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

R. No : 239/ATVAT/2021

Date of Order : 13/10/2021

M/s Rashtriya Transport Corporation  
5810, Gali No.-08, Block No.-04,  
Dev Nagar, Karol Bagh,  
New Delhi.

..... Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. R. Mahana.

Counsel representing the Revenue

: Sh. P. Tara.

ORDER

1. This order is to dispose of review application filed by the dealer, who was appellant in appeals No.352-353/21. Said appeals were disposed of by this Tribunal vide judgment dated 26/8/2021.

The operative part of the judgment reads as under –

“18. In view of the above discussion, no interference is called for in the impugned order passed by learned OHA, so far as levy of tax is concerned and as such the same is upheld.

Impugned order regarding upholding of penalty u/s 86(14) of DVAT Act is also upheld.

However, as regards the imposition of penalty u/s 86(19) of DVAT Act is concerned, impugned order deserves to be set aside, for the reasons given above.

*Narinder Kumar*  
13/10/21

*[Signature]*  
13/10/21.



19. As a result, this appeal is partly allowed as regards the imposition of penalty u/s 86(19) of DVAT Act, but the appeal as regard levy of tax and imposition of penalty u/s 86(14) is hereby dismissed.”

2. Arguments heard. Record perused.

3. At the outset, it may be mentioned that the applicant has alleged that there are contrary findings of facts, which has led it to the filing of this application for review.

In this regard, suffice <sup>it</sup> to state here that nowhere it has been alleged as to which are the contrary findings of facts recorded by the Tribunal. Actually, none of the findings of facts is contrary to each other. Furthermore, no review application lies on the ground that findings recorded by Tribunal are wrong.

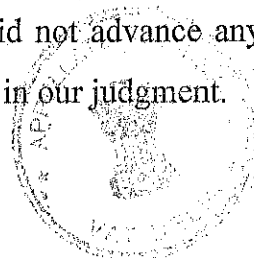
4. As per para 3 of the application, applicant has taken up the ground that the Tribunal has not dealt with the following main issues –

- (i) Jurisdiction of the VATO (Border duty), OHA and exercise of power under VAT Tribunal in dealing with the provisions of the DVAT Act.
- (ii) All documents were produced before VATO as well as OHA, therefore, order of the Tribunal is based on incorrect facts and is a mistake apparent on record.
- (iii) Prayer clause when dealing with relief sought and its consequences.

5. As regards the first point, it may be mentioned here that in the appeals, written submissions were submitted, wherein one of the submission<sup>s</sup> of the appellant was that the Commissioner did not delegate his powers u/s 60 of DVAT Act to any officer, as per provision of section 68 and as such the assessment made by the Assessing Officer was without any jurisdiction and <sup>void</sup> ~~vide~~ ab-initio, but we reiterate that at the time of final arguments, learned counsel for the appellant did not advance any argument on this point, and we specifically recorded this fact even in our judgment.

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6. The appellant had filed the above captioned appeals No. 352 & 353/2006 challenging ~~orders dated~~ orders dated 03/4/2006, passed by Jt. Commissioner-III - learned Objection Hearing Authority (here-in-after referred to as OHA).

Vide impugned order, learned OHA had disposed of objections filed by the appellant - objector against notices of default assessment of tax and interest and penalty issued by Assessing Officer - AVATO on 22/3/2006, u/s 32 and 33 respectively of DVAT Act (here-in-after referred to as the Act), on the basis of audit conducted at the godown of the appellant by the field staff on 9/3/2006. The objections pertained to the tax period 2005-2006.

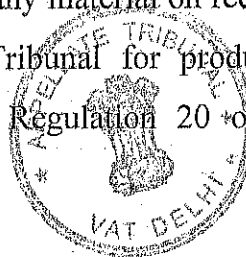
7. As regards the second mentioned ground, in the application it has been alleged that all the documents were produced before VATO as well as OHA, therefore, order of the Tribunal is based on incorrect facts and it is a mistake apparent on record. In this regard, learned counsel has referred to page 42 of the review application, which is <sup>a</sup>copy of order dated 11.5.2012 of the proceedings before the Tribunal.

As per copy of order dt.11.5.2012, counsel for the appellant then representing the appellant undertook to inform the Tribunal as to on which date the documents etc. Of the goods lying in the godown which <sup>was</sup> ~~were~~ sealed on 9.3.2005, were submitted before the Ld.VATO.

However, Learned counsel for the applicant has not been able to show any material that the learned counsel then representing the appellant ever informed the Tribunal about the date when any such document is stated to have been submitted before Ld. VATO.

Then, learned counsel for the applicant has submitted that on 6.9.2013 copies of certain documents were submitted before this Tribunal.

But, no such document was brought to our notice at the time of final arguments. When specifically questioned, if there is any material on record to suggest that any permission was ever sought from the Tribunal for production of any additional material on record, as provided under Regulation 20 of Delhi VAT



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(Appellate Tribunal) Regulations, 2005 or Rule 57 C (2) of DVAT Rules, 2005, learned counsel for the applicant has not disputed that no such permission was ever sought from the Tribunal.

In this regard, it may be mentioned that in this ground, Tribunal has recorded a specific finding in the judgment.

8. In this regard, it may be mentioned that at the time of final arguments, Ld. Counsel for appellant had referred to the provisions of Section 3 (9) of DVAT Act, 2004 and submitted that this is a case where the appellant had produced material before Ld. OHA, during hearing on objections, to rebut the presumption that the goods found lying at the godowns of the appellant were owned by the appellant or that the same were held by the appellant for sale in Delhi. Ld. Counsel for the appellant further submitted that in this regard representation dated 13.3.2006 was also submitted by the appellant to the concerned VATO (Border Duty).

Ld. Counsel had also urged that neither the VATO (Border Duty) nor Ld. OHA took into consideration the material supplied by the appellant to rebut the said presumptions, and as such the impugned order deserved to be set-aside.

We took into consideration that when the appellant filed objections before Ld. OHA, it was alleged in the objection petition that the objector had produced all the documents before VATO (Border duty), but, on the other hand the representative of the department submitted before Ld. OHA that the objector had not produced any document relating to the goods stocked in the godowns at the time of visit by the officers of the department.

We also took into consideration that there was nothing on the record to suggest that the submission made by the representative of the department before Ld. OHA was wrong or against record.

We further took into consideration that as per in the order of Ld. OHA, the manager of the appellant, who was present at the time of said inspection, made statement before the Enforcement Team that he was unable to produce the documents

for the goods kept in the godowns, and further that there was nothing on record to suggest that the said statement was ever retracted by the said manager at the time of inspection or soon thereafter.

So, we concluded that there was nothing in the order passed by Ld. OHA to rebut the presumptions u/s 3 (9) of the Act.

9. It has also been alleged in the application that the applicant is not a dealer and as such default assessment in terms of section 32 is not permissible unless it is a case of sale.

At the time of final arguments on appeals, when this contention was raised, we dealt with the same by observing in the manner as:

“8. Section 3 (1) of DVAT Act provides that subject to other provisions of this Act, every dealer which is registered under this Act or required to be registered under this Act shall be liable to pay tax calculated in accordance with this Act.

9. As regards this contention, it may be mentioned that law requires maintenance of account by the transporters under the Act to enable the taxing authority to trace the dealer, co-relate goods with the dealers transporting goods for fixing the tax liability for checking evasion of tax. Liability of the transporters or carriers arises if they do not disclose the particulars required and what is within their knowledge to help the authorities to collect tax from dealers, which but for this provision might escape. In this regard, we referred to decision in **Tripura Goods Transport Association v. Comm. Taxes** (1999) 112 STC 609 (SC). “

10. On the point of imposition of penalty u/s 86(14), applicant has alleged that Tribunal has wrongly concluded on this point, without reference to the provisions of section 59 and 48 of the Act.

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By so alleging, applicant is challenging the findings recorded by this Tribunal. But, law does not permit the applicant to do so.

11. Applicant has alleged that when the appeal<sup>was</sup> partly allowed by the Tribunal, the consequential ~~of the~~ order for refund of the penalty<sup>h</sup> with interest was required to be passed.

Learned counsel of the applicant has referred to decision in M/s Ajay Road Lines India Pvt. Ltd. v. Commissioner of Trade & taxes, Delhi in Appeal No. 83/2010 by this Tribunal, but without pointing out as<sup>b-</sup>on ~~to~~ which point he has referred to this decision.

Counsel for the Revenue has rightly submitted that even if no specific order for refund has been passed, as per law, the Revenue Authorities shall enforce the order in view of decision in the appeals.

As regards interest on refund, at the time of final arguments, no such contention was raised before us, as rightly submitted even by<sup>by</sup> counsel for the Revenue.

12. As regards penalty imposed u/s 86 (14), we have already observed that no illegality or irregularity could be said to have been committed by the revenue while imposing penalty under this provision of law, or by the learned OHA while upholding the said penalty, as the appellant transporter failed to produce the records pertaining to transaction of goods lying detained at its 2 godowns, as<sup>and</sup> noticed<sup>above</sup> above, when it stood established that the appellant had failed to furnish records regarding transaction of the said goods.

13. In the end, we specifically recorded in the appeal that no other point was argued by the learned counsel of the appellant. We record here also that no other argument has been advanced by learned counsel for the applicant on this application.

14. As a result, this review application is hereby dismissed

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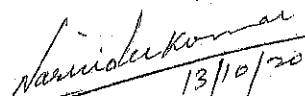


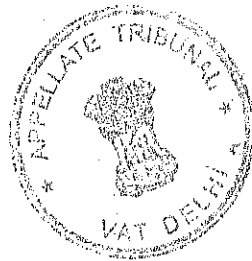
15. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 13.10.2021.

  
13/10/21.  
(Rakesh Bali)  
Member (A)

  
13/10/2021  
(Narinder Kumar)  
Member (J)



Appeal No. R-239/ATVAT/2021/1384-91

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**