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

Misc. No.-04/ATVAT/17-18
Date of Decision : 26/10/2021

M/s. Valvoline Cummins Ltd.,
50/8, Tolstoy Lane, Janpath,
New Delhi

..... Applicant

V

Commissioner of Trade & Taxes, Delhi. Respondent

Counsel representing the Appellant : Sh. Sudhir Sangal.
Counsel representing the Revenue : Sh. C.M. Sharma.

ORDER

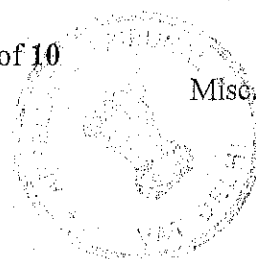
1. This order is to dispose of application u/s 24 of Delhi Value Added Tax Act, 2004 (Appellate Tribunal) Regulation 2005 with prayer for review of order dated 14/7/2017 passed by this Tribunal in Appeals No. 1290-1293/ATVAT/2012.

2. Vide order dated 14/7/2017, this Tribunal partly allowed the said appeals while upholding the impugned order dated 24/9/2012 passed by Special Commissioner-I - learned Objection Hearing

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Authority (OHA).

3. Vide order dated 24/9/2012, learned OHA had partly allowed the objections filed by the dealer – appellant and directed the Assessing Authority to reframe the assessment.

4. Initially Assessing Authority – VATO (Ward No. 206) had carried out default assessment of tax and interest u/s 32 of DVAT Act and levied penalty u/s 33 read with section 86(12) and (14) of the Act for the tax period 2008-09; default assessment of tax and interest u/s 9(2) of Central Sales Tax Act (CST) and also imposed penalty u/s 9(2) of CST Act read with section 86(12) of DVAT Act, for the same tax period i.e. 2008-09. The Assessing Officer had raised the following demands –

S.No.	A.T. (2008-09)	Tax & Interest	Penalty
1.	Under the DVAT Act	51,33,898/-	37,14,202/-
2.	Under the CST Act	5,50,831/-	2,92,580/-

5. Vide order dated 14/7/2017 in the appeals against the impugned order, the Tribunal, held as under :-

“In view of the foregoing discussion the appeals are partly allowed. While impugned orders are upheld in respect of rejection of claim against Goods returned and sale against E-1 form, the impugned orders to the extent the tax is imposed in respect of sales made against C-forms for which the forms are



available with the appellant; sale made against 'I' forms and goods sold as free gift the matter is remanded back to reframe the assessment in accordance with law after giving an opportunity of hearing to the appellant for which the appellant should appear before VATO on 8/8/2017."

6. In this application, applicant has alleged that no finding was recorded in the order dated 14/7/2017 as to rejection of claim of the appellant – dealer regarding decrease in output tax by Rs. 3,44,494/- on the value of credit notes of Rs. 17,07,191/-. Learned counsel for the applicant has put forth the same submission in the course of arguments on this application, and urged that while allowing the review application, the appeals as regards disallowing of decrees in output tax due to change in agreed consideration, by way of credit notes, be restored to their original numbers.

7. The case of the appellant as borrowed from the facts available in the order passed by the Tribunal, while disposing of the appeals, read as under :

"Facts of the case briefly stated are that the appellant dealer is engaged in the business of sale and purchase of lubricants and grease etc. and had made Central Sales against statutory forms during the year 2008-09. While making default assessment for the period 2008-09, the Assessing Authority had disallowed



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decrease in output tax due to change in agreed consideration by way of credit notes. Ld. AA had observed that while issuing credit notes the dealer did not ensure that the purchasing dealers carried out reversal of ITC for these transactions. Tax was also imposed on goods issued to dealers free of cost under a promotional scheme on the ground that the transaction amounted to sale for all purposes. Ld. AA also rejected claims of concessional rate of tax on sale made u/s 6(2) of the CST Act as well as claim of sales against 'I' Form.

Appellant with regard to the rejection of claim of decrease in output tax submitted that he is selling the goods in packs on which MRP is printed which is revised from time to time. For this reason, the appellant company's stock of goods consists of packs bearing old MRP and packs bearing new MRP. The appellant company is maintaining its account of SAP system of accounting and as and when the prices are increased the same is updated in the accounting system for generating invoices. Once the price in system is updated invoices issued after updating the price SAP fare generated at the prevalent / revised prices and invoices cannot be generated at earlier MRP irrespective of the fact that whether the goods being sold through a particular tax/ retail invoice fare from batch bearing lower MRP or from the new pack bearing increased MRP.



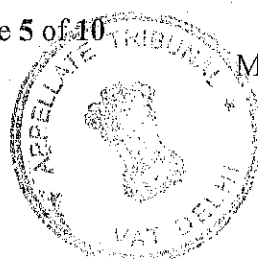
Due to price variation, in view of these facts, necessarily takes place in the invoices issued after updating the prices in SAP and the buyer to whom the goods were supplied and invoiced from the old stock but invoiced at revised price becomes entitled to get credit of the price difference between the price of old packs and new pack.

Hence credit notes had necessarily to be issued by the appellant to the buyers to the extent of such price difference between old pack and new pack or due to increase in amount of discount. Many times such variation takes place due to the reason that by mistake initially discount is allowed in a particular invoice at lower percentage at which it should have been allowed at the time of issue of original invoice."

8. As finds mentioned in the order passed by the Tribunal following objections were raised by the appellant while challenging the order passed by learned OHA –

"That the learned VATO erred in rejecting the claim of decreasing output tax of the appellant Company by a sum of Rs. 3,44,494/-"

"That taking into consideration the facts and circumstance of the case, the appellant company under a legal obligation to issue credit notes to the buyers who were legally entitled to the



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same since the value of goods sold to them was invoiced at a higher price as against the consideration for which the goods were sold.

“That the appellant company was under an obligation to issue such credit notes not for the purpose of discharging its legal obligation but also with an objective to keep correct accounts of its sales and purchases.”

9. In the order passed by the Tribunal, it stands recorded that following arguments were raised by learned counsel for the parties on the point of decrease in output tax on account of change in agreed consideration, by way of credit notes –

“Ld. Counsel for appellant submitted that there was nothing abnormal in issue of credit note in the daily routine transaction in trade as such the appellant company was under legal obligation to issue credit notes to the buyers who were legally entitled to the same since the value of goods sold to them was invoiced at a higher price as against the consideration for which the goods were sold. It is so because the appellant company is selling the goods in packs on which MRP is printed which is revised from time to time and as such appellant company's stock of goods consists of packs bearing old MRP and packs bearing new MRP. Submissions also



made that rejection of claim of decreasing output tax of the appellant company by a sum of Rs. 3,44,494/- and further in levying tax on a sum of Rs. 1,65,98,562/- on the allegation that the goods supplied by the appellant company to this extent free of cost were liable to be taxed being sales. Reference made to the case of Commissioner of Central Excise, Pondicherry vs. EID parry Ltd. 2013 (293) ELT 10 (Mad) decided by the Hon. High Court of Judicature at Madras and the order dated 7/6/2010 passed by this Tribunal in case of M/s S.L. Enterprises v. Commissioner of Trade and Taxes.”

“To counter the submissions, submissions also made that it is not the choice of the appellant to change the MRP as per practice of the appellant as in fact the appellant is selling the goods on MRP as such impugned orders suffers no illegality and infirmity.

“Coming to the issue of credit notes on account of revision in the MRP rates, ld. VATO has observed that the explanation tendered is not plausible explanation and there is no documentary evidence to show that when there is no change in quality and make how there could be change in agreed consideration. The ld. VATO has termed this variation as old MRP rates and new MRP rates. He further observed that the appellant has no where directed the buyers on the credit notes



to reduce their input tax and thereby attracting the provisions of sec. 40 A of DVAT Act 2004.”

“Appellant submission is that the agreed consideration between the parties was the sale price at which the goods of a particular old pack are sold but when old pack are invoiced at increased price due to updating of price in SAP system, the buyer necessarily becomes entitled to get credit of the difference between the two prices of the goods of same product i.e. difference between price of old pack invoiced at increased price and in case if for this reason credit notes were issued to the buyers, the observation of the Id. VATO to the contrary becomes meaningless. There was no question for the Id. VATO to suggest the invoking of sec. 40 A of DVAT Act in the case which is applicable only where there is an agreement between the parties to defeat the intention and application of the Act. However, in the present case, existence of such an agreement is totally ruled out since a credit note has necessarily to be issued to the buyers due to advancement in IT industry.”

“Further submitted that the appellant issued credit notes to the buyers for whatever increased price or lower discount was reflected in the tax/retail invoice and in this manner, the reduction in tax liability of the appellant was passed on to the



buyer, who was lawfully entitled to the same. It was the responsibility of the buyer to reduce input tax credit at his end to the extent for which the credit notes were issued to him by the appellant and the appellant could not be blamed for failure of the buyer to do so and due to act of omission and commission of the buyers. Further submission made that it is only a wild guess of the Id. VATO that the buyers did not reverse ITC at their end. There is no evidence to this effect on record excepting mere version of the Id. VATO but without any material available with him to make such observation”.

11. Learned counsel for the Revenue has opposed the application on the ground that no such ground was averred by the appellant – applicant in the memorandum of appeals. Further submission is that even if argument on this point was raised on behalf of the appellant at the time of final arguments, the Tribunal appears to have rejected the same, as no such ground was averred in the grounds of appeal.

12. As noticed above, the dealer – appellant specifically averred this ground in para No. 2,3, & 4 of the memorandum of appeal and in the course of arguments on merits, learned counsel for the appellant specifically argued on this point as well. There is nothing in the order dated 14/7/2017, that the Tribunal adjudicated this ground of appeal i.e. on the point of rejection of claim of decrees in output tax, while deciding the appeals. We find merit in the

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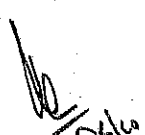
argument advanced by learned counsel for the applicant that no finding was recorded in the order dated 14/7/2017 as to rejection of claim of the appellant – dealer regarding decrease in output tax by Rs. 3,44,494/- on the value of credit notes of Rs. 17,07,191/-. For the purpose of complete adjudication of the said dispute in appeals i.e. as to rejection of claim of the appellant – dealer regarding decrease in output tax by Rs. 3,44,494/- on the value of credit notes of Rs. 17,07,191/-, the concerned appeals deserve to be restored to their original numbers.

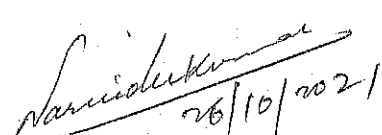
~~12.~~ As a result this application is allowed and the concerned appeals are restored to their original numbers, for the purpose of adjudication of the ground as to rejection of claim of the appellant – dealer regarding decrease in output tax by Rs. 3,44,494/- on the value of credit notes of Rs. 17,07,191/-.

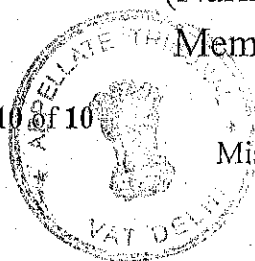
13. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 26/10/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Misc No. 4/ATVAT/17-18. 14
Appeal No. 1290-1293/ATVAT/12-13 / 1424-31

Dated: 28/10/21

Copy to:-

- (1) VATO (Ward-206)
- (2) Second case file
- (3) Govt. Counsel
- (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.
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)
- (9) Commissioner (T&T)




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