(58)

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

Appeal No : 74-79/ATVAT/2019-20
Date of Decision : 14/9/2021

M/s. Abhilasha Impex Pvt. Ltd.
House No. 4, Inder Enclave,
Paschim Vihar,
Delhi – 1100085. ..... Appellant

V

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

Counsel representing the Appellant : Sh. R.K. Aggarwal.
Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. Appellant company is registered under Delhi Value Added Tax Act (here-in-after referred to as DVAT Act) vide Tin No. 07480304497 (Ward No. 63). The company has filed the above captioned six appeals challenging orders dated 25/7/2019 passed by learned Objection Hearing Authority (here-in-after referred to as OHA).

2. Vide impugned orders, the assessment regarding tax and interest for 2nd, 3rd & 4th quarter of the year 2013-14 made by the Assessing Officer and the penalty imposed in respect of all the said

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three quarters by the Assessing Officer, were affirmed. The Assessing Officer had issued notices of default assessment of tax & interest u/s 32 and default assessment of penalty u/s 33 of DVAT Act.

3. It is pertinent to mention here that earlier assessment of tax and interest and imposition of penalty, for the 2nd, 3rd & 4th quarter of the financial year 2013-14 made by the Assessing Officer vide order dated 15/6/2015 was challenged by the company by filing objections and the Learned OHA, vide orders dated 10/2/2016 and 12/2/2016 upheld the levy of tax and interest, and imposition of penalty.

Said orders passed by learned OHA were challenged before the Appellate Tribunal, by way of appeals No. 7 to 12. Appellate Tribunal vide judgment dated 14/7/2017 remanded the matter to the Assessing Officer-VATO, while setting aside the orders dated 10/2/2016 & 12/2/2016, observing in the manner as:

> "So far as the imposition of penalty is concerned, in our considered view it was also wrongly imposed. Firstly, on the ground that no notice of hearing was given as held by Hon'ble Delhi High Court in the case of Bansal Dyechem Pvt. Ltd. Vs. Commissioner Value Added Tax Delhi. Secondly, no finding in this regard has been given that on what basis the returns filed by the appellant have been deemed to be false, deceptive and misleading. Appellant in his returns claimed ITC on the basis of tax given by him to the selling dealers and accordingly paid the

tax. On this basis, returns filed by the appellant cannot be said to be false, deceptive or misleading.

On the basis of above discussion, we find that the lower authorities wrongly denied ITC to the appellant without verifying from the selling dealer only on the basis of mismatch in annexure 2A filed by the appellant and the revised annexure 2B filed by the selling dealer though original 2B filed by the selling dealer matched with the annexure 2A filed by the appellant, hence in the interest of justice it would be appropriate to remand back the matter to the concerned VATO to reframe assessment regarding tax, interest and penalty afresh after giving an opportunity of hearing to the appellant and after verifying from the selling dealers whether they have deposited or adjusted output tax in these quarters. Accordingly, impugned order dated 12.02.2016 passed by OHA are hereby set aside. Appellant is directed to appear before the concerned VATO on 28.08.2017 who shall dispose of the matter in the light of observations made in these orders as soon as possible."

4. Vide order dated 29/6/2018, Assessing Authority – VATO (Ward-63) directed the appellant – dealer to pay additional tax due with interest, and also imposed penalty in respect of all the aforesaid three quarters of the year 2013-14. The disputed demand can be tabulated as under -

S. No.	Tax Period	Nature of objections	Disputed amount (in Rs.)
1.	2nd qtr. 2013-14	u/s 32 of DVAT Act	Rs. 7,32,355/- (tax+ interest)
2.	2nd qtr. 2013-14	u/s 33 of DVAT Act	Rs. 4,30,000/- (penalty)

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3.	3rd qtr. 2013-14	u/s 32 of DVAT Act	Rs.18,24,924/- (tax+ interest)
4.	3rd qtr. 2013-14	u/s 33 of DVAT Act	Rs. 10,95,825/- (penalty)
5.	4th qtr. 2013-14	u/s 32 of DVAT Act	Rs. 2,33,669/- (tax+ interest)
6.	4th qtr. 2013-14	u/s 33 of DVAT Act	Rs. 1,43,500/- (penalty)

5. On 24/9/2018, the dealer-appellant filed objections against the above said notices of default assessment of tax, interest and penalty issued by Assessing Authority.

Learned Spl. Commissioner –II – learned OHA disposed of the objections while observing in the manner as –

"I have carefully perused the record available / made available, the statement of facts and grounds of objections and also heard the submissions of both the sides. From the record and the contentions raised by the ld. Counsel for the objector, ends of justice would be met if an opportunity of being herd is afforded to the objector, as the principle of natural justice have not been followed in framing of the assessment. The notices of default assessment of tax and interest and penalty are therefore, set aside and the case is remanded to the assessing authority to afford another opportunity to the objector and thereafter pass a reasoned and speaking order as per law. The Assessing Authority shall examine all relevant record. The objector5 shall appear before the assessing authority on 26/8/2019 without waiting for a notice in the matter along with all the relevant material."

6. Hence these appeals.

7. Arguments heard. File perused.

8. Learned counsel for the appellant has drawn our attention to an application filed by him in the meanwhile on 25/8/2021, so as to raise an additional ground of appeal i.e. -

> "In the present circumstances, applicable law and the authority vested by virtue of applicable law, the ld. OHA has erred while remanding back the order to the file of the learned VATO."

Learned counsel for the appellant has argued that in view of Provisions of section 76(4) of DVAT Act, OHA has no power to pass remand orders. Learned counsel for the appellant has also submitted that the stipulated period of 4 years for making of assessment having already expired, the impugned order deserves to be set-aside.

In support of his submission, learned counsel for the appellant has relied on provisions of section 251(1) of Income Tax Act; decision in Arise India Limited vs. Commissioner of Trade & taxes, Delhi & Ors, in WP (C) No 2106/2015, decided by our own Hon'ble High Court on 26/10/2017; decision in CIT vs. Orissa Corporation Pvt. Ltd., 1986 SCR (1)979; circular No. 21/15-16 dated 1/9/2015 issued by Spl. Commissioner (Policy), Delhi; and decision dated 5/10/2018 by this Tribunal in Deepali Designs & Exhibits Pvt. Ltd v. Commissioner of Trade & Taxes, Delhi.

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It may be mentioned here that on behalf of the appellant two pages written submission has also been filed. The written submission also includes the submission "that the learned OHA has erred in law and on facts while not deciding the issue as to what extra was expected from the dealer in case of matching of Annexure 2A and 2B generated by the dealer from the official portal of the Department itself."

9. Learned counsel for the Revenue has contended that no such submission was raised by counsel for the dealer – objector before learned OHA and as such, none of these grounds can be raised by the appellant in these appeals. The contention of learned counsel for the Revenue is that the Authorized Representative of the dealer representing the dealer in the objections petitions simply argued before the learned OHA that objector having not been afforded any opportunity of being heard, the objection petition deserved to be allowed, and that appreciating this sole contention, the learned OHA set aside the assessments made by the Assessing Authority, for decision afresh.

Accordingly learned counsel for Revenue has urged that these and the application for additional grounds appeals deserve to be dismissed.

10. A perusal of the impugned order dated 25/7/2019 passed by learned OHA would reveal that even though various objections were taken by the dealer – objector in the objection petition, Sh. R.R. Singla, CA representing the dealer – objector before the learned

OHA submitted only one point i.e. that the objection petition be allowed as the objector was not afforded any opportunity of being heard and the impugned order was passed without considering the documents on record i.e. invoices, written submission and decisions of various courts from time to time. It may be mentioned here that Sh. R.R. Singla is an associate of Sh. R.K. Aggarwal, counsel for the appellant herein.

After having gone through the record, learned OHA observed in the manner as –

> "From the record and the contentions raised by the learned counsel for the objector, ends of justice would be met if an opportunity of being heard is afforded to the objector, as the principles of natural justice have not been followed in framing of the assessment. The notices of default assessment of tax and interest and penalty are therefore, set aside and the case is remanded to the assessing authority to afford another opportunity to the objector and thereafter pass a reasoned and speaking order as per law. The assessing authority shall examine all relevant record. The objector shall appear before the assessing authority on 26/8/2019 without waiting for a notice in the matter alongwith all the relevant material."

From the above observations made in the order passed by learned OHA and the only contention put forth by Sh. R.R. Singla, learned CA representing the objector before learned OHA, we find that learned OHA appreciated the only contention that was agitated before him, on behalf of the objector, that this is a case where

principles of justice were not followed by the Assessing Authority while making assessments and accordingly, in the interest of justice, and so as to provide a reasonable opportunity of being heard to the objector, he deemed it a fit case to set-aside the assessment orders, and consequently remanded the matter to the Assessing Authority.

11. As regards, the application filed by the appellant for additional ground of appeal, sub-rule 3 of Rule 57C of DVAT Rules, 2005 provides that the Appellant Tribunal shall not, at the hearing of appeal allow the appellant to go into any ground of appeal not specified in memorandum of appeal unless the Appellate Tribunal is satisfied that omission of that ground there from was not wilful or unreasonable. Herein the appellant – dealer has not alleged in the application as to why this ground was not taken in the memorandum of appeal initially filed. In the course of arguments, learned counsel for the appellant has not been able to satisfy as to the omission of this ground in the memorandum of appeal initially filed. Even otherwise, the decision in Commissioner of Sales Tax & Ors. v. M/s Subhash & Company, Appeal (Civil) 1374 of 2003, by the Hon'ble Apex Court, on 17th February, 2003, is of significance. Same reads as under -

> "Whenever an order is struck down as invalid being violation of principles of natural justice, there is no final decision of the case and, therefore, proceedings are left open. All that is done is that the order assailed by virtue of its inherent defect is vacated but the proceedings are not terminated. (See Gurdutt & Bros. V. Income Tax Officer, Special Circle, Banglore (1960 (40) ITR 208 SC) and Superintendent (Tech.I)

Central Excise, I.D.D. Jabalpur and Ors. V. Pratap Rai (1978 (114) ITR 231 SC).

In commissioner of Sales Tax, U.P. v. R.P. Dixit Saghidar (2001 (9) SCC 324), it was held as follows –

> "We are unable to subscribe to the view of the High Court. The aforementioned passage quoted from the Tribunal's order shows that the Tribunal was of the view that once the order is quashed by the Assistant Commissioner, he could not in law remand the case for a decision afresh. As has been noted, before the Assistant Commissioner, the Counsel for the respondent had contended that the ex-parte order should have been set aside because no notice had been received. When principles of natural justice are started to have been violated it is open to the appellate authority, in appropriate cases, to set aside the order and require the Assessing Officer to decide the cases de novo. This is precisely what was directed by the Assistant Commissioner and the Tribunal, in our opinion, was clearly in error in taking a contrary view."

12. In view of the above decision by Hon'ble Apex Court, we find that learned OHA was justified in directing de novo assessment by an order of remand. Herein, the direction was appropriate one, as the only ground on which the interference was sought, and interference was accordingly made, related to the violation of principles of natural justice by none providing of reasonable opportunity to the dealer – objector by the Assessing Authority.

13. As regards, the other contentions now sought to be raised before this Tribunal, suffice it to state that, when the said contentions were not agitated before learned OHA, and the only point raised was that principles of justice were not followed by the Assessing Authority by providing reasonable opportunity to the dealer, and the learned OHA accepted the only contention raised there by the learned CA, the said other contentions cannot be agitated before this Tribunal.

14. So far as, the three orders regarding imposition of penalty, a perusal of para 14 of the judgment dated 14/7/2017 passed by the Tribunal would reveal that all the three orders regarding imposition of penalty were set-aside while observing that the returns filed by the appellant could not be said to be false, deceptive or misleading. In view of the specific finding recorded by the Tribunal and the factum of setting aside of the penalty in respect of all the three quarters, it can safely be said that the matter was remanded by the Tribunal vide judgment dated 14/7/2017 only for afresh assessment of tax and interest if any and not in respect of penalty.

Accordingly, on remand of the matter by learned OHA vide impugned order dated 25/7/2019, the Assessing Officer is required to comply with the directions issued by learned OHA only as regards the assessment of tax and interest, if any, and not on the point of imposition of penalty.

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15. As a result, the appeals filed by the appellant challenging the impugned order dated 25/7/2019, as regards imposition of penalty for the said three quarters, are allowed.

However, the appeals filed by the appellant challenging the impugned order of remand dated 25/7/2019 as regards tax and interest if any, are hereby dismissed.

16. 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 : 14/09/2021

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14.9.21

(Rakesh Bali)
Member (A)

14/9/2021

(Narinder Kumar)
Member (J)

Appeal No. 74-79/ATVAT/19-20/1024-31 Dated: 18/9/21

Copy to:-

(1)	VATO (Ward-63)	(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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REGISTRAR