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M/S KHANDELWAL STEEL
Rev. No. 06/ATVAT/18

27/8/2021

Present: Sh. H.C. Bhatia, Counsel for Appellant.
Sh. S.B. Jain, Counsel for Revenue.

This order is to dispose of review application filed by the dealer, which was appellant in appeals No. 133-134.

Arguments heard. File perused.

The dispute pertains to impugned order dated 16/4/2017 passed by learned OHA vide which objections filed by the dealer were disposed of. Prior thereto, Assessing authority had passed order dated 7/3/2007, issuing notice of default assessment of tax and interest and separate notice of assessment of penalty.

The assessment was made on the basis of survey conducted by Enforcement Branch on 23/8/2006 which led to detection of variation in stock and cash, and also recovery of 23 loose papers which disclosed turnover worth Rs. 1,84,225/-.

Vide judgment dated 29/6/2018, this Tribunal disposed of both the appeals by observing in the manner as –

“From the facts of the present case it is apparent that the appellant has not been able to explain the variations found during survey and has taken the plea that considering the

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volume and nature of the business the variation were small. He has also admitted that as the appellant is also in the retail business it is not always possible to issue the invoices immediately. These facts go to show that the appellant has not been maintaining the books of accounts in the ordinary course of business and the return filed by the appellant could not be stated to be correct. In view of these fact and circumstances of the case we do not find any reason to interfere with the default assessment of tax and interest. So far as imposition of penalty of Rs. 1,00,000/- u/s 86(15) is concerned, considering the demand of tax and interest created we are of the considered view that the same be reduced to Rs. 70,000/- which we accordingly do. Orders accordingly.”

Learned counsel for the petitioner – applicant has submitted that in the grounds of appeal, a specific ground i.e. ground no. 3, was pleaded, and agitated at the time of final arguments, but while disposing of the appeal against the order pertaining to tax and interest, said ground was not adjudicated upon. Therefore, learned counsel has urged that the review application be allowed as regards the appeal challenging the levy of tax and interest.

Said ground no. 3 in the grounds of appeal reads as under –

“That the VATO erred in law in arbitrarily treating the entire sales taxable @ 12.5% whereas as per the record, the bulk of transaction of the appellant relate to item taxable @



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4% as is evident from the record of the appellant and the details filed during the default proceedings. The assessment is thus, devoid of the principle of best judgment assessment and the assessment has been made arbitrarily based on surmises, conjectures and is the result of whims and fancy of the part of the VATO without any material to support the same."

On going through the judgment dated 29/6/2018, we find that on behalf of the appellant, it was urged that the penalty imposed be reduced and at the same time enhancement may also be reduced. In support of this contention, reference was made to two decisions M/s. Laxmi Timber Merchant vs. Trade & Taxes, Delhi, Appeal No. 84-85/ATVAT/07 and M/s. Mahavir Steel Traders vs. Commissioner of Trade & Taxes, Delhi, Appeal No. 291-292/ATVAT/07.

In the course of arguments on this review petition, when we have enquired from learned counsel for the Revenue, if any argument was advanced on the point ^{alleged as} raising the ground No. 3, in the memorandum of appeal, reproduced above, learned counsel for the Revenue has candidly admitted that argument was advanced on the said point, on the basis of ground no. 3 ^{on merits.}

In view of the above submission, ^{that-} the ground no. 3, ^{was} agitated before the Tribunal and the fact that while deciding the appeals, the said ground no. 3, ^{mistakenly} was/not adjudicated, we deemed it a fit case for allowing ^{of} this review ^{petition}, so as to adjudicate the



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ground no. 3, and for decision afresh in appeal no. 133/07, in view of outcome on adjudication of ground no. 3.

Learned counsel for the petitioner/applicant submits that the other appeal No. 134, having been filed ^{only} against the order of penalty, this review application is not being pressed in respect of the said appeal.

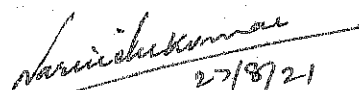
As a result, this review petition is partly allowed, so as to adjudicate the ground no. 3, of the memorandum of appeal, and for decision afresh in appeal no. 133/07, in view of the outcome on adjudication of ground no. 3. Appeal no. 133/07 is therefore ^{restored} to its original number for adjudication on the said ground.

Announced in open court.

Dated : 27/8/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. R.No-6/DVAT/18 in
133-134/DVAT/

/894-901

Dated: 2/9/2021

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| (1) | VATO (Ward-96) | (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. | | |




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