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

Review No. 238/ATVAT/2021
Date of Decision : 6/9/2021

M/s. Amway India Enterprises Pvt. Ltd.,
Ground & 1st Floor,
Heirarchical Commercial Centre,
Jasola,
New Delhi – 110025. .... Appellant

V

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

Counsel representing Applicant : Sh. A. K. Bhardwaj,
Counsel representing Revenue : Sh. P. Tara

JUDGMENT

1. This order is to dispose of review application filed by the dealer, who was appellant in appeals No.370-394/17. Said appeals have been recently disposed of by this Tribunal vide judgment dated 18th of August, 2021.

2. The only ground pressed by learned counsel for applicant is that decision in **Nav Bharat Enterprises Ltd. V. Sales Tax Officer**, (1987)

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066 STC 0252, relied on behalf of the appellant while challenging the order of remand by Learned OHA for assessment under Central Sales Tax Act, has not been taken into consideration.

3. It may be mentioned here that it was only while going through the written submissions that I took notice of said decision referred therein. A finding was recorded in the judgment dated 18.8.2021 that decision was of no help to the appellant. Otherwise, the order of rejection of contention of learned counsel for the appellant that the department should have resorted to remedy of revision, instead of passing an order of remand, would not have been there. Similarly, the words "in the given facts & circumstances, the decisions cited by learned counsel for the appellant were of no help to the appellant" could not appear. Words "that the question of expiry of prescribed period for making of assessment did not arise" would also not have been there in the judgment.

4. I may add that on behalf of the appellant, on the points involved in appeals, in all 12 cases were cited. 11 cases find mention in the appropriate portion of the judgment, where respective contentions raised on behalf of appellant were discussed. The only exception is Nav Bharat's case, and that ~~due to~~ too due to inadvertent mistake.

5. In view of the views expressed above, I could dismiss the review application. However, keeping in view the principle of natural justice

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that justice should not only be done, but also appear to have been done and so that faith of none of the parties to the litigation, in the justice delivery system, gets shattered, even due to suchlike omission or mistake, I deem it a fit case to review the judgment dated 18.8.2021 on this limited point, while referring to the decision in Nav Bharat's case.

6. Heard. File perused.

7. For the purposes of review, by way of ready reference, it is apposite to state that the appeals were filed challenging orders dated 8/1/2018 passed by Learned Addl. Commissioner- Objection Hearing Authority (hereinafter referred to as OHA).

8. The appellant company is engaged in the business of resale of goods by 'direct selling method'. On 29/1/2013, VAT Department directed the appellant to get special Audit conducted, u/s 58A of DVAT Act, for the year 2011-12, through a designated auditor, namely, M/s Matta & Associates, CA.

9. On completion of Audit, a report was submitted by the above said firm to the VAT Department on 25/4/2013. Thereafter, show cause notice was served by the concerned VATO, for assessment purposes on 10/5/2013. The company filed detailed reply to the said notice. Ultimately, Assessing Officer issued notice of default assessment of tax and interest, vide 12 orders dated 12/7/2013. These notices/assessments pertained to the tax period beginning from April, 2011 to March, 2012

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and were issued u/s 32 of the DVAT Act. Total demand was of Rs. 5,09,52,590/- i.e. Rs. 4,10,47,163/-by way of tax & Rs. 99,05,427/- towards interest).

10. Said demand was challenged by the dealer-company by way of objections under section 74 of DVAT Act.

11. Learned OHA partly allowed the objections and partly affirmed the tax, interest and also the penalty as imposed by Learned VATO. He also passed an order of remand. Relevant portion of remand order of Learned OHA, challenged in appeals, reads as under:-

> "However, so far as assessment of tax, interest and penalty in respect of Central sales of Rs. 79,79,64,762/- under section 32 and 33 of DVAT Act, 2004 is concerned the dealer has submitted that assessing the Central Sales under DVAT Act is incorrect. Therefore, even though the Assessing Authority has correctly decided the issue of taxability of the said item @ 5% even on Central sales which has been discussed and decided in above paras no. 18 to 31, however, the Assessing Authority has made technical mistake by assessing Central sales under the provisions of DVAT Act-2004 and therefore, I am inclined to remand the matter on this issue to the Assessing Authority to pass fresh and appropriate orders under the relevant provisions of CST Act to meet the end of justice within next two months after providing due opportunity of hearing and to produce documents/records to the objector dealer. If the Objector dealer does not appear for hearing or do not produce the relevant records/documents, despite of providing due opportunity, the Assessing authority shall be free to pass appropriate orders

as per law. The objector dealer shall appear for hearing along with relevant records before Assessing Authority on 23.01.2018 at 11.00 AM."

Feeling dissatisfied, the dealer filed 24 appeals before the Tribunal.

12. Vide judgment dated 18.8.2021, all appeals were disposed of. One of finding pertained to the order of remand passed by Learned OHA. While disposing of the appeals, challenge of the appellants on this very issue was disallowed and consequently, order of remand was upheld.

Submissions on behalf of the appellant challenging the order of remand.

13. At the time of final arguments in the appeals, on the issue of order of remand, following points were raised on behalf of the appellant:

"that the Assessing Authority had the exclusive and original jurisdiction to make assessment, but, *within the time limit prescribed* u/s 34(1) of DVAT Act;

that law does not permit OHA *to extend the period of limitation* for the purpose of fresh assessment;

that the said jurisdiction having not been exercised *within the prescribed period*, the Assessing Authority cannot be permitted to proceed with the matter; and

that the impugned order, vide which learned OHA has remanded

the matter to the Assessing Authority for the purpose of afresh assessment as regards the central sales, under CST Act, deserves to be set-aside. "

14. Learned counsel for the appellant had referred to decision in "**State of Punjab & Ors. v. M/s Shreyans Indus Ltd. Etc.** in Civil Appeal Nos. 2506-2511 of 2016, decided on 04/03/2016 by Hon'ble Supreme Court." was also relied on. In the said decision, attention was specifically drawn to a previous decision in **Bharat Heavy Electrical Ltd. v. Assistant Commissioner of Commercial Taxes (INT-I), South Zone, Bangalore and others,** (2006) 143 STC 10.

15. Reference to **Nav Bharat's** case is there in the written submissions which were filed by counsel for the appellant.

16. On the other hand, learned counsel for the Revenue contended that as regards assessment in respect of central sales worth Rs. 79,79,64,762/-, since learned OHA accepted the objection of the dealer – appellant that assessing the central sales under DVAT Act is incorrect, in view of this technical mistake by the Assessing Authority, learned OHA was justified in remanding the matter to the Assessing Authority with directions to pass assessment order afresh under the relevant provisions of CST Act.

17. Learned counsel for Revenue referred to the provisions of Section 80 of DVAT Act, and contended that the order passed by Assessing

Authority is in substance and according to the intent and purposes of DVAT Act, and as such any mistake, defect or omission in such assessment will not make the orders invalid.

18. Learned counsel for Revenue further contended that the OHA, in exercise of powers vested with him u/s 74(7) of DVAT Act, correctly remanded the matter under CST Act for correct assessment, particularly, when objection in this regard was raised by the appellant itself. learned counsel for Revenue has relied on decision in **M/s Shaila Enterprises v. Commissioner of Value Added Tax,** (2016) 94 VST 367 (Del), in particular, para 17, to point out that same contains discussion as to the power of OHA on the point of remand, and to issue directions for making of fresh assessment as contained u/s 34(2) of DVAT Act. Reference has also been made to decision in **M/s Aimil Ltd v. Commissioner of Value Added Tax,** W.P. (C) No. 4597/2017, decided on 24/5/2017 by our own Hon'ble High Court.

Decision in Nav Bharat's case

19. Let's first of all take up Nav Bharat's case. In nutshell, therein, Hon'ble High Court observed that it was not a case which could be regarded as having been remanded, the reason being that the appellate authority was not seized of any appeal arising under the Central Act, and rather it was seized of appeal under the Local Act, and further that in the given situation, while dealing with appeal under Local Act, if directions

are issued with regard to taxability of items under Central Sales Tax Act, proceedings could not be initiated under Central Sales Tax Act, by treating it as a case having been remanded to it.

Decision in Nav Bharat is distinguishable on facts

20. Firstly, in Nav Bharat's case, sales tax returns were filed by the petitioner under local Act i.e. Delhi Sales Tax Act; and also under the Central Sales Tax Act. Therein, 2 orders were passed. In the separate order, as regards Central Sales Tax Act, there was no tax payable under the said Act. However, the petitioner was sought to be taxed only under the local Act i.e. Delhi Sales Tax Act. Therein, the order under CST Act had attained finality.

21. Herein, only one order, and not two, was passed by the Assessing Authority. Vide single order, tax was levied under Local Act and Central Sales Tax Act, under DVAT Act, treating the entire turnover exigible to tax. Objections were filed against the single order.

22. In Nav Bharat's case, only when the dealer-petitioner challenged by way of appeal, the order pertaining to local tax, the Assistant Commissioner observed that the given turnover was taxable under the provisions of Central Sales Tax Act, and further observed that the orders under CST Act, required revision by the competent authority.

23. In Nav Bharat's case, the appellate authority was not seized of any

appeal or matter arising under Central Act, and rather it was dealing with appeal or matter only under provisions of Local Act. In the given situation, Hon'ble Judge observed that had any direction been issued with regard to taxability of some items under the local Act, then possibly a fresh order could be passed in furtherance of the directions issued.

24. Here, Learned OHA was seized of objections against single notice of default assessment issued as regards turnover(s) of Central Sales and VAT, and not only with only one turnover, as was in Nav Bharat's case.

25. In Nav Bharat's case, the dealer challenged levy of tax under Local Act. 28. Herein, As noticed above, the Learned OHA accepted the objection of the appellant-objector that as regards the aforesaid turnover, assessment was required to be made under CST Act, and found that it was by mistake made under DVAT Act alongwith the other turnover covered by DVAT Act, it was a case of inadvertent mistake.

26. In Nav Bharat's case, Hon'ble Judge upheld the observations made by the Assistant Commissioner in the order dated 16.9.1982 that the competent authority should take proceedings to revise the order under CST Act. Significant to note that there, the directions by the Assistant Commissioner were to revise the order under CST Act.

27. Here, the directions issued by Learned OHA were not to revise the assessment order. The directions were to pass fresh and appropriate orders under the relevant provisions of CST Act.

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28. As a result, I find merit in the contention of learned counsel for the revenue that in view of the inadvertent mistake made by the Assessing Authority, by including the central sales turnover, while making assessment regarding turnover covered by DVAT Act, So, it is held that vide impugned order, the Learned OHA was justified in rectifying the mistake apparent on record and in issuing above said directions to the Assessing Officer to issue separate notice of default assessment as regards central sales turnover, so as to segregate it from the turnover covered by DVAT Act.

29. Consequently, there is no merit in the contentions raised by learned counsel for the appellant. The order of remand passed by Learned OHA with directions stipulated therein, in the given facts and circumstances, deserves to be upheld.

Change in law after Nav Bharat's case

30. Nav Bharat's case pertained to assessment year 1975. Therein, sales tax returns were filed under Delhi Sales Tax Act and Central Sales Tax Act and two orders of assessment were issued on 10.4.1978. As per order under CST Act, no tax was payable. However, sales were taxed under Local Act-Delhi Sales Tax Act; dealer filed appeal only against order under Local Act. Assistant Commissioner passed order on 16.9.1982 for revision of turnover which was taxable under Central Sales Tax Act (and not under Local Act), by the competent authority.

31. Present matter pertains to the assessment year April 2011 to March, 2012. Delhi Value Added Act, 2004 came into force w.e.f. 1.4.2005. In Nav Bharat's case, Hon'ble Judge observed that the procedure for imposing tax under Central Sales Tax Act was the one provided by the Local Act, but the two proceedings are independent of each other. At the same time, Hon'ble Judge observed, "it is true that in some cases orders may be interrelated, interlinked or interconnected because a controversy may arise as to whether a particular type of sale is taxable under the local Act or the Central Sales Tax Act. " It was very clearly observed that separate assessment orders are passed when two separate returns are to be filed.

32. At this stage, reference to the relevant provisions of section 74 B of DVAT Act, is of much significance. There is a proviso to sub-sec. (2) of Section 74 B. It clearly empowers the authority passing the order on objection, notwithstanding anything contained in this Act, to rectify the order or part of the order on any matter *other than the matter which has been so considered and decided in any proceedings by way of objection,* in relation to any order or part of an order.

33. During the period, when dispute in Nav Bharat's case arose, no provision or say proviso to sub-section (2) of Section 74 B as available in DVAT Act, was in force. At that time, as per decision in Nav Bharat's case, proceedings could not be initiated under Central Sales Tax Act by

treating it as a case remanded by the appellate authority.

34. But, in view of powers conferred on Learned OHA under this proviso to sub-section (2) of Section 74 B of DVAT Act, he is competent to rectify the order or any part thereof, while hearing objections against the said order, on any matter other than the matter *which has been so considered and decided in any proceedings by way of objection.* In other words, where an Assessing Authority, makes suchlike mistake of issuing notice of default assessment in respect of turnover of central sales and VAT, by way of one order, the Objection Hearing Authority dealing with objections against such an order filed under section 74 B of DVAT Act, shall be competent to rectify the order or part of the order on any matter other than the matter considered and decided in the objections.

Therefore, even on this ground decision in Nav Bharat's case does not come to the aid of the appellant.

35. Consequently, applying the law in force in the form of proviso to sub-section (2) of DVAT Act, 2004, to the facts of present case, it is again held that Learned OHA was justified in passing the impugned order for the purposes of rectification of mistake.

Time Limit

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36. As regards contentions raised by learned counsel for the appellant on the point of time-period prescribed for making of assessment, as noticed above, assessment was made by Assessing Officer on 12/7/2013 and Learned OHA disposed of the objections vide order dated 8/1/2018.

37. Section 74 B of DVAT Act, 2004 deals with rectification of mistakes and review. It provides two separate time limits of four years for rectification of mistake.

42. Firstly, sub-section (1) of section 74 B, provides a maximum period of 4 years from the end of the year in which the order passed by him, was served. It is so, where Commissioner on his own motion, is to rectify the mistake apparent on record.

But, here is not a case, where the Commissioner has of his own motion, proceeded to rectify the mistake in the initial assessment.

38. Secondly, sub-section (1) of section 74B of DVAT Act, prescribes that the Commissioner may rectify any such mistake, in case any person affected by an order, brings to the notice of the Commissioner -

(a) within " a period of 4 years" from the end of the year in which the order passed by him, was served or

(b) "thereafter".

39. The only condition is that the person who is affected by an order,

should bring to the notice of the Commissioner mistake apparent on record, within the aforesaid period of 4 years.

It is so, where Commissioner on his own motion, is to rectify the mistake apparent on record.

40. Here, the relevant provision applicable to the present case is the proviso to sub-section (2) of Section 74 B. Sub-section (2) postulates that provisions of sub-section (1) of section 74 B shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority. It means, where objection is filed by any person affected by the order, the OHA hearing the objections is empowered to rectify a mistake apparent on record within a period of 4 years (from the end of the year in which the order passed by him, was served), or thereafter.

41. Here, since the dealer filed objections and also pointed out that corrections in the assessment were required to be made in the manner indicated above, Learned OHA was very much competent to rectify the mistake apparent on record in the order passed by the Assessing Authority.

While passing the impugned order, Learned OHA also prescribed a period of two months, for implementation of the impugned order.

42. In view of above discussion, the decisions cited by learned counsel

for the appellant on the point of limitation do not come to the aid of the appellant.

43. The review application filed by the dealer-appellant is disposed of accordingly.

44. Copy of this order, which is to be read in continuation of judgment dated 18.8.2021, 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 : 6/9/2021.

Narinder Kumar 6/9/2021

(Narinder Kumar)
Member(J)

Review
~~Appeal~~ No. 938/ATVAT/2021/928-935 Dated: 8/9/21

Copy to:-

(1) VATO (Ward-)
(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
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REGISTRAR