

## BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial) &amp; Sh. Rakesh Bali, Member (Administrative)

Appeal No : 352-353/ATVAT/2006-07

Date of Decision : 26/8/2021

M/s Rashtriya Transport Corporation  
5810, Gali No.-08, Block No.-04,  
Dev Nagar, Karol Bagh,  
New Delhi.

..... Appellant

V

Commissioner of Trade &amp; Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. R. Mahana.

Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

1. The appellant has filed the above captioned appeals against orders dated 03/4/2006, passed by Jt. Commissioner-III - learned Objection Hearing Authority (here-in-after referred to as OHA).

2. Vide impugned order, learned OHA disposed of objections filed by the appellant – objector against notices of default assessment of tax and interest and penalty issued by Assessing Officer – AVATO on 22/3/2006, u/s 32 and 33 respectively of DVAT Act (here-in-after referred to as the Act), on the basis of audit conducted at the godown of the appellant by the field staff on 9/3/2006. The objections pertained to the tax period 2005-2006.

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3. Case of the appellant, as set out in the memorandum of appeal reads as under -

"M/s. Rashtriya Transport Corporation, is engaged in the business of carrying goods for Rewards i.e. charges and is as such a Transporter. The appellant is having its Head Office and principal place of business in Delhi at premises 5810, Gali No. 8, Block No. 4, Dev Nagar, New Delhi - 11005 and is having two godowns at Delhi i.e. at Opp. Electric poll No. 52, Gali No. 2, Master Mohalla, Libaspur, Delhi and IInd Godown opp; electric Poll No. 83-84, Master Mohalla, Libaspur, Delhi.

The godowns of the appellant were surveyed by the Enforcement officials of the Delhi VAT Department on 9/3/2006. The Manager of the appellant Shri Ram Kumar was present at the godowns. He informed the officials that in accordance with the provisions of Delhi Value Added Tax Act, 2004 all the information/ record relating to the goods are in their possession and available but the same is available in appellant's head Office and principal place of business which is at 5810, Gali No. 8 Block No. 4 Dev Nagar, Karol Bagh, New Delhi being their head office but the officials insisted on record being available at godown. In spite of facts it was explained to the official that their principal place of business is at Dev Nagar, Karol Bagh, New Delhi. They book as well as receive goods/documents for delivery at their principal place of



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business. When a customer approach then at principal place of business 5810, Gali No. 8, Block No. 4 Dev Nagar, Karol Bagh, New Delhi, after completing all formalities the appellant send with him hi employee for taking delivery of goods from godown and the employee gives delivery of goods.

The Enforcement officials without providing the appellant the opportunity to call for the record from the principal place of business or visiting principal place of business sealed the godown on the ground that documents are not available and also recorded the statement of the manager to this effects, the respondent did not record the entire version truthfully and ultimately asked the manager to sign the statement. The stock inventory was prepared by the VATO officials with regard to goods at godown and the copy of the same was given to the manager. The sealing memo prepared by official is annexed as Annexure P-1, and this clearly establish the place of main business at 5810, Gali No. 8, Block No. 4 Dev Nagar, Karol Bagh, New Delhi -5 and godown at the above address. The official only sealed godowns and also passed Mall Roko Order.

Thereafter the appellant appeared before the VATO (Border duties) and produced all the relevant documents including L/R, invoices, registration no. of the purchasing dealer to whom the goods belong etc. as required under law. Inspite of having provided all the information alongwith filing of copies of all the

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documents as required under law the VATO officials held that the appellant is deemed to be the owner of the goods and assessed the appellant u/s 42(2) read with section 3(9)(a)(b) of the VAT Act and created a disputed demand of Rs. 4,91,096.00 on the alleged turnover of Rs. 1,22,77,400/- vide order dated 22/3/06.

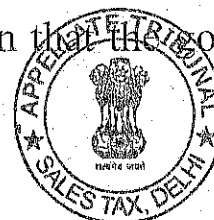
The VATO has thus imposed tax on the appellant without fixing any liability or sales effected by him.

The VATO further also imposed a penalty of Rs. 4,91,096/- u/s 86(1) and Rs. 50,000/- u/s 86(14) of the VAT Act, inspite of the fact that no offence was committed by the appellant u/s 86(19) as he has produced all the records as required under law.

On being aggrieved from both the orders, appellant had preferred two objections before the appropriate authority against both the orders as per law.

The objection authority had disposed of both the objection by single order wherein he has rejected both the objections and confirmed notice for default assessment as well as penalty levied issued by the Value Added Tax Officer.”

4. Ld. Counsel for appellant has referred to the provisions of Section 3 (9) of DVAT Act, 2004 and submitted that this is a case where the appellant produced material before Ld. OHA, during hearing on objections, to rebut the presumption that the goods found



lying at the godowns of the appellant were owned by the appellant or that the same were held by the appellant for sale in Delhi. Ld. Counsel for the appellant further submitted that in this regard, representation dated 13.3.2006 was also submitted by the appellant to the concerned VATO (Border Duty).

Ld. Counsel has urged that neither the VATO (Border Duty) nor Ld. OHA took into consideration the material supplied by the appellant to rebut the said presumptions, and as such the impugned order deserves to be set-aside.

Another contention raised by Ld. Counsel for the appellant is that notice was required to be issued to the appellant for the purpose of inspection of record as provided u/s 59 of DVAT Act, but no such notice was issued to the appellant and even on this ground the impugned order deserves to be set aside.

It has also been contended by Ld. Counsel for the appellant that provisions of DVAT Act would apply to every dealer who is registered under this Act, but the applicant, which is a transporter, was not registered under DVAT Act, and as such the appellant was not liable to be assessed for tax under the said Act.

5. Notice of Default Assessment of Tax U/s 32 of DVAT Act read with section 3 (9) of the Act, issued by the Assessing Authority on 22/3/2006 reads as under -



"Whereas godowns of M/s Rashtriya Transport Corporation situated at Godown No. 1 Opp. N.D.P.L. Poll No. 52, Gali No. 2 (Inside Gali No. 6) Master Mohalla.

Godown No. 2, Opp : N.D.P.L. Poll No. 83 & 84, Gali No. 2 (Inside Gali No. 6) Master Mohalla, visited by the Field Staff of this office on 09.03.06 and sealed the premises for want of purchase bills and other related documents.

Whereas the transporter failed to produce the proper documents of the goods lying at his godown premises at the time of detention and assessed as under :

S.No.	Amount	Rate of Tax	Tax
1.	1,22,77,400/-	4%	4,91,096/-

This dealer is hereby directed to pay tax amounting Rs. 4,91,096/- and furnish proof of such payment to the undersigned on or before 06.04.06 for getting release of goods/deseal of the Godown".

6. Notice of default assessment of tax u/s 33 of DVAT Act, issued by the Assessing Officer on 22/3/2006 reads as under -

"Whereas I am satisfied that the transporter has a liability to pay penalty u/s 86 of Delhi Value Added Tax, 2004 for the following reasons:-



Penalty u/s 86 (19) equal amount of tax (Rs.491096/-). As the goods being transported without proper documents.

Penalty u/s 86 (14) fail to furnish all records regarding transactions of goods detained (Rs. 50,000/-) now therefore, the transporter is hereby directed to pay penalty of an amount of Rs.541096.00 and furnish proof of such payment to the undersigned on or before 06.04.06 for getting the goods released”.

7. While disposing of the objections, learned OHA observed in the manner as -

“The D. R. stated that both the above situations cannot be viewed in isolation and since the objector did not produce any documents relating to the goods are owned by him for sale in Delhi and hence the notice of default assessment is justified. The manager, in his statement recorded at the time of inspection, has also stated that he is unable to produce the documents for the goods kept in the godwon.

As regards imposing of penalty u/s 86 (14) the D. R. Stated that since the dealer did not produce any document or information about the goods kept in the godown at the time of inspection hence penalty imposed u/s 86 (14) is justified.

The D. R. also stated that since the goods had already left the premises of the selling dealer but had not reached its destination,



the goods are in transit and this is covered u/s 61 of the DVAT Act and hence the penalty imposed u/s 86 (19) is in accordance with law.

I have heard the arguments put forth by the Departmental Representative and the objector. I am inclined to accept the arguments put forth by the D. R., hence the objection is rejected and the notice for default assessment and penalty issued by the Border Duty branch of the Deptt. is upheld.”

8. Section 3 (1) of DVAT Act provides that subject to other provisions of this Act, every dealer which is registered under this Act or required to be registered under this Act shall be liable to pay tax calculated in accordance with this Act.

As regards, this contention, it may be mentioned that law requires maintenance of account by the transporters under the Act to enable the taxing authority to trace the dealer, co relate goods with the dealers transporting goods for fixing the tax liability for checking evasion of tax. Liability of the transporters or carriers arises if they do not disclose the particulars required and what is within their knowledge to help the authorities to collect tax from dealers, which but for this provision might escape. In this regard, reference may be made to decision in **Tripura Goods Transport Association v. Comm. Taxes** (1999) 112 STC 609 (SC).

9. As regards, levy of tax, interest & imposition of penalty, section 3 (9) of the Act provides that a presumption may be raised that the



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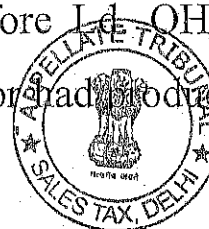
goods in respect of which the person has failed to furnish information or permit inspection, on being required by the Commissioner so to do, are owned by the said person and are held by the said person for sale in Delhi, and thereupon the provisions of this Act shall apply accordingly.

Said presumption is to be raised when any person who transports goods or holds goods in custody for delivery or on behalf of another person, on being required by the Commissioner, fails to furnish any information in his possession in respect of the goods or fails to permit inspection thereof.

10. Admittedly, in this case, godowns of the appellant were inspected by the field staff on 9.3.2006. Thereafter, notice of default assessment of tax dated 22.3.2006 was issued by VATO (Border duty). The premises of the appellant were sealed for want of purchase bills and other related documents. On account of failure of appellant to produce documents in respect of the goods lying at the said godowns, the appellant was directed to pay tax.

Vide another notice of default assessment, u/s 33 of DVAT Act, the VATO (Border duty) imposed penalty on the appellant u/s 86 (19) as the goods were being transported without proper documents and also because the appellant failed to furnish all records regarding transaction of the goods, which were found detained at the godowns.

11. When the appellant filed objections before Ld. OHA, it was alleged in the objection petition that the objector had produced all the



documents before VATO (Border duty), but, on the other hand the representative of the department submitted before Ld. OHA that the objector had not produced any document relating to the goods stocked in the godowns at the time of visit by the officers of the department.

It may be mentioned here that there is nothing on the record to suggest that the submission made by the representation by the department before Ld. OHA was wrong or against record.

12. As mentioned in the order of Ld. OHA, the manager of the appellant, who was present at the time of said inspection, made statement before the Enforcement Team that he was unable to produce the documents for the goods kept in the godowns. There is nothing on record to suggest that the said statement was ever retracted by the said manager at the time of inspection or soon thereafter.

So, there is nothing in the order passed by Ld. OHA to rebut the presumptions u/s 3 (9) of the Act.

13. Learned Counsel for revenue has rightly submitted that the relevant provisions pertaining to seizure of record and goods, kept on any business premises by a transporter, is the provision of section 60 of DVAT Act and not section 59 of the Act as submitted by learned counsel for the appellant. Learned counsel for the Revenue has further rightly submitted that section 60 does not provide for issuance of any notice to any such transporter whose business premises is to be inspected by the Commissioner.



Learned counsel for the Revenue has referred to following two decisions (1) Bajaj Electricals Ltd. v. Assistant commercial Taxes Officer, (2008) 18 VST 436 (SC) decided on 4/11/2008 by Hon'ble Supreme Court of India (2) Guljag Industries v. Commercial Taxes Officer, Appeal (civil) 5197 of 2005 decided on 3/8/2007 by Hon'ble Supreme Court of India.

The first mentioned case cited by learned counsel for the Revenue pertains to declaration in form ST 18A made by the consignee and non furnishing of particulars in the said forms signed by the consignee.

The second mentioned case also pertains to form 18A. Here the case pertains to inspection by the team which led to the disclosure of facts that goods were lying at the godowns of the appellant but they failed to produce any documents.

14. As regards penalty imposed u/s 86 (14), since the appellant transporter failed to produce the records pertaining to transaction of goods lying detained at its 2 godowns, as noticed above, when it stands established that the appellant failed to furnish records regarding transaction of the said goods, no illegality or irregularity can be said to have been committed by the revenue while imposing penalty under this provision of law, or by the learned OHA while upholding the said penalty.

15. As regards penalty imposed under section 86(19) of DVAT Act, it is significant to note that this provision of law is attracted in a case



where goods are being 'carried by a transporter' without the documents or without proper and genuine documents or without being properly accounted for in the documents referred to in sub-section (2) of section 61 of the Act.

Here, it is not case of the Revenue that the goods were being carried by a transporter-the appellant herein. As per case of Revenue, the goods were being detained at the godowns. In this situation, provisions of section 86(19) of the Act are not applicable to the fact of present case. As a result, penalty imposed under section 86(19) of the Act cannot be sustained. Therefore, the impugned order upholding the penalty under this provision of law is hereby set-aside.

16. In the written submissions, one of the points raised on behalf of the appellant is that the Commissioner did not delegate his powers u/s 60 of DVAT Act to any officer, as per provision of section 68 and as such the assessment made by the Assessing Officer is without any jurisdiction and vide ab-initio. However, it may be mentioned here that in the course of arguments, learned counsel for the appellant has not advanced any argument on the point of jurisdiction of VATO (Border duty).

17. No other point has been argued by the learned counsel of the appellant.



18. In view of the above discussion, no interference is called for in the impugned order passed by learned OHA, so far as levy of tax is concerned and as such the same is upheld. Impugned order regarding upholding of penalty u/s 86(14) of DVAT Act is also upheld. However, as regards the imposition of penalty u/s 86(19) of DVAT Act is concerned, impugned order deserves to be set-aside, for the reasons given above.

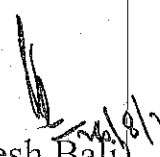
19. As a result, this appeal is partly allowed as regards the imposition of penalty u/s 86(19) of DVAT Act, but the appeal as regard levy of tax and imposition of penalty u/s 86(14) is hereby dismissed.

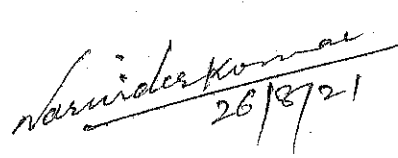
20. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 26/8/2021



  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)

Appeal No. 8352-353/ATVAT/2006-07/830-837

Dated: 26/8/2021

Copy to:-

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| (1) | VATO (Ward- )  | (6) | Dealer     |
| (2) | Second case file   | (7) | Guard File |
| (3) | Govt. Counsel  | (8) | AC(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. |     |            |



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