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

Appeal No : 270/ATVAT/2018

Date of Decision : 01/11/2021

M/s Prime Energy Pvt. Ltd.,  
302-303, Middle Circle,  
Connaught Place,  
New Delhi-1100 01.

.....Appellant

V

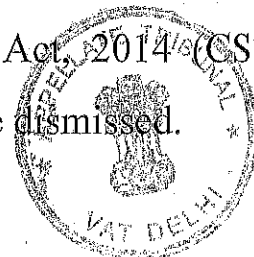
Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Atul Gupta.  
Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. By way of present appeal, dealer – appellant herein has challenged order dated 7/1/2019, passed by learned Objection Hearing Authority (OHA), vide Tin No. 07130409886, whereby the objections filed by the dealer under section 74(1) of Delhi Value Added Tax Act (here-in-after referred to as the Act), filed against notices of default assessment of tax and interest framed on 27/3/2018, under Central Sales Tax Act, 1956 (CST), in respect of tax period annual 2013-14, were dismissed.



*Narinder Kumar*  
1/11/2021

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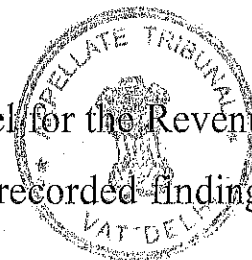
2. The Assessing Authority framed assessment of tax and interest under CST Act, by observing in the manner as –

“In response to notice dated 26.09.2017 for assessment, dealer has requested vide letter dated 10.10.2017 for 20 days time. Time was granted and case was adjourned for 18.10.2017, dealers submitted the reply of H.M No. 03&04. In response to H.M. No. 04, the dealer has filed challans which are under verification and in response to H.M. No. 3, dealer has submitted that the interstate sale against C-form is wrongly entered in sales account and it is purchase of the 2<sup>nd</sup> Qtr. 2013. The reply submitted by the dealer has not been in accordance with their return of the 2<sup>nd</sup> qtr., therefore, the reply could not be considered. Further, dealer has failed to submit statutory forms till date. Accordingly, assessment is hereby framed.”

3. Since the objections against the assessment dated 27/3/2018 came to be rejected, the dealer has filed present appeal.
4. Arguments heard. File perused.
5. It may be mentioned here that in the objections, the dealer put forth grounds of challenge to the demands of tax and interest but by way of additional submissions he also put forth following five grounds –

- a. “Inter-state sales against form C are subject to CST at 2% and not at 12.5%, as the prescription stipulated under rule 12 of the Central Sales Tax Rules, 1957 is fulfilled.

- b. On inter-state sales, CST at 2% is already paid, which is not considered by AVATO.
  - c. No sales Tax Liability on Rs 58,97,583/-, as the said amount is turnover of inter-state purchases inadvertently mentioned in revised 2<sup>nd</sup> quarter returns as inter-state sales owing to clerical mistake.
  - d. Appellant is not liable to pay interest.
  - e. Calculation of demand is not correct.”
6. A perusal of the impugned order would reveal that learned OHA decided only one point as regards correction of deficiency in the return, while referring to the provision of section 28 & 31 of DVAT Act, and ultimately concluded that there was no infirmity in the impugned notice of default assessment issued by the Assessing Authority
7. Learned counsel for the appellant has rightly pointed out that the learned OHA, while passing the impugned order reproduced all his additional submissions but did not record any finding in respect thereof except by holding that the dealer had failed to revise / rectify his return despite sufficient time and that the prescribed period of one year had elapsed long back on 31/3/2015.
8. In the course of arguments, learned counsel for the Revenue has candidly submitted that the learned OHA recorded finding only

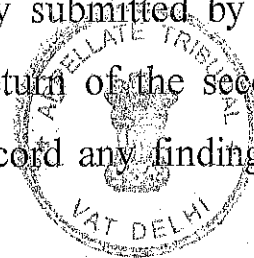


as regards the period meant for rectification of return, but he did not decide any other ground/ objection raised on behalf of the dealer, in the objections and also by way of additional submissions.

9. Learned counsel for the dealer – appellant has referred to the return initially submitted on 18/2/2014, for the second quarter of 2013 and then to the revised return in the said quarter, submitted on 31/3/2015, and pointed out that revised returns was furnished to rectify an error which had crept in the return initially filed on 18/2/2014, but while rectifying the error, officials of the dealer committed another error / mistake in the return.
10. Further, it is submission of learned counsel that when notices dated 1/12/2017 were issued by the Assessing Authority u/s 59(2) of DVAT Act 2004, the dealer filed reply dated 8/12/2017 thereto, but the Assessing Authority did not go through the record produced by the dealer, as regards sales against C-forms and proceeded to make the impugned assessment by simply observing that reply submitted by the dealer was not in accordance with their return for the second quarter. As regards inter-State sales against C-forms, another submission is even learned OHA did not consider the record produced by the dealer.



11. From the copy of the reply dated 8/12/2017 given by the dealer to the Assessing Authority, in response to the notices dated 1/12/2017, it appears that purchase and sale register – DVAT 30 & 31, ledger account of the purchasing party and CST-9 were submitted by the dealer with the reply in support of its version that the actual sale against C-form was wrongly entered in the sales account, whereas it was pure purchase value of the said period; and that the dealer had already paid tax in respect of all the quarters.
12. When the dealer pleaded to have paid the entire tax in respect of all the quarters, the Assessing Authority should have got verified the challans submitted by the dealer. But the Assessing Authority did not seek any verification of the challans. Even the learned OHA did not seek any verification of the said challans, before upholding the assessment made by the Assessing Authority:
13. As regards, the plea of the dealer that the sales against C-forms were wrongly shown in the return for the second quarter, and actually the said value was pure purchase, firstly it was the duty of the Assessing Authority to enquire into the said plea before passing the assessment order that the reply submitted by the dealer was not in accordance with their return of the second quarter. Even the learned OHA did not record any finding in



this regard.

14. As regards, the findings recorded by learned OHA while referring to section 28 & 31 of DVAT Act on the point of prescribed period for revision/ rectification of return, learned OHA did not enquire into the plea put forth by the dealer concerning inter-State sales against C-forms, which according to the dealer was actually pure purchase.
15. In **Steel Authority of India Ltd. vs. Sales Tax Officer**, (2008) 9 SCC 407, Hon'ble Apex Court observed that therein important questions were raised but not dealt with by the first appellate authority. Therein, reference was also made to decision in "Alexander Machinery (Dudley) Ltd. v. Crabtree 1974 ICR 120 (NIRC), wherein it was observed that failure to give reasons amounts to denial of justice.
16. In view of the above discussion and applying the decision in Steel Authority of India Ltd's case (supra), to the present case, we find that this is a fit case where the matter should be remanded to learned OHA for decision afresh on the objections filed by the dealer.
17. As a result, the appeal is disposed of and while setting-aside the impugned order dated 7/1/2019, learned OHA is directed to decide afresh the objections filed by the dealer, and the




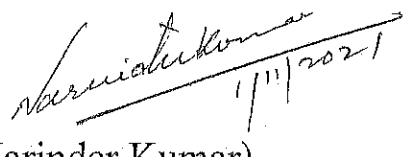
additional submissions from point (a to e), reproduced above, in accordance with law, after providing reasonable opportunity of being heard, to both the parties.

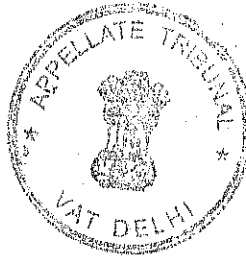
18. Parties to appear before learned OHA on 18/11/2021.
19. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 01/11/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 270/AT VAT/2018/1464-1471

Dated: 2/11/21

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



  
**REGISTRAR**