

Stay Application No.142/ATVAT/19

Appeal No.05-08/ATVAT/19

Date of Order: 5/10/2021

M/s. Nav Electricals,  
2060, Chah Indara, Bhagrath Place,  
Delhi – 110006.

..... Appellant

V

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

Counsel representing the Appellant : Sh. B.K. Bansal,

Counsel representing the Revenue : Sh. M.L. Garg.

**Order on Stay Applications U/s 76(4) of DVAT Act.**

1. The appellant is a dealer registered under Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) vide TIN 07480363667. Present four appeals have been filed by the dealer against order dated 11.06.2018 passed by learned OHA Sh. Virendra Kumar, Special Commissioner-I, Zone –II.

2. Vide impugned order Ld. OHA disposed all the objections filed by the dealer challenging notices of default assessment of tax, interest and penalty, framed on 08/09/17, u/s 32 & 33 of DVAT Act, in addition to challenge to the notice of default

assessment of tax and interest, of the same date i.e. 08/09/17 issued u/s 9 of Central Sales Tax Act, 1956 (herein after referred to as CST Act).

3. Matter pertains to all the four quarters of the year 2013-14.

4. Prior to the impugned order, the Assessing Authority vide orders dated 08/09/17, issued notice of default assessment of tax, interest on the basis of documents filed by the dealer i.e. returns and annexure 2A & 2B.

5. As regards 1<sup>st</sup> Qtr, the Assessing Authority observed that the dealer-appellant had purchased goods from M/s. J.S. Electricals, M/s. K.G.N. Electricals, M/s. Sanjay Nandani Sales Corpn. & M/s. Kalkaji Trading Corp.

6. So far as M/s. K.G.N. Electricals is concerned, the Assessing Authority found that wife of the proprietor of the dealer-appellant is the proprietor of the said concern M/s. K.G.N. Electricals. On this very ground, the Assessing Authority disallowed ITC claimed against purchases made from the said concern, having regard to the provisions of Section 17 of DVAT Act.

7. As regards M/s. Sanjay Nandani Sales Corpn. and M/s. Kalkaji Trading Corp., the Assessing Authority observed that the selling dealer of the appellant-dealer was also related to these two concerns, they being husband and wife.

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8. Further, a perusal of Annexure 2A filed by M/s. Sanjay Nandani Sales Corpn. showed cancellation of its selling dealers Shri Jagannath Trading Corporation, Shri Jagannath Enterprises, Ankit Sales Corporation, Sharda Enterprises and Vikas Trading Corporation. Assessing authority observed that selling dealers were common in respect of both these concerns and M/s. K.G.N. Electricals. The Assessing authority disallowed the claim of the dealer in respect of ITC, keeping in view violation of provisions of Section 17 of DVAT Act, while observing that the trade was between the husband and wife circular in nature, and that it was a case of evasion of tax by nefarious means.

On perusal of Annexure 2A filed by M/s. J.S. Electricals, from whom the dealer-appellant is stated to have purchased goods, revealed that the dealer-appellant had purchased goods from Dimple Plastic (P) Ltd, Sharda Enterprises, Shri Jagannath Trading Corporation, Shri Jagannath Enterprises, and Vikas Trading Corporation.

M/s. Dimple Plastic (P) Ltd. used to deal in plastic and other goods and not in electrical goods whereas the dealer-appellant used to deal in electrical goods.

Assessing Authority found that M/s. Sharda Enterprises had not shown any sale or purchase during first quarter 13-14 and accordingly was of the view that the purchases shown by M/s. J. S. Electricals were fake / suspicious.

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M/s Vikas Trading Corporation is further stated to have purchased goods from M/s Multimedia, taxable @ 5% and 12.5% whereas M/s Multimedia Electronics sold goods taxable @5% only. In view of this fact, the Assessing Authority was of the view that the dealer – appellant made purchases on papers only. With these observations, Assessing Authority rejected ITC claimed by the dealer.

As further observed by the Assessing Authority, once the ITC claim was rejected, the sale shown by the dealer – appellant, as central, actually did not exist and such dealer was not entitled to claim benefit of sale against C-Form.

Assessing Authority further observed that the dealer had not filed form-9, and accordingly rejected all his central sales against statutory forms and treated them as sales without any statutory forms.

Assessing Authority further observed that same pattern was seen in the subsequent quarters.

On perusal on Annexure-2(A) of dealer – appellant for Fourth Quarter-2013-14, Assessing Authority found as under :

“It is found that he is purchasing goods from his wife as M/s K.G.N. Electricals apart from Sanjay Nandani Sales Corp. and M/s. Shri Kalkaji Trading Corp. having TIN 07170368930 & 07710442644. M/s Nav Electrical has purchased goods from above named three dealers taxable @5 & 12.5% respectively, which is a sign of suspicious trading”.

On perusal of DP-I filed by M/s. Sanjay Nandani Sales Corp. and M/s. Shri Kalkaji Trading Corp., the Assessing Authority observed as under –

“That M/s. Sanjay Nandani Sales Corp. is running his business from G-3/151, Sector-16, Rohini, Delhi-110089. The said dealers got himself register on 12.02.2009 and filed DVAT-4 closure of his business w.e.f. 31.05.2015. Whereas M/s Shri Kalkaji Trading Corp. has got himself register on 19.09.2012 and filed DVAT-9 for closure of business w.e.f.31.05.2015. The dealer is also running his business from G-3/151, Sector-16, Rohini, Delhi-110089 where M/s. Sanjay Nandani Sales Corp. is already functioning. The proprietor of Shri Kalkaji Trading Corp. is Ms. Geeetika whereas M/s Shri Sanjay Nandani is proprietor of M/s. Sanjay Nandani Sales Corp. as confirmed over phone, Shri Sanjay Nandani and Ms. Geetika are husband and wife.

Further, on perusal of Annexure-2(a) filed M/s Sanjay Nandani Sales Corp. shows his selling dealers as cancelled and one of the selling dealers is common to K.G.N. Electricals”.

Assessing Authority further observed as under -

“Hence, from the above, it is clear that the trading is circular in nature and in some case, the trading is between husband and wife which contravenes Section-17 of the DVAT Act and, hence, ITC claimed is disallowed as it is a clear cut case of evading tax by nefarious means. I accordingly, reject the ITC claimed in all quarters and also reject all his Central sale against statutory forms and treat it as sale without any statutory forms.”

9. Vide order of same date, the Assessing Authority issued notice of default assessment of tax and interest, under CST Act, while observing that for the reasons given in respect of assessment made under DVAT Act for year 2013-14, he was making assessment under CST Act. While so observing the Assessing Authority levied additional tax and interest under CST Act, as under:

Tax period	Additional tax due	Interest	Total Amount due
1 <sup>st</sup> Qtr.2013	1,10,649/-	68,173/-	1,78,812/-
2 <sup>nd</sup> Qtr.2013	1,747/-	1,010/-	2,757/-
3 <sup>rd</sup> Qtr.2013	4,048/-	2,188/-	6,236/-
4 <sup>th</sup> Qtr.2013	4,291/-	2,162/-	6,453/-

10. Feeling dissatisfied with the above mentioned assessments framed by the Assessing Authority the dealer-appellant filed objections but the Ld. OHA rejected all the objections and upheld the default assessment of tax, interest and penalty, as framed by the Assessing Authority vide order dated 08/09/17.

11. Hence these appeals. Applications u/s 76(4) of DVAT Act have also been filed.

12. Arguments heard on the stay applications. File perused.

13. Learned counsel for the applicant has contended that this is a case where notice is stated to have been issued by the department

on portal, before issuing notice of default assessment of tax and interest, but there is nothing on to record to suggest that the department complied with directions contained in para 6 & 7 of the judgment in **Swastic Polymers v. Commissioner of Trade and Taxes & Anr.**, (2018) 56 DSTC 109.

Learned counsel for the Revenue has submitted that notices were duly served on the dealer by displaying the same on the portal and that it is for the dealer to go through the contents of the notice.

For the present, Revenue has not placed on record any material to show compliance with the aforesaid directions contained in Swastic Polymers case. It would be for the Revenue to explain on this aspect at the time of final arguments as well.

14. Another submission put forth by learned counsel for the applicant is that the applicant did not violate any provision of clause (g) of sub-section 2 of section 9 of DVAT.

This submission can be appreciated at the time of final arguments when reference is made to the relevant data as available in Annexure-2A & 2B, so as to find out if actually more ITC was being claimed than the corresponding output tax, reported by the selling dealer. ✓

15. As regards observations made in the impugned order on the point of relationship of the dealer with the other dealers, as

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described therein, learned counsel for the applicant submits that actually there was no transactions between related parties.

On the other hand, learned counsel for the Revenue has submitted that various transactions of the dealer have been declined, <sup>same</sup> ~~seem~~ being between related parties, and in view of the provisions of section 17 of DVAT Act.

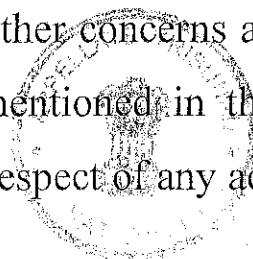
Only at the time of final arguments, and after considering all the material, it can be decided if the transactions were or were not between related parties.

16. Last of all, counsel for applicant has submitted bank account of the dealer was attached on 5/2/2018 by VATO and that keeping in view the financial condition of the dealer, which is writ large on the face of the proprietor of the dealer, deposit of amount by way of pre-deposit be waived.

Learned counsel for the applicant has drawn attention to copy of the statement of account in support of factum of attachment of the account of the dealer where, a sum of Rs. 1,03,683.49 was lying in deposit as on 5/2/2018.

In the course of arguments, the factum of attachment of the bank account of the dealer by VATO has not been disputed.

However, keeping in view that other concerns are being run by the wife of the dealer, as find mentioned in the impugned orders and no statement of account in respect of any account of the



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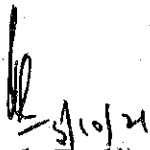
wife has been made available, and having regard to the demand raised by the Revenue towards tax, interest and penalty, we deem it a fit case to call upon the dealer – appellant to deposit 10% of the disputed amount towards tax and interest, within 25 days from today, by way of pre-deposit for the purpose of entertainment of appeals. We order accordingly.

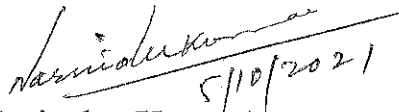
17. Ld. Counsel for the applicant to apprise Ld. Counsel for the Revenue regarding compliance of this order of pre-deposit, so that on the next date appeals are taken up for final arguments. Otherwise, law shall take its own course. The stay application is disposed of accordingly. Counsel for appellant - applicant to apprise learned counsel for the Revenue regarding compliance with this order within time so that on the next date i.e. on 02/11/2021 the appeal is taken up for final hearing.

18. 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 : 5/10/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)

Stay Appl- 142/MTVAT/19 @ /1280-87  
Appeal No. 05-08/ATVAT/19

Dated: 6/10/21

Copy to:-

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|---|----------------|
| (1) VATO (Ward-15)  | (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<br>DVAT/GST, Delhi - through EDP branch. |                |
| (9) Commissioner (T&T)  |                |



  
**REGISTRAR**