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

Appeal No : 189-190/ATVAT/2018

Date of Decision : 27/10/2021

M/s. K.V. Construction,
26, Pocket-II, Sector 5,
Rohini, Delhi – 110085.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. S.P. Gogia.
Counsel representing the Revenue : Ms. Suman Kapoor.

JUDGMENT

1. Appellant, a proprietorship concern, stands registered with the Department of Trade & Taxes, Delhi, vide Tin No. 07142013048. It is engaged in the business of work contract and trading of packing material.
2. Dealer has challenged order dated 18/7/2018 passed by learned Objection Hearing Authority (OHA) – VATO Ward-112 (Spl. Zone), whereby the dealer has been directed to pay a sum of Rs. 25,748/- i.e. Rs. 13,499/- towards additional tax and Rs. 12,249/- towards interest, as regards 1st quarter of the year 2012.

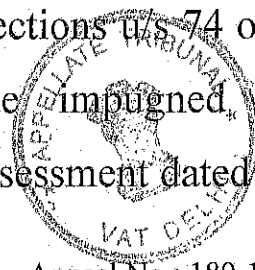
Narinder Kumar
27/10/21

3. The dealer – appellant filed objections before learned OHA challenging notice of default assessment of tax and interest, vide which Assessing Authority – VATO (ward-63) directed the assessee – dealer to deposit a sum of Rs. 62,447/- on the following grounds –

“Whereas upon being satisfied that the dealer has a liability to pay tax and interest on the basis of mismatch between the data filed online in Annexure-2A with the Annexure -2B filed by the selling dealers, notice of default assessment of tax and interest u/s 32 was issued in form DVAT 24 bearing Ref, No. 150010142142 dated 15/5/2014 for the tax period 1st quarter 2012 – 13.

As the buyer/sellers have thereafter revised their online 2A/2B data and in view of the changed position, I am reviewing the assessment order bearing Ref. No. 150010142142, dated 15/5/2014, suo-motu, in exercise of the powers conferred by virtue of section 74B(5) of Delhi Value Added Tax Act, 2004”

4. Vide separate notice of assessment u/s 33 of DVAT Act, issued on 7/6/2014, Assessing Authority imposed penalty to the tune of Rs. 49,832/- on the dealer – appellant, on the ground of violation of provisions of section 86(10) of DVAT Act.
5. Assessee – dealer also challenged this second mentioned notice u/s 33 of DVAT Act, by filing objections u/s 74 of DVAT Act. Thereupon, Learned OHA, vide impugned order dated 18/7/2018 modified the notice of assessment dated 7/6/2014 and



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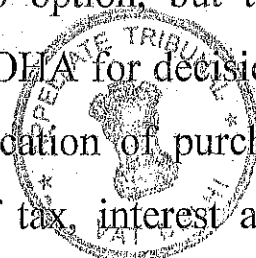
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directed the dealer – objector to pay a sum of Rs. 13,499/- by way of penalty u/s 86(10) of DVAT Act.

6. The dealer challenged the notices of default assessment of tax and interest and assessment of penalty by filing objections u/s 74 of DVAT Act. Vide impugned order, learned OHA disposed of objections.
7. Feeling dissatisfied with both the impugned orders passed by learned OHA, dealer – appellant has filed these two appeals.
8. Vide order dated 1/11/2019 passed by this Tribunal, while disposing of application u/s 76(4) of DVAT Act, dealer – appellant was directed to deposit 10% of the disputed amount of tax and interest within 30 days. Compliance with the said order was made, as finds mentioned in order dated 27/11/2019.
9. Arguments heard. File perused.
10. Learned counsel for the appellant has submitted that vide impugned order the learned OHA observed that purchases worth Rs. 1,07,995/- were not verified and as such levied tax @ 12.5% with interest and also imposed penalty u/s 86(10) of the Act, but learned OHA did not consider the invoices filed by the dealer during objection proceedings, and that had the learned OHA considered all those invoices, he would have not

found any mismatch in 2A and 2B, pertaining to the 1st quarter of 2012.

11. We find that in the impugned order, learned OHA observed that purchases worth Rs. 1,07,995/- were not verified, but, the learned OHA nowhere specified as to on what basis he recorded this finding. Had the learned OHA specified the reason/ factor which led to the finding regarding non-verification of the purchases worth this amount, we could proceed to consider legality or illegality in the order. Since the impugned order does not contained any reason for arriving at this finding regarding non verification of purchases worth Rs. 1,07,995/-, it is difficult to adjudicate the dispute i.e. if still there was mismatch in the two reports i.e. 2A & 2B.
12. In the course of arguments, learned counsel for the Revenue has submitted that actually purchases worth Rs. 1,07,995/- could not be verified because of difference in Tin number(s), as depicted in 2B submitted by the selling dealers. Learned counsel, however, candidly admitted that this fact / reason does not find mentioned in the impugned order.
13. In the given situation, we have no option, but to order for remand of the matter to the learned OHA for decision afresh as regards the verification / non verification of purchases worth Rs. 1,07,995/-, and on the point of tax, interest and penalty,



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giving reasons, after hearing both the parties in accordance with law.

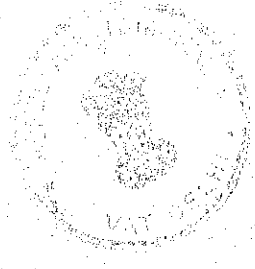
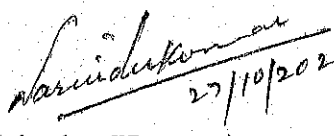
14. As a result, these appeals are disposed of and matter is remanded to the learned OHA for decision afresh as regards the verification / non verification of purchases worth Rs. 1,07,995/-, and on the point of tax, interest and penalty, giving reasons, after hearing both the parties in accordance with law. Parties to appear before learned OHA on 11/11/2021.

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 : 27/10/2021


(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)

Appeal No. 189-190/VAT/2018/1432-39

Dated: 28/10/21

Copy to:-

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| (1) VATO (Ward- 112) | (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