

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

Appeal No. 144 to 157/ATVAT/18-19

Date of Decision : 26/07/2021

M/s. R.K. Overseas,
Shop No. A-1, Sanjay Nagar,
Gulabi Bagh,
Delhi – 110007.

..... APPELLANT

V

Commissioner of Trade & Taxes, Delhi.

..... RESPONDENT

Counsel representing the Appellant :

Counsel representing the Revenue :

Sh. Arif Ahmad (Chairman)
Sh. R.K. Singh (Member)
Sh. P. Tara (Member)
Sh. S.B. Jain (Member)
Rectified today.
26/7/2021

JUDGMENT

1. Present 14 appeals have been filed by the appellant – a proprietorship concern- through its proprietor, against seven orders. The impugned orders are dated 19/1/2018. These were passed by Special Commissioner-II-Learned Objection Hearing Authority, while disposing of objections filed under section 74 of DVAT Act (here-in-after referred to as the Act).

Narinder Kumar
26/7/2021



2. By way of objections, appellant challenged assessment made by the Assessing Officer. The Assessing Officer had levied tax and interest, in respect of 7 quarters. Vide separate seven orders of same date, the Assessing Officer had imposed penalty in respect of all the 7 quarters.
3. Vide impugned orders, Learned OHA has affirmed levy of tax and interest and imposition of penalty. Hence, these appeals.
4. The appellant is engaged in the trading of auto parts, accessories, lubricants and tyres etc. It is a dealer registered having Tin No. 07480362988, under DVAT Act.
5. Audit of the appellant is said to have been conducted in respect of the financial year 2009-10. On the basis of audit, seven notices are stated to have been issued to the appellant, which led to levy of tax, interest and penalty as under -

S.No.	Tax Period	Amount (in Rs.) under DVAT Act	
		Tax & Interest	Penalty
1.	2 nd Qtr. 2009-10	54,43,098/-	44,12,996/-
2.	Oct., 2009	18,13,646/-	14,85,761/-
3.	Nov., 2009	27,08,414/-	22,41,704/-
4.	Dec., 2009	19,70,434/-	16,48,649/-
5.	Jan., 2010	52,567/-	46,040/-



6.	Feb., 2010	10,85,920/-	9,27,351/-
7.	March, 2010	14,93,591/-	12,89,101/-

6. The only argument advanced by learned counsel for the appellant is that this is a case where no permission in the form of DVAT-50 was issued by the Commissioner, to the Audit Officer to make assessment as regards tax, interest on the basis of audit, and since the impugned assessment is without any jurisdiction, the impugned orders passed by the learned OHA affirming the assessment of tax, interest and imposition of penalty deserve to be set-aside.

7. In support of his contention learned counsel has placed reliance on decision in **H.G. International vs. The commissioner of Trade and Taxes, Delhi**, ST.APPL. No. 63/2014 decided on 16/8/2017 by our own Hon'ble High Court, provisions of Section 58 of DVAT Act, 2004 and rule 65 (3) of DVAT Rules, 2005.

8. Learned counsel for the Revenue has submitted that audit was conducted by the department in its office, as regards some bogus transactions, reflected in the return, which required audit and enquiry, and since the appellant failed to prove that the transactions were genuine, impugned assessment was made and penalty was imposed, which have been rightly affirmed by the Learned OHA.



9. It may be mentioned here that on merits, learned counsel for the appellant has not advanced any argument. In other words, in the course of arguments, the facts which led to assessment as regards tax, interest and penalty vide impugned orders have not been challenged before us.

10. As regards DVAT -50, only for ready reference it is pertinent to mention here that same is a document in proof of grant of authority to the person specified therein to exercise powers under Chapter X of the Act.

11. It may be mentioned here that appellant has not argued before us that the Officer, who conducted the Audit, had no power to conduct audit or to investigate under Chapter X. Therefore, we need not go into the question, if the authorization letter in form DVAT 50 is required to be carried for the purposes of audit at the office premises of the dealer or at the office premises of the department also.

12. On the point of jurisdiction to make assessment, by the Officer, who conducted the audit, Learned counsel for the Revenue has submitted that the concerned Officer being a Value Added Tax Officer, had the jurisdiction to make assessment, and as such the assessments as regards tax, interest and imposition of penalty have been rightly upheld by the Learned OHA.

13. As regards DVAT-50, same is required to be issued by the Commissioner, to the Audit Officer to exercise powers under Chapter X. This Chapter contains provisions pertaining to audit, investigation and enforcement. Sub-section (4) of Section 58 empowers the Commissioner either to -

- a. confirm the assessment under review; or
- b. to issue a notice of assessment or re-assessment of the amount of tax, interest and penalty pursuant to sections 32 and 33 of the Act,

where the Commissioner has considered the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him.

14. In H.G. International's case(supra), following question of law was framed by Hon'ble High Court: -

"The only question of law framed by the order dated 4th August, 2016 is "whether the VATO (Audit) can pass an assessment order in terms of the Delhi Value Added Tax Act, 2004?"

15. In that case, at no stage of proceedings before the VATO, the OHA, or the Appellate Tribunal, the Appellant raised the issue regarding the jurisdiction of the VATO (Audit) to pass the default



assessment order. However, Hon'ble Court permitted the Appellant to raise this question since it went to the root of the matter.

16. The question was answered in the affirmative, i.e. in favour of the Department and against the Assessee.

17. The Appellant was engaged in the business of trading in auto parts, tyres and the lubricant oil. The Appellant's claim of input tax credit was rejected ^{by} issued by the Value Added Tax Officer ('VATO'), who also happened to be the VATO (Audit), for the aforementioned 2nd, 3rd and 4th quarters for the year 2008-09, resulting in creation of demand and imposition of penalty. After the OHA upheld the orders of default assessment and interest and penalty, The Appellant approached the Appellate Tribunal, which, by the impugned order, dismissed the appeal.

18. The thrust of the arguments of the Appellant was that the person who conducted the audit could not himself make the assessment. In that case, Hon'ble High Court observed as under:

"Section 58 (4) states that the Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of audit, if any, or any information otherwise available to him, either confirm the assessment under review or serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty



pursuant to Sections 32 and 33 of the DVAT Act.

Therefore, Section 58 (4) itself contemplates the auditor carrying out an assessment or re-assessment as the case may be, in terms of Sections 32 and 33 of the DVAT Act.

19. The powers under Section 58 can be delegated by the Commissioner to named officers in terms of Section 66 (1) read with Section 68 of the DVAT Act.

20. In that case, at the relevant time, when the audit of the Appellant took place, there was an order dated 31st October 2005 issued by the Commissioner, VAT under Section 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules') delegating his powers under various provisions of the DVAT Act to an officer of a particular designation. Therein, Hon'ble High Court observed that said order dated 31st October 2005 issued by the Commissioner, VAT under Section 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules') was an order validly issued and was not subject matter of challenge in those proceedings.

22. In view of the above order dated 31st October 2005. Hon'ble High Court further observed that the impugned orders of default assessment of tax, interest and penalty issued by the VATO (Audit) were validly issued and within his powers and jurisdiction in terms of



22/2677

22/2677

Section 58 (1) read with Section 58 (4), and Section 66 read with Section 68 of the DVAT Act.

23. Present case pertains to assessment for the year 2009-2010. Here, in the course of arguments, learned counsel for the appellant has not disputed that the aforesaid order dated 31st October 2005 was applicable at the time audit was conducted and reassessment was made by VATO (Audit) on the basis of evidence collected during audit. Learned counsel for appellant has also not submitted that any order subsequently passed by the Commissioner was applicable during the period VATO (Audit) conducted the audit and then made reassessment. Therefore, in view of the decision in H.G. International's case, which upheld the validity of order dated 31st October 2005, in force at the relevant time, there is no merit in the contention of learned counsel for the appellant that in the year 2009-10, VATO (Audit) had no power to make re-assessment or to act as Assessing Officer under DVAT Act.

24. It may be mentioned here that in the course of arguments when attention of learned counsel for the appellant was drawn to the question of law framed in H.G. International case (supra)-cited by him- and that the said question was answered by the Hon'ble High Court in affirmative i.e. in favour of the department and against the assessee, only at that moment learned counsel for the appellant



candidly admitted that the question framed therein was decided against the assessee, and further that HG International's case does not support the contention raised by him in this appeal.

25. However, Learned counsel for the appellant has referred to order dated 19.12.2019 passed by this Tribunal in M/s Prakash Trading company v. Commissioner, and the decision in **Capri Bathaid Pvt. Ltd. vs. Commissioner of Trade & Taxes**, WPC No. 8913 of 2014, and the subsequent circular dated 11/4/2016 issued by Commissioner DVAT, to contend that the Officer, who conducts audit cannot exercise powers of VATO.

26. Learned counsel for the Revenue has rightly pointed out that Capri Bathaid's case was decided by our Hon'ble High Court in 2016 and the decision in M/s Prakash Trading Company, by this Tribunal is of the year 2019, and that here, the impugned assessment being of the financial year 2009-10, neither these two decisions nor the circular dated 11/4/2016 issued by Commissioner DVAT in view of directions contained in Capri Bathaid's case delegating certain powers, ~~DO NOT~~ come to the aid of the appellant.

27. In view of the above discussion and findings that during the relevant period i.e. year 2009-2010, VATO (Audit) had the jurisdiction even to make reassessment as regards tax, interest and exercise powers in this regard and for imposition of penalty, all these




14 appeals deserve to be dismissed. The impugned orders passed by Learned Objection Hearing Authority affirming the orders passed by VATO are upheld. Accordingly, all the 14 appeals are hereby dismissed.

28. 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 : 26/07/2021


26/7/2021

(Rakesh Bali)
Member (A)




26.7.2021

(Narinder Kumar)
Member (J)

Appeal No. 144-157/AVMT/18-19/640-647

Dated: 28/7/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-) | (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. | |




PS/ PA to Member (A)