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BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

Appeal No. 75/ATVAT/14

Date of Order : 11/10/21

M/s. Raychem RPG Ltd.
401-406, Vishwa Sadan,
District Centre, Janakpuri,
New Delhi.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Present for the Appellant- Applicant : Sh. S. Sangal
Present for the Respondent : Sh. P. Tara

JUDGEMENT

1. Dealer-Appellant is a company registered under Delhi Value Added Tax 2004 (herein after referred as DVAT Act), vide TIN No.- 07332018126, in ward 1. The dealer has challenged order dated 03-03-2014 passed by Ld. Objection Hearing Authority (hereinafter referred as Ld. OHA) thereby disposing of the objections filed by the dealer.



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2. The objections came to be filed before Ld. OHA (Special Commissioner-1) on the averment that while filing DVAT 16, in respect of 4th qtr. of the year 2007-08, it wrongly reflected sales as local sales.
3. Further, it is a case of the dealer-appellant that on instructions from its Mumbai Office, the dealer placed order dated 22-01-2008 with M/s RPG Cables Ltd. of Thane, Mumbai for supply of certain materials, for execution of contract entered into by the dealer with NDMC.
4. Further, it is case of the dealer-appellant that a sum of Rs.47,99,790/- was wrongly deposited by this company, on inter-state sales of Rs. 11,99,97,746/- made from Mumbai, and further that the said amount is actually refundable to the dealer company, reason being ~~is~~ that tax was payable on supply of goods to NDMC from Mumbai for the purpose of execution of the contract at Delhi.
5. A perusal of the impugned order would reveal that the Ld. OHA disposed of the objections while observing as under:-

"I have gone through the written statement and the judgments cited by the learned counsel for the Objector. The goods involved in the execution of works contract by contractor are deemed sales as per


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constitution (46th Amendment) Act, 1982 taxable either under the Delhi VAT Act or under the CST Act, in Delhi depending upon analysis of the transaction terms of contracts and provisions contained in Section 3 of the CST Act. Further, Section 7 of DVAT allow exceptions for the interstate sale (which would however be taxable under the CST Act) and not for the interstate purchases. Therefore, interstate purchases cannot be excluded from the gross receipt for the purpose of computing taxable turnover. These purchases would either be taxable under the DVAT Act or under the CST Act in Delhi at the time of incorporation of goods. Moreover, if the goods are purchased against C Form, the conditions as laid down in Section 8 (3)(b) of the CST Act shall also be complied with failing which penalties under Section 10 and 10 (a) of the said Act shall be imposed. Hence, in view of the above and keeping in view the judgments in case titled Dosal Ltd. Vs. State of Kerala (2010) 29 VST 158 (Ker.), Hydrotech Engineers India Pvt. Ltd. Vs. State of Kerala (1997) 107 STC 420 (Ker.),

State of AP Vs. Bhooratnam & Company (2000) 117 STC 371 (AP), and JDP Associates Vs. State of TN (2003) 131 STC 334 (TNTST), the arguments by the learned counsel are not accepted and the decision of the VATO is upheld. However, VATO concerned is directed to ascertain that complete contract is taxed once only and there should be no double taxation.”

6. On perusal of the portion of the above impugned order, we find

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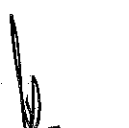
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that Ld. OHA has not given any reason therein. While disposing of the objections, Ld. OHA is required to deal with each argument advanced or objection raised on behalf of the dealer-appellant.

7. However, in the impugned order, Ld. OHA has not discussed any of the contentions advanced by the Ld. Counsel for the dealer-objector. This is not the appropriate way to dispose of such an objection. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. In this regard reference may be made to decision in **Raj kishore Jha v. State of Bihar** 2003 (11) SCC 519). Absence of reasons render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out.

8. Herein, Id. OHA has simply referred to the basic provisions of law. No reason has been given for non acceptance of the contentions or


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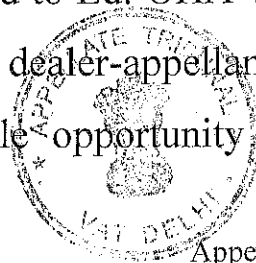

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objections raised on behalf of the dealer. Therefore, we find it difficult to infer as to what weighed with the Ld. OHA for disallowing the contentions/ objections.

9. The dealer-objector had prayed for refund of the excess amount stated to have been deposited by it on certain items, which according to the dealer were not eligible to tax, the same being inter-state sales.
10. Ld. Counsel for the revenue has submitted that on going through the entire material available on record, even this Tribunal can arrive at the conclusion that the objections filed by dealer deserve to be rejected.

However, when the Ld. OHA has not given any reason, while rejecting the claim of the dealer-objector, for refund, we find it difficult to sit in appeal and dispose of the matter in dispute, on the basis of material placed before us.

11. As a result, the appeal is disposed of, and while setting-aside the impugned order, matter is remanded to Ld. OHA with direction to decide the objections filed by the dealer-appellant, afresh giving reasons, after providing reasonable opportunity of hearing the




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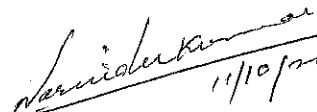
appellant, and in accordance with law.

12. Dealer-Appellant to appear before learned OHA on 01-11-2021.

Date : 11/10/2021.

 11/10/21

(Rakesh Bali)
Member (A)

 11/10/2021

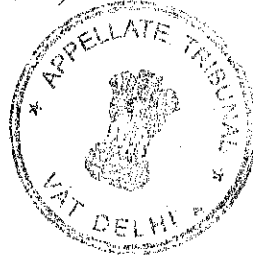
(Narinder Kumar)
Member (J)

Appeal No. 75/ATVAT/14/1368-75

Dated: 13/10/21

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. | |
| (9) Commissioner (T&T) | |




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