi – 110006. .... Appellant

V.

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

Counsel representing Appellant : Sh. Sanjiv Saxena.
Counsel representing the Revenue :Sh. S.B. Jain.

JUDGMENT

1. By way of present eight appeals, captioned above, appellant has challenged orders dated 26/11/2018, passed by learned Special Objection Hearing Authority, (here-in-after referred to as SOHA).

2. The matter pertains to tax period in respect of all the eight quarters i.e. four quarters of the year 2012-13 and four quarters of the year 2013-14.

3. Vide impugned orders, learned SOHA reduced the demands as regards tax and interest, while allowing exemption

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to the appellant in respect of some of statutory forms i.e. C, F, & H Forms which were produced during hearing on objections.

4. It may be mentioned that initially notices of default assessment of tax and interest, under Central Sales Tax Act (here-in-after referred to as the Act) were issued by the Assessing Officer on 24/3/2017 and 26/3/2018.

5. Before filing this appeal, the appellant company is said to have deposited the tax as in terms of impugned orders, in respect of all the eight quarters i.e. 4 quarters of the year 2012-13 and 4 quarters of the year 2013-14.

6. Vide order dated 3/9/2019, while disposing of application u/s 76(4) of the Act, appellant was directed to deposit Rs. 14,000/-, towards interest. Compliance of the said order is stated to have been made on 16/9/2019.

7. Arguments heard. File perused.

8. In the course of arguments, learned counsel of the appellant has challenged the impugned orders only as regards the date from which the interest levied by the Assessing Officer, is to be charged. The contention raised by learned counsel for the appellant is that the Assessing Officer has levied interest from the date of filing of return.

9. Further it is contention of learned counsel for the appellant that so long as the dealer pays tax, which is due according to the

dealer, on the basis of information made available by him in the return, he would not be liable to pay interest from the date of filing of return. Learned counsel for the appellant has urged that liability of the appellant to pay interest would arise w.e.f. date of default, after notice of default assessment is issued or order of assessment is made and the time given for payment of tax expires.

10. In support of his contention, learned counsel for appellant has relied on following decisions :-

(1) **J.K. Synthetics Ltd. v. Commercial Tax Officer,** AIR 1994 SC 2393;

(2) **Maruti Wire Inds. Pvt. Ltd. v. S.T.O.**, 1st Circle, Mattancherry, (Civil) 3009 of 1999, decided on 27/03/2001 by Hon'ble Supreme Court of India ;

(3) **M/s. Pure Drinks (New Delhi) v. The Member**, Sales Tax Tribunal, W.P. (C) 1638/1994 decided on 21/8/2013 by our own Hon'ble High Court ,

(4) **M/s. Pentex Sales Corporation v. Commissioner of Sales Tax, Delhi,** ST. REF. 1/1998 decided on 06/5/2013 by our own Hon'ble High Court ~~of Delhi~~; and

(5) **M/s. Globe-Hi-Fabs, Faridabad v. The State of Haryana & Ors.,** CWP No. 2810 of 1999 (O & M)

decided on 30/7/2014 by Hon'ble High Court of Punjab & Haryana at Chandigarh.

11. In J.K. Synthetics' case (Supra), the question related to payment of interest on tax on the amount of freight charged in respect of sale of cement under the relevant cement control order. Ultimately, by another decision of Hon'ble Apex court, it was held that freight element formed part of the price of the cement and sales tax was leviable on the sale price inclusive of the freight amount. Therefore, the appellant was required to pay sales tax on the sale price inclusive of the freight. The dispute was limited to the point as to whether the appellant was required to pay interest on the additional sales tax which had to be paid on the inclusion of the freight amount in calculating the sale price. According to the appellant, interest u/s 11-B of the Act can only be charged for the period subsequent to the determination of sales tax under the final assessment and that too after the expiry of the period allowed under the notice of demand issued on finalisation of the assessment.

In the given facts and circumstances, Hon'ble Apex Court observed as under -

"the conjoint reading of Sections 7(1), (2) and (2-A) and 11-B of the Act leaves no room for doubt that the expression 'tax payable' in Section 11-B can only mean the Act leaves no room for doubt that the expression 'tax

payable' in Section 11-B can only mean the full amount of tax which becomes due under sub-sections (2) and (2-A) of the Act when assessed on the basis of the information regarding turnover and taxable turnover furnished or shown in the return. Therefore, so belong as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under Section 7 of the Act and, therefore, it would be difficult to hold that the 'tax payable' by him is not paid' to visit him with the liability to pay interest to hold that the 'tax payable' by him is not paid' to visit him with the liability to pay interest under clause (a) of Section 11-B."

12. Present case is distinguishable on facts as herein, admittedly, return was filed, and u/s 31 of DVAT Act, the return filed by the dealer – assessee u/s 26 or 27 is deemed to be a notice of the assessment and to be under the hand of the Commissioner, and the Commissioner is taken to have made, on the day of which the return is furnished, an assessment of the tax payable of the amount specified in the return. Furthermore, the appellant while filing return, claimed benefit on the basis of statutory forms, which were to be produced by the appellant but only some of them were produced before learned OHA and thereafter no statutory form has been produced by the appellant till today. It was for the appellant to prove his bonafide in

furnishing the return, claiming benefit on the basis of all the statutory forms, including the forms which have still not been produced. But appellant has not placed on record any document, in the form of any correspondence with the other party, to suggest that the said transactions in respect of the statutory forms, which have not so far been produced, were genuine. Appellant cannot take any advantage of the fact that in the orders passed by the Revenue, no mala-fide was attributed to the appellant for non-production of the remaining statutory forms. In the given facts and circumstances, decision in J.K. Synthetic's case (supra) does not come to the aid of the appellant.

13. In Maruti Wire Inds. Pvt. Ltd.' case (Supra), the question for determination before the Hon'ble Supreme Court was;

> "Whether the appellant, an assessee, is liable to pay any penal interest on the assessed tax under Section 23(3) of the Kerala General Sales Tax Act, 1963 (hereinafter the Act, for short), from the date when return was due though neither a return was furnished not any tax paid on self-assessment basis, is the question arising for decision in this appeal".

Therein, the appellant had not filed a return of the turnover relating to the above-said transaction. The Sales Tax Officer finalised the assessment on 10.10.1984 and served the appellant on 4.3.1985 with notice raising a demand of sales tax where after

the tax was paid. The appellant was then served with two notices raising demand for payment of Rs. 1,85,882.58p. as penal interest under sub-section(3) of Section 23 of the Act for the period 20.5.1983(the date by which the return of turn-over was due to be filed accompanied by proof of payment of the tax due as per return) to 25.2.1985.

Hon'ble Supreme Court was of the opinion, "liability of the assessee appellant to pay sales tax could have arisen either on return being filed by way of self assessment or else on an order of assessment being made. No doubt Rule 27(7A) of the Kerala General Sales Tax Rules, 1963 casts an obligation on assesses to file a return of total turnover and taxable turnover accompanied by proof of payment of the amount of tax due within 20 days of the previous quarter but such a return was not filed by the appellant. A failure to file return of taxable turnover may render the assessee liable for any other consequences or penal action as provided by law but cannot attract the liability of penal interest under sub-section(3) of Section 23 of the Act on the parity of reasoning that if a return of turnover would have been filed on the due date then the tax as per return would have become due and payable on that date".

Appellant cannot take any advantage of decision in Maruti Wire Inds. Pvt. Ltd.' case (supra), as the same is distinguishable on facts, as therein, no return was furnished, but in the present

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case, admittedly, return was filed, and u/s 31 of DVAT Act, the return filed by the dealer – assessee u/s 26 or 27 is deemed to be a notice of the assessment and to be under the hand of the Commissioner, and the Commissioner is taken to have made, on the day of which the return is furnished, an assessment of the tax payable of the amount specified in the return.

14. In M/s Pure Drinks's case (supra), the point was raised to the chargeability of interest section 27(1) of the Delhi Sales Tax Act, 1975. In the facts and circumstances of the said case, it was an admitted position that no return had been filed under the said Act in respect of the year 1980-1981. Ultimately, after due notice and opportunity to the dealer (petitioner herein) a best judgment assessment was made on 26.3.1985 by the assessing authority.

Thereafter, on 01.10.1985, a show-cause notice was issued by the Assistant Commissioner seeking suo moto revision of the assessment orders under section 46 of the said Act. Thereafter, the Assistant Commissioner passed an order on 03.09.1986 whereby the Assistant Commissioner gave directions to the Sales Tax Officer to issue the necessary demand notice and challans in terms of the said order, which included computation of interest demand notice and challans in terms of the said order, which included computation of interest for each of the four quartets of

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1980-81 both under the local Act as well as under the central Act.

Therein, Hon'ble High Court, while relying on decision in J.K. Synthetic's case (supra) and Maruti Wire Industries' case (supra) set aside the impugned order to the extent it required the petitioner to pay interest under section 27(1) of the said Act.

As noticed above, we have observed that the decision in J.K. Synthetic's case (supra) and Maruti Wire Industries' does not come to the aid of the appellant, same being distinguishable on facts.

15. In M/s Pentex Sales Corporation's case (supra) demand was raised by the assessing Authority for the assessment year 1984-85, under DSCT Act 1975 , on the ground that ST-1 forms submitted by the petitioner were held to be invalid as enquiry revealed that said forms were issued by the purchasing dealers who did not hold a registration certificate in respect of goods sold by the petitioner. The assessing authority also imposed interest on the tax, from the date of filing of return.

Hon'ble High Court observed that it was not a case of wilful omission on the part of the petitioner in making his return or that the return was made by the petitioner knowing that the particulars in the ST-1 Form on the strength of which deduction in the taxable turnover was claimed were inaccurate.

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Hon'ble High Court referred to the decision in J.K. Synthetic's case (supra), wherein it was held that if dealer has furnished particulars without wilfully omitting or withholding any particular information which has bearing on the assessment of tax, which he honestly believes to be correct and complete, it would be difficult to hold that the dealer has not acted bona fide belief that the same was not necessary or with those who have failed to pay full tax due, not with a view to evading the liability to pay tax, but because they believed that they were liable to pay the tax as assessed by them.

Hon'ble High Court also held that there was no wilful omission on the part of the petitioner is filing a true return.

Decision in M/s Pentex Sales Corporation's case (supra) is distinguishable on facts as therein the other party to the transaction i.e. the selling dealer did not hold a registration certificate with respect to electronic goods and the assessing authority did not allow deduction on account of said sales an imposed interest on the tax assessed, from the date of filing of the return.

So the decision in the said case, also does not come to the aid of the appellant, same being distinguishable on facts.

In M/s Globe Hi-Fabs's case (supra), Hon'ble High Court placed reliance on J.K. synthetic's case (supra) and held that the

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interest under Section 25(5) of the Haryana General Sales Tax Act, 1973 would be calculated from the date of passing of the revisional order and no liability on account of interest could be maintained for the period prior to the said date. The said decision was based mainly on decision in J.K. synthetic's case (supra). Same also does not come to the help of the appellant, for the reasons already given above.

No other argument has been advanced by the learned counsel of the appellant.

Conclusion -

16. In view of the above discussion, we find that there is no merit in the appeal or illegality or irregularity in the impugned order on the point of levy of interest. Consequently, all these appeals are hereby dismissed.

31. Copy of the order be supplied 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 : 16/08/2021

16/8/21.

(Rakesh Bali)
Member (A)

Narinder Kumar 16/8/2021

(Narinder Kumar)
Member (J)

Appeal No. 298-305/ATVAT/2018/752-759 Dated: 17/8/2021

Copy to:-

(1) VATO (Ward-35)
(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)

REGISTRAR

APPELLATE TRIBUNAL SALES TAX DELHI