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

Appeal No : 135-138/ATVAT/2018

Date of Decision : 2/9/2021

M/s. HML Enterprises,  
RZF-37/4-A, 1<sup>st</sup> Floor,  
Gali No. 37A, Sadh Nagar-II,  
Palam Colony, Palam,  
New Delhi – 110047.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Authorized representative of the Appellant: Sh. Naveen Singh, CA  
Counsel representing the Revenue : Sh. M.L. Garg

### JUDGMENT

1. Present four appeals have been filed by the dealer, registered vide Tin No-07280478916, challenging the order dated 28.5.2018 passed by Ld. VATO—OHA whereby imposition of penalty u/s 86 (09) of DVAT & CST Act vide order dated 2.9.2014 passed by Assessing Authority, in respect of the 3<sup>rd</sup> Quarter & 4<sup>th</sup> Quarter of 2013 has been upheld.

2. Ld. Counsel for the appellant has contended that no notice was issued by the Assessing Authority—VATO before imposing penalty and as such the impugned order deserves to be set aside.

*Narinder Kumar*  
2/9/2021

3. In support of this contention Ld. Counsel for the appellant has only referred to decision in **Bansal Dye Chem v. Commissioner of VAT**, ST. Appeal 29 of 2015, decided on 24.9.2015. learned counsel has not produced any copy of the said decision, despite wait.

4. In the course of arguments when we have enquired from the Ld. Counsel for the appellant, as <sup>to or</sup> which date the appellant had filed returns, learned counsel has submitted that the online return for the 3<sup>rd</sup> & 4<sup>th</sup> Qtr was filed by the dealer—appellant on 28.7.2014 and its hard copy was submitted to the Revenue department on 7.8.2014. Ld. Counsel of the appellant further submits that the return for the 3<sup>rd</sup> Qtr was required to be submitted within 21 days i.e. by November 2014 and return for the 4<sup>th</sup> Qtr was required to be filed by April 2014. In this way, Ld. Counsel for the appellant has not disputed late filing of the returns.

5. As per assessment orders dated 2/9/2014, dealer failed to furnish return under CST Act for 3<sup>rd</sup> qtr. of 2013 by the stipulated dated and there was delay of 171 days; that dealer failed to furnish return under DVAT Act for 4<sup>th</sup> qtr. of 2013 by the stipulated dated and there was delay of 80 days; that dealer failed to furnish return under DVAT Act for 3<sup>rd</sup> qtr. of 2013 by the stipulated dated and there was delay of 171 days; that dealer failed to furnish return under CST Act for 4<sup>th</sup> qtr. of 2013 by the stipulated dated and there was delay of 80 days.

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6. Faced with this, Ld. Counsel has submitted that the proprietor of the dealer was not keeping good health and as such returns could not be filed in time. When we have enquired from the Ld. Counsel for the appellant if this reason was put forth before Ld. OHA, while filing objections, Ld. Counsel admits that this reason was not put forth before Ld. OHA. Therefore, we do not find any reason to consider this ground now put forth by counsel for the appellant.

7. Learned counsel for the appellant has contended that actually the appellant was not required to file any return, as he had asked only for refund of some security and as such no penalty could be imposed. In this regard, learned counsel has only referred to some order passed by this Tribunal in some other case, but no such order has been provided by the learned counsel, despite wait.

In this regard, when admittedly the appellant stands registered with the Revenue Department, return was required to be filed and that too within the prescribed period. But, as noticed above, the appellant filed returns much beyond the prescribed period.

8. As regards the contention raised by learned counsel for the appellant that no notice was issued by the Assessing Authority to the appellant before imposition of penalty u/s 33 or 86(9) of DVAT Act, and the decision cited by learned counsel for the appellant, it is pertinent to mention here that in view of decision in Sales Tax Bar Association (Regd.) Vs. GNCTD, WP (C) No. 4236/2012, by

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our own Hon'ble High Court, also relied on by learned counsel for the Revenue, no notice was required to be issued to the appellant before passing orders of penalty.

9. In Bansal Dye's case (supra), our own Hon'ble Court observed that penalty order u/s 86(10) of the Act was passed by the Assessing Officer, without service of prior notice of penalty on the Assessee and also without affording the Assessee an opportunity of being heard on the point of imposition of penalty, and as a result, set aside the impugned order holding that the said order was unsustainable in law. Therein, it was also observed that the very nature of the proceedings under section 33 of the DVAT Act read with Rule 36(2) of the DVAT Rules underscore the need for the VATO to observe the principles of natural justice while making the penalty order, that this entails serving on the Assessee a separate notice to show cause why penalty should not be imposed and affording the assessee an opportunity of being heard prior to passing the penalty order and further that the imposition of penalty is not a mechanical or automatic exercise but requires application of mind by the assessing authority to the facts and circumstances of the case.

10. In that case, the premises of the Assessee were surveyed and it was found that there was variation in case and stock, and as a result, the Assessing Officer enhanced the gross profit and levied tax, interest and also penalty. In that case, the Assessee had paid

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tax, interest and penalty, and it questioned the penalty order, inter alia, on the ground that no opportunity of hearing was afforded on the point of penalty before the passing of the order.

11. In Bansal Dye's case (supra), it was seen that on the basis of survey, a notice was issued to the Assessee under section 59 of the Act as regards the assessment of tax, but the Assessee did not participate in the assessment proceedings and accordingly, notice of default assessment of Tax and interest was issued by the Assessing Officer. On the same day, the Assessing Officer passed the order of penalty, without service of prior notice on the Assessee.

12. In Sales Tax Bar Association's case (supra), our own Hon'ble High Court clearly observed that the scheme of the statute (DVAT Act) itself is first allowing a unilateral assessment by the assessee, thereafter a unilateral assessment by the Assessing Officer and thereafter providing for a bilateral assessment after opportunity of hearing. As further held, with such a statutory scheme, it cannot be said that the post decisional hearing will be farcical or a sham. Moreover such hearing is in exercise of quasi judicial power and is subject to an appeal to the Tribunal.

13. Undisputedly, the decision in Sales Tax Bar Association's case on the relevant point of opportunity of being heard, before assessment of penalty, was not referred to by learned counsel for the petitioner or the respondent in Bansal Dye's case (supra).

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14. Even otherwise, here the appellant filed objections before learned OHA, and the learned OHA disposed of the objections after providing to the dealer – appellant opportunity of being heard. In this way, we find that this is a case where impugned order came to be passed by Learned OHA, after affording reasonable opportunity of being heard, in terms of decision in Sales Tax Bar Association's case.

15. In the given situation, in view of decision in Sales Tax Bar Association Case, decision in Bansal Dye's case (supra), does not come to the aid of the appellant.


### Conclusion


16. As a result, there is no merit in these appeals. Consequently all these 4 appeal are hereby dismissed.

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 : 02/09/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)

Appeal No. 135-138/Arvat/2018/936-943

Dated: 8/9/21

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. |                |



REGISTRAR