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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

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

Appeal No : 238-240/ATVAT/2018

Date of Judgment : 03/12/2021

M/s. Special Cables Pvt. Ltd.,  
2, Community Centre,  
East of Kailash,  
New Delhi – 110048.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Anshul Goel.

Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. By way of present three appeals, dealer – appellant, registered with Department of Trade & Taxes vide Tin No. 076701409568, has challenged order dated 12/10/2018 passed by learned Objection Hearing Authority (OHA), whereby three objections dated 17/3/2018, 21/3/2018, 21/3/2018 & filed by the dealer against three separate notices of default assessment have been rejected.

2. Matter pertains to tax period 1<sup>st</sup>, 2<sup>nd</sup> & 4<sup>th</sup> quarters of 2012,



*Narinder Kumar*  
3/12/2021

3. Vide notices of default assessment dated 25/1/2018, Assessing Authority directed the dealer to deposit a sum of Rs. 2,530/- for 1<sup>st</sup> quarter; Rs. 7,95,897/- for 2<sup>nd</sup> quarter; and Rs. 1,88,163/- for 4<sup>th</sup> quarter under DVAT Act.

4. The notices were framed by the Assessing Authority on the following grounds –

1<sup>st</sup> quarter -

“Dealer deals in manufacturing of cable reception instruments and other article made of other metal. While scrutiny of the case it was noticed that the in 1<sup>st</sup> Qtr 2012-13 dealer claimed ITC of Rs 2,530/- from M/s R. K. G. Sales (India) Pvt. Ltd. (Tin. 07560386030). The firm was cancelled by the Department on non functional basis w.e.f. 16.07.2015. Huge demand/ dues of Rs. 4,04,24,425/- are pending against the dealer the 2<sup>nd</sup> stage selling dealers of M/s R.K. G. Sales (India) Pvt. Ltd. i.e. M/s Tradelink India Trading company Tin. 07240390765 has mismatch from all its selling dealer as they have not shown the sale to M/s Tradelink India Trading Company (Tin 07240390765) in their annexure 2B. Keeping in view of the facts mentioned above, it seems that the transactions made by the dealer are not bonafide, hence, the ITC claimed by the dealer of Rs. 2,530/- from the above mentioned dealer is hereby reversed.”

2<sup>nd</sup> quarter

“Dealer deals in manufacturing of cable reception instruments and other article made of other metal. While scrutiny of the case it was noticed that the Dealer has claimed input of Rs. 7,95,897/- in second Qtr 2012-13 from M/s R.K. G. Sales (India) Pvt. Ltd. (Tin. 07560386030). The firm was cancelled by the Department

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on non functional basis w.e.f. 16.07.2015. Huge demand/ dues of Rs. 4,04,24,425/- are pending against the dealer, further during scrutiny of its selling dealers it was found that the 3<sup>rd</sup> stage selling dealers of M/s R.K.G Sales (India) Pvt. Ltd. i.e. M/s Siddhi Enterprises Tin. 07690415980 has mismatched from all its selling dealer as they have not shown the sale to M/s Siddhi Enterprises (Tin 07690415980) in their annexure 2B. Keeping in view of the facts mentioned above, it seems that the transactions made by the dealer are not bonafide, hence, the ITC claimed by the dealer of Rs. 7,95,897/- is hereby reversed.”

#### 4<sup>th</sup> quarter

“Dealers deals in manufacturing of cable reception instruments and other article made of other metal. While scrutiny of the case it was noticed that the Dealer has claimed input of Rs. 1,88,163/- in fourth quarter 2012-13 from M/s R.K. G Sales (India) Pvt. Ltd. (Tin. 07560386030). The firm was cancelled by the Department on non functional basis w.e.f. 16.07.2015. Huge demand/ dues of Rs. 4,04,24,425/- are pending against the dealer further during scrutiny of its selling dealers it was found that the extended dealer of M/s R.K. G Sales (India) Pvt. Ltd. i.e. M/s R.R. Enterprises, Tin. 07630437159 & M/s Raghav Enterprises, Tin. 07460460775 have mismatch from all its selling dealers as they have not shown the sale to M/s R.R. Enterprises, Tin.07630437159 & M/s Raghav Enterprises, Tin. 07460460775 in their annexure 2B. Keeping in view of the facts mentioned above, it seems that the transactions made by the dealer are not bonafide, hence, the ITC claimed by the dealer of Rs. 1,88,163/- is hereby reversed.”

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5. Feeling aggrieved by the notices of default assessment, objections were filed by the dealer, but the learned OHA rejected all the 3 objections. Hence, these appeals.
6. In the course of arguments, it has been pointed out that the that the common order disposing of the three objections, is not a reasoned order as the objections raised by the dealer have not been discussed or adjudicated giving reasons on all aspects and as such the impugned order deserves to be set-aside.
7. A perusal of the order would reveal that learned OHA disposed of all the three objections while observing in the manner as —

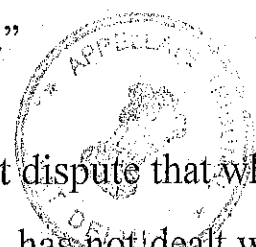
“I have perused the grounds of objection stated in DVAT 38, documents made available by the dealer and impugned orders passed by AA as well as heard the arguments made by the objector dealer. The order passed by AA is self explanatory and does not differ from any defects. I accordingly do not found any reason to interfere with the order of AA.

The mismatch was checked and detected on portal during the hearing proceeding. Hence, I accordingly reject the objections and upheld the demands so imposed by the AA.

The objections are disposed off accordingly.”

8. Learned counsel for the Revenue does not dispute that while disposing of the objections, learned OHA has not dealt with

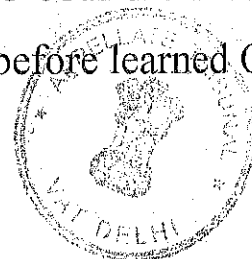
  
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all the concerned aspects put forth in the objections and also not given reasons on the basis of which he has upheld notices of default assessment.

9. Having gone through the material available on record, we find that the learned OHA was required to deal with each objection raised by the dealer in respect of notice of assessment pertaining to three different quarters and then to effectively decide the matter. However, herein it cannot be said that the learned OHA has effectively disposed of the objections. Learned OHA was required to discuss each objection raised by the dealer in respect of each assessment in question, but he has touched and that too in brief, only the aspect of mismatch, without referring to details as per record stated to have been made available. So, the matter needs to be remanded to the learned OHA for decision afresh.

10. Consequently, while disposing of the appeals, we set aside the impugned order dated 12/10/2018 and remand the matter to learned OHA for decision afresh on the objections filed by the dealer, pertaining to all the three quarters after providing opportunity of being heard, to both the sides, in accordance with law. Parties to appear before learned OHA on 27/12/2021.



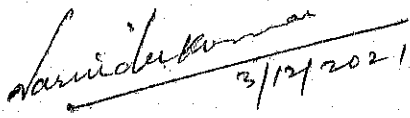
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11. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 3/12/2021

(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 238-240 / DVAT 2018 / 1560-67

Dated: 01/12/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward- 87)  | (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