

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

Appeal No : 175-176/ATVAT/2019

Date of Decision : 10/12/ 2021

M/s. Julta & Co.

269, Rajouri Apartments,

Rajouri Garden,

New Delhi – 110027.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. Rahul Gautam.

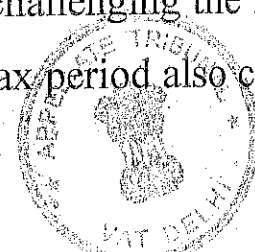
Counsel representing the Revenue

: Sh. P. Tara.

JUDGMENT

1. Dealer has challenged order dated 12/12/2020 passed by learned OHA, whereby its objections u/s 74 of Delhi Value Added Tax Act, 2004, (here-in-after referred to as the DVAT Act) in respect of tax period Annual 2016-17 have been rejected and the notice of default assessment issued by the Assessing Authority on 18/6/2018 has been upheld; and because the other objections filed u/s 74 challenging the levy of penalty of Rs. 1,60,191/- for the same tax period also came to be dismissed by learned OHA.

Narinder Kumar
10/12/21



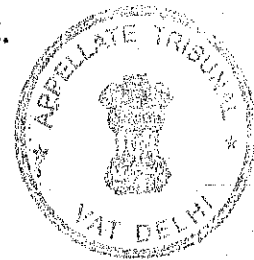
2. As regards levy of tax and interest u/s 32 of DVAT Act, Assessing Authority framed assessment on the following grounds :

“The dealer has approached the department with some papers to prove the claim of refund of 1st Qtr 2017-18. The dealer is being represented by Sh. Uday Ghosh Accountant and Sh. Vinod Gautam Advocate and submitted DVAT 30,31, Statement of Sale/Purchase, Audited Balance Sheet, Purchase & Sale invoices and details of salary & wages. The dealer is a work contractor of DMRC for maintenance contract for leakage & seepage and roof treatment.

As per the documents, invoices produced by the dealer on different dates through Sh. Uday Ghosh Accountant and Sh. Vinod Gautam Advocate, it is noticed that the dealer has executed some contracts in Jhajjar (Haryana) for Aravali Power Company Ltd. for Rs. 17,08,705/- on the TIN No. issued by Delhi Value Added Tax Department, which has not been shown in the returns by the dealer. Hence the turnover of Rs. 17,08,705/- (1708705-427176 labour 25%) Rs. 12,81,529/- is also to be taxed @ 12.5% under CST Act. Dealer to pay penalty equal to tax deficiency along with interest as per section 9(2) of CST Act 1956 read with section 32,33 & 86(10) of DVAT ACT”.

3. Penalty of Rs. 1,60,191/- came to be imposed by the Assessing Authority u/s 86(10) of the Act.

4. Arguments heard. File perused.



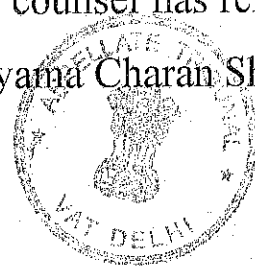
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5. Learned counsel for the appellant opened his argument by submitting that the Assessing Authority fell in error in levying tax and interest even though it was not a case of sale or purchase of any goods in Delhi, and rather sale and purchase took place in Jhajjar (Haryana) and as such the said assessments deserve to be set-aside.
6. Learned counsel for the Revenue has rightly submitted that the Assessing Authority framed assessment of tax and interest while observing that the dealer had executed some contracts in Jhajjar (Haryana) for Arawali Power Company Ltd on the Tin No. issued by Delhi Value Added Tax Department, Delhi, but the dealer failed to show this turnover in the returns. Learned counsel for the Revenue has referred to Form-I of Central Sales Tax (Delhi) Rules 2005 and in particular column R 6.7 which pertains to sales of goods outside Delhi and submitted that in view of provision of section 4 of CST Act, the dealer was required to depict the said turnover in the said column but the dealer failed to do so.
7. In the course of arguments, we have enquired from learned counsel for the appellant, if any document was produced by the dealer before the Assessing Authority to show that the sale and purchase did not take place in Delhi or that the same actually took place in Jhajjar (Haryana) only. Learned counsel for the appellant has candidly admitted that no

document in proof of sale/purchase concerning said works contract in Jhajjar (Haryana), was produced by the dealer before the Assessing Authority.

8. During objections u/s 74 also, the dealer failed to produce any documentary evidence in support of ^{its} ~~his~~ claim that sale/purchase of the goods took place at Jhajjar (Haryana) and the dealer executed the work ^{contract} there itself.
9. Admittedly, the dealer had used its Tin number which it stands registered with Department of Trade and Taxes, Delhi. It is not case of the dealer that it stood registered with the taxes department of Jhajjar (Haryana).
10. For the aforesaid reasons, learned OHA rightly upheld the rejection of the claim of the dealer, and also upheld the assessment of tax and interest.
11. Learned counsel for the appellant then submitted that the dealer was filing quarterly return but the Assessing Authority wrongly made assessment for the tax period - Annual 2016-17. In support of this argument, learned counsel has referred to decision in State of MP and Ors. v. Shyama Charan Shukla, 1990 Sales Tax Cases Vol 79, Page 439.




12. On the other hand, learned counsel for the Revenue has submitted that the Assessing Authority did not fall in error by making assessment for the tax period Annual 2016-17. Learned counsel for Revenue has rightly submitted that decision in Shyama Charan Shukla's case (supra) of the year 1990 pertains to assessment made under C.P. and Berar Sales Tax Act, 1947, whereas in this case, provisions of CST Act, 1956 read with DVAT Act 2004 are applicable. Accordingly, we do not find any merit in this contention raised by the learned counsel for the dealer.
13. As regards penalty, learned counsel for the appellant has submitted that there was no column in the return furnished by the dealer to show the transactions pertaining to works contract in Jhajjar (Haryana) and as such it cannot be said that the dealer was liable for penalty u/s 86(10) of DVAT Act.
14. As already noticed above, in column R 6.7, dealer was required to show turnover pertaining to sales of goods outside Delhi, but admittedly the dealer did not depict any turnover in the said column. Therefore provisions of section 86(10) are attracted to the present case. Consequently, we hold that the Assessing Officer rightly imposed penalty on the dealer u/s 86(10) of the Act read with section 9 of 2 of CST Act.



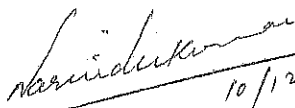
15. As a result, these appeals challenging the assessment of tax, interest and penalty are hereby dismissed, being without merit.
16. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 10/12/2021


(Rakesh Bali)
Member (A)



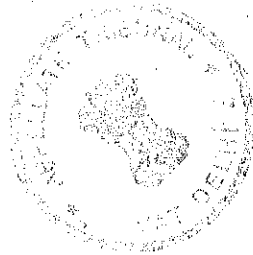

(Narinder Kumar)
Member (J)

Appeal No. 175-176/ATVAT/19/1624-31

Dated: 11/12/21

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