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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial) & Sh. Rakesh Bali, Member (Administration)

Appeal No.: 133/2007

Date of order: 12-10-2021

M/s Khandelwal Steel & Timber
553/2, Main Road,
Chirag Delhi, New Delhi

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. H. C. Bhatia

Counsel representing the Revenue : Sh. S.B.Jain

JUDGMENT

1. Initially, the appellant company filed two appeals bearing nos. 133-134 challenging the order dated 16-04-2017, passed by Ld. OHA, as the objections filed by dealer-appellant company were disposed of as regards notice of default assessment of Tax & Interest and separate notice of assessment of penalty, both dated 07-03-2007, challenged by way of said objections.
2. The Assessing Authority made aforesaid assessments on the basis of survey conducted by Enforcement Branch on 23-08-2006, which led to detection of variation in stock and cash, and also recovery of 23 loose papers which disclosed turnover worth Rs. 1,84,225/-.
3. Vide judgment dated 29-06-2018, this Tribunal disposed of both the appeals nos. 133-134. However, the dealer-appellant

Narinder Kumar
12/10/2021

12/10/21

Page 1 of 5



filed review application no. 6/ATVAT/18 while making averment :

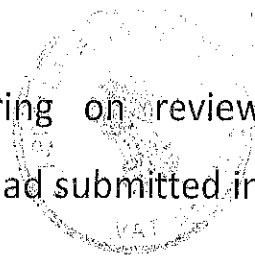
"that the VATO erred in law in arbitrarily treating the entire sales taxable @12.5%, whereas as per the record, the bulk of transaction of the appellant relate to item taxable @4% as is evident from the record of the appellant and the details filed during the default proceedings; that the assessment is ~~this~~^{it}, devoid of the principle of best judgment assessment and the assessment has been made arbitrarily based on surmises, conjectures and is the result of whims and fancy of the part of the VATO without any material to support the same."

4. Vide order dated 27-08-2021, we allowed the prayer in the review petition by observing that in view of the submission that the ground no.2 (of ground of ~~appeals~~^{objections} filed before Learned OHA) i.e. ground No.3 (of the ground of appeals filed before the Tribunal), was agitated before the Tribunal and the fact that while deciding the appeals, the said ground was mistakenly not adjudicated, so as to adjudicate the said ground and for decision afresh in appeal no. 133/07, in view of outcome on adjudication of the said ground .
5. It may be clarified here that during hearing on review application, Learned Counsel for the applicant had submitted in

12/10

14/10

Page 2 of 5



the review application that the other appeal No. 134, having been filed only against the order of penalty, that review application was not being pressed in respect of the said appeal.

6. That is how, appeal no. 133/07 is before us for hearing only for the purpose of adjudication of the above said ground no. 3.
7. Arguments heard. File perused.
8. Ld. Counsel for the dealer-appellant has submitted that many transactions entered into by the appellant during the relevant tax period, related to items taxable @4% , but the Assessing Authority treated the entire sales as taxable at the rate of 12.5%. Further, it has been submitted by the Ld. Counsel that while raising objections before the Joint Commissioner-III, by way of first appeal/objections, the dealer had pointed out illegality in the notice of default assessments in treating the entire sales taxable at the rate of 12.5%, but this point was not decided by the Learned OHA.
9. We have gone through the impugned order passed by Ld. Joint Commissioner-III, vide which the objections filed by the dealer were disposed of. We find that in the impugned order, Ld. OHA did not record any findings as regards the said objection that the entire sales were subjected to ^{be} taxable at the rate of 12.5% whereas, bulk of the transactions of the dealer related to items exigible to taxable ^{be} at the rate of @4%.

12/10

12/10/21.

Page 3 of 5



10. Ld. Counsel for the revenue does not dispute that the Ld. OHA did not adjudicate the said objection raised by the dealer, even though Ld. OHA accepted the objections on the point of tax to the extent that he reduced the default assessment from Rs.40056/- to Rs. 38790/- . The fact remains that the Ld. OHA did not adjudicate the above mentioned objection raised on the point of rate of tax to which sales were exigible.
11. In the given circumstances, the matter needs to be remanded to the Ld. OHA for adjudication of the above said objection.
12. Ld. Counsel for the Appellant submits that this point can be decided by this Tribunal, without remanding the matter, as it is ~~been~~ a legal issue.
13. Learned counsel for the Revenue rightly submits that the issue is not only a legal issue. Had it been only a legal issue, we would have decided the same, but keeping in view that it was a case of stock variation, and vide order dated 29-06-2018 this Tribunal has already recorded finding that dealer-appellant was not able to explain the variations found during survey and further that the appellant was not maintaining books of accounts in the ordinary course of business, and that the return filed by the dealer could not be stated to be correct, it can be ascertained only by the Learned OHA as to which of the items/goods were exigible to tax at the rate of 12.5% or 4%.

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Page 445




14. Keeping in view that the issue involved is based on facts and law, we deem it ^afit case to remand the matter to the Ld. OHA.

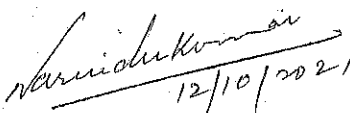
As a result, the matter is remanded to Ld. OHA, for adjudication of objection as available in ground No.2 of grounds of ^{objections} appeal filed before Learned OHA, after providing reasonable opportunity of being heard to the parties, and for just^a decision in accordance with law, on the point of assessment of tax and interest.

15. Parties to appear before Ld. OHA on 28.10.2021.
16. 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 : 12/10/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Page 575.



Appeal No. 133/ATVAT/2007/1392-99

Dated: 18/10/21

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) | |


REGISTRAR