(17)

PS

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

Appeal No. 08/ATVAT/2018-19
Date of Decision : 17/8/2021

M/s. Metalore Overseas (P) Ltd.,
Office No. 536, DLF Towers,
Shivaji Marg, Najafgarh Road,
New Delhi – 110015. ..... Appellant

V.

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

Present:

Counsel for the Appellant- Applicant : Sh. R.K. Aggarwal
Counsel for the Revenue : Sh. M.L. Garg

JUDGMENT

1. The above captioned appeal came to be partly allowed by this Tribunal on 4/12/2019,

2. Thereafter, appellant filed an application for review of the said order on the ground that the impugned order passed by learned Objection Hearing Authority (OHA) on the point of penalty was not adjudicated while disposing of the said appeal.

Narinder Kumar 17/8/2021

17/8.

APPELLATE TRIBUNAL SALES TAX, DELHI

3. Vide order dated 5/8/2021, the review application was disposed of and the appeal was restored to its original number for arguments and decision only on the point of penalty.

4. Arguments heard. File perused.

5. It may be mentioned here that Assessing Authority had imposed penalty vide order dated 1/1/2008 by observing in the manner as –

> "Whereas I am satisfied that the dealer has liability to pay penalty u/s 86 of Delhi Value Added Tax Act, 2004 for the following reasons.
>
> While framing default assessment for the tax period of July, 2007 it has been observed that the dealer has claimed input tax credit amounting to Rs. 2,85,682/- for job work. It has also been noticed that the dealer has shown balance carried forward of Rs. 76,924/- in the original return of June, 2007 but in the return of July, 2007, the carried forward amount has been shown as Rs. 2,18,559/- which is in excess of Rs. 1,41,635/- of the actual amount of carried forward admissible. Thus, a tax deficiency of Rs. 4,27,317/- (1,41,635/- + 2,85,682/-) has occurred. Therefore, penalty of equal amount is imposed u/s 86(10) of DVAT Act, 2004 for the same.

17/8

15.8

APPELLATE TRIBUNAL SALES TAX DELHI

Now, therefore, the dealer is hereby directed to pay penalty of an amount of Rs. 4,27,317/- and furnish details of such payment in form DVAT-27A alongwith proof of payment to the undersigned on or before 15/1/2008."

6. In the course of arguments, learned counsel for the appellant has confined his submissions as regards imposition of penalty for claiming input tax credit for job work. As regards, the remaining amount of penalty i.e. Rs. 1,41,635/-, learned counsel for the appellant submits that since the findings recorded by Assessing Authority and learned OHA as regards the balance carry forward amount are concerned, same having been set-aside by this Tribunal vide judgment dated 4/12/2019, he is not arguing this appeal as regards the said penalty.

7. While challenging the order of penalty on a sum of Rs 2,85,682/-, the amount which the appellant had claimed by way of input tax credit for job work, learned counsel for the appellant has contended that the assessment made by the Assessing Authority and learned OHA was not by a speaking order.

Another contention is that proprietor of M/s. Mangalam Creations has given an affidavit that he had charged tax to the tune of Rs. 2,85,682/- from the appellant company on the basis of works contract, and that in view of this affidavit, no penalty could be imposed for the said work.

17/8 17/9

APPELLATE TRIBUNAL SALES TAX DELHI

Another contention raised by learned counsel for the appellant is that penalty has been imposed u/s 86(10) of the Act, but no penalty can be imposed under this provision of law, in respect of tax deficiency.

Therefore, learned counsel for the appellant has urged that the impugned order passed by learned OHA upholding the imposition of penalty on the said amount of Rs. 2,85,682/- be set aside.

8. On the other hand, learned counsel for Revenue has referred to the notice of assessment of penalty u/s 33, issued by VATO on 1/1/2008 to point out that penalty of Rs, 2,85,682/- has been imposed because the dealer claimed ITC for a job work i.e. a non-creditable item and in this way, the appellant furnished a return which was false, misleading or deceptive. The contention is that in the given situation, penalty has been rightly imposed u/s 86(10) of the Act.

9. U/s 86(10) of the Act, penalty can be imposed on a person who furnishes a return under DVAT Act, which is false, misleading or deceptive in a material particular; or omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular; shall be liable to pay, by way of penalty, a sum of ten thousand rupees or the amount of the tax deficiency, whichever is the greater.

10. Herein, vide judgment dated 4/12/2019, this Tribunal has already upheld the impugned order passed by learned OHA while observing

that the stitching charges levied in the invoice made it clear that work was performed solely on job work rather than work contract and as such it could not be said that transaction involved was either for sale or works contract to enable the appellant to claim tax credit.

The learned Tribunal took into consideration also the effect of payment of tax by the appellant to M/s. Manglam Creations, while recording the said findings and rejecting the claim of the appellant.

In the given facts and circumstances when the Assessing Authority clearly mentioned in the order dated 1/1/2008 that the dealer – appellant claimed ITC to the tune of Rs. 2,85,682/- for job work, and imposed penalty u/s 86(10) of the Act, it can safely be said that the penalty was imposed for furnishing of return which was false, misleading or deceptive on the point of ITC.

11. Learned counsel for the appellant has relied on decisions by this Tribunal in M/s. Abhilasha Impex (P) Ltd. v. Commissioner of Trade & taxes, Delhi, appeal No. 74-79/ATVAT/2019-20 decided on 22/7/2021 and M/s. Planet Retail Holding (P) Ltd. v. Commissioner of Trade & Taxes, Delhi in appeal No. 205-206/ATVAT/15-16, to submit that order of default assessment of penalty was set-aside by this Tribunal in case of mis-match in 2A & 2B.

12. Decision in M/s. Abhilasha Pvt. Ltd. is distinguishable on facts, as the Tribunal had already vide decision dated 14/7/2017 set-aside the

orders regarding imposition of penalty but even thereafter, on remand of the matter for fresh assessment of tax and interest, penalty was again imposed.

In M/s. Planet Retail Holding (P) Ltd. (supra), a case of mis-match in 2A & 2B, it was observed that the return filed by the appellant therein could not be termed to be false or incorrect or misleading. Herein, as noticed above, the appellant claimed ITC for job work and it led to imposition of penalty u/s 86(10) of the Act.

13. In view of the above discussion, and the findings already recorded by this Tribunal, particularly in para 12 of the judgment dated 4/12/2019, we do not find any merit in this appeal, as regards the imposition of penalty to the tune of Rs. 2,85,682/-. Accordingly, the appeal pressed as regards this amount of penalty is hereby dismissed.

14. File be consigned to the record room. 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 : 17/8/2021

17.8.21

(Rakesh Bali)
Member (A)

17/8/2021

(Narinder Kumar)
Member (J)

Appeal No. 08/AT(VAT)/2018-19/768-775 Dated: 18/8/21

Copy to:-

(1) VATO (Ward-69)
(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)

APPELLATE TRIBUNAL SALES TAX, DELHI

REGISTRAR