

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

Appeal No. 196/ AT VAT/2020-21

Date of Judgment: 6/10/2021

M/s Ases Security Pvt. Ltd.
485/14, Sarpanch Ka Bara, Gali No.6,
Mandawali, Delhi-110092.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Raj Kumar Batra &
Sh. Suresh Agrawal.
Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. Appellant has filed this Appeal No. 196/20, challenging the order dated 01.03.2021, passed by Ld. Objection Hearing Authority (hereinafter referred to as OHA). Vide impugned order, Ld. OHA upheld order dated 31.07.2020, passed by Assessing Authority.

Vide notice of default assessment dated 31.07.2020, the Assessing Authority levied tax to the tune of Rs. 2,86,784/- on the dealer-appellant. This notice of default assessment levying the tax came to be passed after the matter was remanded by Ld. OHA vide order

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dated 17.07.2017 while disposing of the objections earlier filed under Section-74, against notice of default assessment initially issued by the Assessing Authority on 28.12.2016 under Section-32 of DVAT Act.

2. The matter pertains to 4th Quarter of the year 2012-13.
3. As noticed above, the impugned order passed by Ld. OHA is dated 01.03.2021. The objections were filed before Ld. OHA on 30.10.2020, challenging the notice of default assessment dated 31/7/2020. As finds mentioned in notice of default assessment dated 31/7/2020, consequent upon remand of the matter (vide order dated 17/7/2017 passed by learned OHA), notice u/s 59 (2) of DVAT Act was issued to the dealer to produce the books of accounts, as specified in the said notice; that telephonic contact was also tried, but no response was received from the dealer. Accordingly, the Assessing Authority proceeded ex-parte and issued the notice of default assessment dated 31/7/2020.
4. Feeling aggrieved by the said default assessment dated 31/7/2020, the dealer filed objections on 30/10/2020. While disposing of the objections, learned OHA observed in the impugned order that during hearing on objections, the petitioner placed on record only a

copy of return which was also incomplete and further, that no relevant documents such as invoices, Bank Statement etc. were produced by the dealer-objector. Ld. OHA went on to observe that dealer had not placed on record necessary evidence in respect of his claim of ITC under Section 9(1) of DVAT Act. Ld. OHA, therefore, concluded that objector had not complied with the provisions of law, time and again, and was completely negligent.

5. Learned counsel for the dealer – appellant has advanced only one argument that in view of provisions of section 34 (2) of DVAT Act, the assessment could be made by the Assessing Authority, on remand of the matter by learned OHA, within a period of one year from the date of order of remand, and that since the Assessing Authority took about three years time in framing the default assessment i.e. on 31/7/2020, the said notice of default assessment deserves to be set-aside.

In support of his submissions, learned counsel has referred to following decisions –

- i) Shaila Enterprises v. Commissioner of Value Added Tax (2016) 94 VST 367 (Delhi), upheld by Hon'ble Supreme Court in SLP(C) No. 27037/2016;

- ii) Blue Star Ltd. vs. Commissioner of Trade & Taxes, writ petition (C) No. 10020/2018 dt. 26/9/2019.
- iii) AIMIL Ltd. vs. Commissioner of Trade & Taxes, WP(C) No. 4597/2017 & 4599/2017 dt. 24/5/2017;
- iv) M/s. Arora Enterprises vs. Commissioner of Trade & Taxes & ors., WP(C) No. 1563/2018 dt. 6/8/2018.
- v) M/s Arora Enterprises vs. Commissioner of Trade & Taxes & ors., WP(C) No. 11126/2018 dt. 15/4/2019;
- vi) M/s. Malkiat Singh & Sons vs. Commissioner of Trade & Taxes & Anr., WP(C) No. 9204/2018 dt. 21/5/2019.

6. On the other hand, learned counsel for the Revenue has contended that this is not a case of remand as opportunity was granted by the learned OHA vide order dated 17/7/2017, on the request of the dealer that no opportunity of being heard was provided to the dealer by the Assessing Authority in framing notice of default assessment dated 28/12/2016. Further, it has been contended by learned counsel that provisions of section 34(2) of DVAT Act come into application only where Appellate Tribunal or Court takes a decision for re-assessment, but this is a case where the directions for re-assessment were issued by learned OHA. Consequently, learned counsel has urged that the decisions cited by



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learned counsel for the appellant do not come to the aid of the dealer – appellant.

7. Present case pertains to re-assessment of the 4th quarter of the year 2012-13

8. Section 34 of DVAT Act w.e.f. 1/4/2013 reads as under –

“(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period. Whichever is the earlier:

Provided that where the commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within

one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person." ✓

9. Before amendment vide notification No. F.14(4)/LA-2013/cons2law/11, dated 28/3/2013, read with section No. 3(17) Fin. (Rev.-1)/2012-13/dsvi/263; dated 30/3/2013, - enforced w.e.f. 1/4/2013, section 34 read as under –

“1. No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

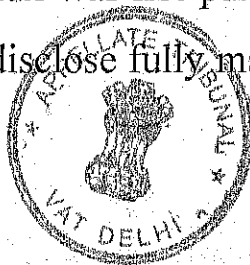
- (a) the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or
- (b) the date on which the Commissioner made an assessment of tax for the tax period. Whichever is the earlier:

Provided that where the commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2). Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person. "

10. In this matter, which pertains to ~~to~~ re-assessment of the 4th quarter of the year 2012-13, re-assessment u/s 32 could be made within a period of 4 years from the date of filing of return u/s 26 of sub-section (1) of section 28 of the Act. It is not case of the Revenue that the dealer filed return beyond the stipulated time. So, it can be said that return was filed by the dealer in April, 2013. In this situation, the Commissioner could make re-assessment within four years from 31/3/2013, as provided u/s 34 (1), ~~as~~ amended vide notifications dated 28/3/2013 & 30/3/2013.

11. As per proviso available u/s 34, the said period of four years shall stand extended to six years where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person.



12. Here, the dealer – appellant is stated to have claimed refund but is said to have failed to furnish documents in support of the claim of refund as required u/s 9(1) of DVAT Act. It is not case of the Revenue that the Commissioner had reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the dealer. In this situation, the re-assessment could be made by the Commissioner – Assessing Authority herein, within a period of four years from 1/4/2013 i.e. by 1/4/2017. Herein the Assessing Authority, framed re-assessment on 31/7/2020 i.e. beyond the prescribed period of limitation.

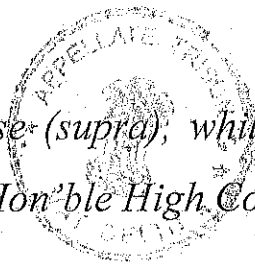
13. In Shaila Enterprises case (supra), our own Hon'ble High Court observed in para 17 that in the event of a remand ordered by the Court or Appellate Tribunal, the fresh decision on remand was required to be taken within one year. Hon'ble Court further observed that in the said case, neither fresh assessment order was passed nor the order of refund was passed within one year of the date of the order of the OHA.

In this case, on the point of limitation for making of re-assessment, learned counsel for the Appellant has mainly relied on decision in Shaila Enterprises's case, and submitted that in all

other cases cited by him, reliance was placed on the decision in Shaila Enterprises case.

Undisputedly, in Shaila Enterprises case (supra), writ petition was filed before the Hon'ble High Court u/s 226 of the Constitution of India, challenging the order dated 25/6/2013 passed by the OHA. As noticed above, section 34(2) comes into application in case of re-assessment on the basis of decision by the Appellate Tribunal or Court. In that case, Hon'ble High Court clearly observed that in the event of remand ordered by the Court or Appellate Tribunal, fresh decision on remand was required to be taken within one year. ^{Therein} ~~In that case,~~ re-assessment had not been required to be made by decision of Appellate Tribunal or Court. ^{Therein} ~~Order~~ of re-assessment was passed by the OHA with specific directions for decision within 30 day's time from 25/6/2013, but no re-assessment order was passed by the Assessing Authority. In the given facts and circumstances, Hon'ble High Court observed that the Assessing Officer did not realise implication of his failure to pass fresh assessment orders in terms of order dated 25/6/2013.

Subsequently,
/ In AIMIL's case- (supra), while referring to the decision in Shaila Enterprises, Hon'ble High Court, observed that the Hon'ble



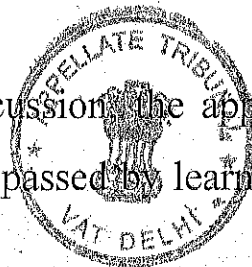
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Court had set-aside the demands in Shaila Enterprises case, on account of failure of the VATO to comply with the time bound directions of the OHA ^{and because the} ~~would be fatal to the~~ ^{were} ~~demands which are~~ ^m raised far beyond the time period envisaged for completion of the fresh assessment proceedings.

Herein, the order of remand came to be passed on 17/7/2017 and the Assessing Authority issued notice of default of re-assessment after about three years. The limitation for passing of the assessment in terms of section 34(1) of DVAT Act was already over by 1/4/2017. In the given situation, the notice of default assessment dated 31/7/2020 can safely be said to have been framed beyond the prescribed period of limitation of four years, in view of provisions of section 34(1). However, we do not find any merit in the contention of learned counsel for the appellant that provision of section 34(2) of DVAT Act come into application in this case. Rather, the provisions of section 34(2) of DVAT Act come into application only in case of a decision by Appellate Tribunal or Court, with direction for re-assessment, as observed by the Hon'ble High Court in Shaila Enterprises' case.

14. In view of the above discussion, the appeal is allowed and impugned order dated 1/3/2021 passed by learned OHA upholding



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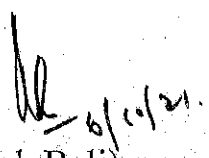
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the notice of default assessment dated 31/7/2020 framed by the Assessing Authority is set aside. _____

15. 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 : 6/10/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)




Appeal No. 196/AT(VAT)/2020-21/1312-19

Dated: 8/10/21

Copy to:-

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| (1) VATO (Ward-84) | (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