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

Appeal No. 133-134/ATVAT/18-19

Date of order-22/09/2021

M/s Cosmic Trends Pvt. Ltd.
261, Vardhman Fortune Mall,
G.T. Karnal Road, City Centres,
Near Gujranwala Town,
Delhi-110033.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. Lalwani

Counsel representing the Revenue

: Sh. M.L. Garg

JUDGMENT

1. Present appeals have been filed by the dealer challenging order dated 24.05.2018 passed by Learned Objection Hearing Authority - Joint Commissioner.

2. The dealer-Appellant company deals in sale and purchase of Surgical Instruments, PVC articles etc., registered vide TIN No. 07510304141.

The matter pertains to Ist & 2nd Quarter of the year 2013-14.

3. Initially, vide order dated 20.12.2017, the Assessment Authority, AVATO (Ward-65) directed the dealer-appellant to pay a

Narinder Kumar
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sum of Rs.6,00,682/- i.e. towards tax for Ist Quarter, 2013 on the following ground:-

“During the processing of refund, it has come to notice that the dealer has made purchase from M/s Maharaja Tradex Pvt. Ltd.(Tin No. 07950402160) (Cancelled date 22.07.2011) and claimed ITC of Rs.4,00,344/- in the Ist Qtr.2013-14 but the same could not be verified. Further, the extended dealer of Maharaj Tradex. (Tin No. 07950402160) are cancelled and paying Nil tax. The dealer has also made purchase from M/s Somya Sales Pvt. Ltd. (Tin NO. 07050403915) and claimed ITC of Rs.2,00,338/- in the Ist Qtr.2013-14 but the same could not be verified. Further the extended dealer of M/s Somya Sales Pvt. Ltd. (Tin No. 07050403916) are cancelled and paying Nil tax. Hence, the total ITC of Rs.600682/- is disallowed u/s 9(2)(g) of DVAT Act, 2004.”

4. Vide another notice of default assessments of tax and interest, framed on the same date i.e. 20.12.2017 under Section-32 of the DVAT Act, the Assessment Authority-AVATO (Ward-65) directed the dealer-appellant to pay a sum of Rs.2,00,070/- by way of tax on the following grounds:

“During the processing of refund, it has come to notice that the dealer has made purchase from M/s Somya Sales Pvt. Ltd. (Tin No. 07050403916) and claimed ITC of Rs.2,00,070/- in the 2nd Quarter 2013-14 but the same could not be verified. Further, the extended dealer of M/s Somya Sales Pvt. Ltd. (Tin No. 07050403916) are cancelled and paying Nil Tax. Hence, the total ITC of Rs. 2,00,070/- is disallowed u/s 9(2)(g) of DVAT, 2004.”



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5. Feeling aggrieved by the above said two notices of default assessment, the dealer-appellant filed objections. Vide impugned common order, Ld. OHA dismissed the objections while observing that the assessments made by the Assessment Authority were as per the provisions of law.

6. As noticed above, while framing notice of default assessment in respect of Ist Quarter of 2013, the Assessment Authority observed that ITC claim of the appellant could not be verified and also that registration of extended dealer of M/s Maharaja Tradex Pvt. Ltd., from whom the dealer-appellant had made purchases, was cancelled. Similarly, as observed by the Assessment Authority, the other claim of ITC put forth by the dealer also could not be verified and furthermore, the registration of extended dealer of M/s Somya Sales Pvt. Ltd., from whom the dealer-appellant is stated to have made purchases, was cancelled.

7. As regards the 2nd Quarter of 2013, the Assessment Authority rejected the claim of ITC of the dealer-appellant as the same could not be verified and also because registration of the extended dealer of M/s. Somya Sales Pvt. Ltd., from whom the dealer-appellant is stated to have made purchases, was cancelled.

8. In the course of arguments, Ld. Counsel of the appellant has drawn attention to the report dated 29.05.2019 submitted by the revenue and the two forms DVAT-11. Learned counsel has submitted that vide one DVAT- 11, registration of M/s Maharaja Tradex Pvt. Ltd. was cancelled on 10.07.2015 and as per the other



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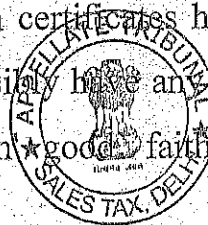
DVAT-11, registration of R.K. Enterprises was cancelled on 18.07.2014, and that too with retrospective effect i.e. registration of M/s. Maharaja Tradex Pvt. Ltd. was cancelled with effect from 22.07.2011 and that of M/s R.K. Enterprises was cancelled with effect from 06.04.2011.

Ld. Counsel for the revenue has not disputed the retrospective cancellations of the registration of above said two dealers.

9. In **Commissioner of Sales Tax, New Delhi v. Hari Ram Oil Co.**, 087 STC 0493, the claim of the dealer to seek exemption in respect of sales made by the respondent to registered dealers on the strength of declarations furnished by the purchasing dealers was rejected, on the ground that the registration of those purchasing dealers had been cancelled before the sales took place. Tribunal found that the cancellation was published only after the sales in question had taken place and that therefore, the respondent could not be denied the exemption. On a reference, Hon'ble High Court held:

"From the facts enumerated above it is clear that the factum of the cancellation of registration certificates of the two purchasers was notified only after the assessment year was over and the sales had been made.

As on the date when sales were effected by the dealer, in the present case, the cancellation of registration certificates had not been notified. The dealer, therefore, could not possibly have any knowledge about the cancellation. The dealer acted in good faith and obtained the declarations before making the sales.



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According to rule 12 of the Delhi Sales Tax Rules, 1951, when the registration certificate is cancelled the order of cancellation shall as soon as possible after the same has been made be published in the official gazette.

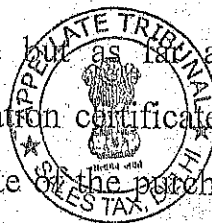
It has been held by a Division Bench of the Andhra Pradesh High Court in the case of Yemmiganur Spinning Mills [1976] 37 STC 314, that the notification of cancellation of registration would be effective and enforceable only w.e.f the date of its publication in the gazette.

Similarly a single Bench of the Punjab and Haryana High Court in Arjan Radio House's case [1973] 31 STC 49 came to the conclusion that if the selling dealer is not aware of the cancellation of the registration certificate because of the non-publication about the same in the official gazette then he cannot be deprived of the benefit of the declarations received by him.

It appears to us that the intention of the Legislature in promulgating rule 12 clearly was that the factum of cancellation of registration must be made known to the whole world. It is only for this reason that the rule requires publication about the cancellation in the official gazette. Such publication is always regarded as information to the world at large.

Once the factum about the cancellation of the registration is published thereafter no dealer can plead that it was ignorant about the cancellation having been effected.

It is no doubt true that the purchasing dealers may have been aware that their registration certificates had been cancelled and they may have wrongly issued the declarations but as far as the selling dealer is concerned if he obtains a declaration certificate and it is not known to him that his registration certificate of the purchaser had been cancelled



and that cancellation is not notified in the official gazette then the selling dealer is entitled to the benefit under the Act. He cannot be penalised for the inaction of the department in non-publication or late publication in the official gazette.

The selling dealer, in the present case, has acted in good faith and as far as he is concerned he had obtained valid declaration certificates at the time of making the sales. The Tribunal was, therefore, right in coming to the conclusion that the benefit claimed by the dealer could not be denied to him."

10. Ld. Counsel for the appellant has urged that when it is not the case of revenue that at the time of entering transactions by the dealer-appellant with the selling dealer, the registration of the selling dealer stood cancelled, the Assessing Authority erred in declining the claims of dealer-appellant in respect of ITC. Learned counsel has relied on decisions on **Quest Merchandising India Pvt. Ltd. Vs. Govt. of NCT of Delhi** (2017) 55 DSTC 181 and **Pratishtha Industries vs. Commissioner of Trade & Taxes, Delhi** in Appeal No. 56/ATVAT/18 decided by this Tribunal on 04.04.2019,.

It has also been contended by the Ld. Counsel of the appellant that the provisions of Section 9(1) and Section 9(2) of DVAT Act, could not be made applicable as regards the extended dealer.

11. On the other hand, Ld. Counsel for the revenue has referred to the report dated 29.05.2019 from the Revenue Department and submitted that this is a case where VAT Inspector visited the business premises and reported that M/s. Maharaja Tradex Pvt. Ltd.

and M/s R.K. Enterprises were not functioning from the registered business places and that in view of this fact, the Assessing Authority was justified in rejecting the ITC claims of dealers-appellant while observing that the ITC claims could not be verified.

12. Even if in the above said report, Revenue department has reported so, in view of the decision in Hari Ram Oil Co.'s case (supra), we do not find any merit in the contention raised by Ld. Counsel of the Revenue.

As on the date sales were effected by the dealer, in the present case, the cancellation of registration certificates had not been notified. The dealer-appellant, therefore, could not have any knowledge about the cancellation. Therefore, it cannot be said that the dealer did not act in good faith or did not take due care.

Rather, we find merit in the contention raised on behalf of the appellant that in view of the retrospective cancellation of registration of M/s. Maharaja Tradex Pvt. Ltd., the ITC claim of the dealer-appellant could not be rejected.

13. As regards cancellation of extended dealer, Revenue has not placed on record any material to suggest that the dealer-appellant, the supplying dealer and the extended dealer, had entered into any single agreement or that any invoice was directly issued by the extended dealer to the dealer-appellant. In this situation it was not obligation of the dealer-appellant to satisfy itself about proper registration of the extended dealer at the relevant time. So, we also find merit in the

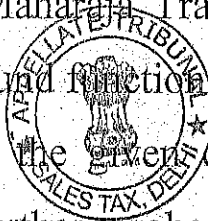


contention on behalf of the appellant that because of cancellation of registration of the extended dealer i.e. R.K. Enterprises too, the ITC claim of the dealer could not be rejected.

14. Ld. Counsel for revenue has submitted that when M/s. Maharaja Tradex Pvt. Ltd. and the extended dealer M/s R.K. Enterprises were not functioning from the registered business place, it was a case of collusion, and as such the Assessing Authority rightly rejected the ITC claim.

15. When we have enquired from learned counsel for the revenue, if Assessing Authority made any observations in the notices of default assessment issued in respect of Ist & IInd Quarter-2013 that it was a case of collusion between the dealer-appellant and selling dealer or extended dealer, Ld. Counsel for the revenue has candidly admitted that there is no such observation in the notice. So, it cannot be said to be a case of any collusion between any of the dealer with the dealer-appellant. What the Assessing Authority observed is that the ITC claim could not be verified. Therefore, in view of the decision on Quest Merchandising India Pvt. Ltd.'s case (supra), the ITC claim of the dealer-appellant could not be rejected.

16. It may be mentioned here that in view of the report dated 29.05.2019 submitted by the revenue during pendency of these appeals, business premises of M/s Maharaja Tradex Pvt. Ltd. and those on R.K. Enterprises were not found functioning at the time, the VAT Inspector visited the same. In the given circumstances, the concerned authority should have further probed the matter and



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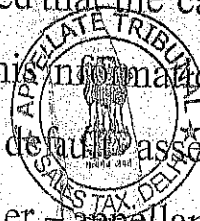
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collected material if there was any collusion between the dealers. On collection of requisite material, the concerned authority could proceed under section 40 A of DVAT Act. However, for the reasons best known to the authorities, no step in this direction appears to have been taken.

17. In view of above discussion, we find that the notices of default assessment of tax issued by the Assessing Authority in respect of both these quarters of the year 2013, deserve to be set aside. For the same reasons, the impugned order dated 24.05.2018 passed by Ld. OHA, upholding the levy of tax and interest, also deserves to be set aside.

18. Accordingly, while allowing both these appeals, the impugned order dated 24.05.2018 passed by learned OHA is set aside.

Before parting with this judgment, we may observe that in the notices of default assessment, the factum of cancellation of registration of the supplying dealer and the extended dealer was mentioned, but without specifying as to on which date the same was cancelled. In the said notices, it was nowhere mentioned that the cancellation of the registration was with retrospective effect. It was only during pendency of the appeal, on filing of an application on behalf of the dealer – appellant that DVAT – 11 forms were filed by the Revenue, only from which it transpired that the cancellation was with retrospective effect. Non supply of this information to the dealer – appellant, either in the notices of default assessment or by supplying copies of DVAT-11 to the dealer – appellant with the said




notices, led to delay in disposal of these appeals. Even otherwise, supply of this information at the appropriate time to the dealer – appellant could enable the dealer – appellant to raise objection before the learned OHA, and due consideration thereof by the learned OHA in view of the settled law. Therefore, we observe that in a case of cancellation of registration of any dealer, the Assessing Authority must specify in the notices of default assessment, about the date of order in the form of DVAT-11 and also that whether the cancellation was from the date of the said order of cancellation or with retrospective effect, so that all concerned are aware of this significant information while dealing with such-like matters of levy of tax, interest, penalty or rejection of ITC claim. Copy of this order be also sent to the Commissioner, VAT, Department of Trade & Taxes for information and action, as deemed appropriate.

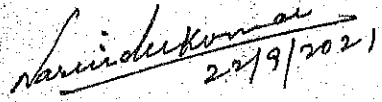
19. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 22/09/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 133/-134/DVAT/18-19/1184-91

Dated: 24/9/21

Copy to:-

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| (1) VATO (Ward-6S) | (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. | |
| (9) Commissioner (T&T) | |


REGISTRAR