

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

Appeal No. 1038-1077/ATVAT/11

Date of Decision: 09-12-2021

M/s. HDFC Bank Ltd.,  
E-13/29, 2<sup>nd</sup> Floor, Harsh Bhawan,  
Middle Circle, Connaught Place,  
New Delhi - 110001.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Shammi Kapoor;  
Counsel representing the Revenue : Sh. C.M.Sharma.

.....

Appeal No. 637-644/ATVAT/13

Date of Decision: 09-12-2021

M/s. HDFC Bank Ltd.,  
E-13/29, 2<sup>nd</sup> Floor, Harsh Bhawan,  
Middle Circle, Connaught Place,  
New Delhi - 110001.

.....Appellant

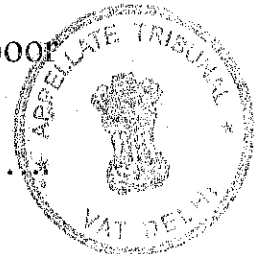
V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Shammi Kapoor  
Counsel representing the Revenue : Sh. P. Tara

.....



Appeal No. 645-648/ATVAT/13

Date of Decision: 09-12-2021

*Narinder Kumar*  
9/12/2021

*Rakesh Bali*

M/s. HDFC Bank Ltd.,  
E-13/29, 2<sup>nd</sup> Floor, Harsh Bhawan,  
Middle Circle, Connaught Place,  
New Delhi - 110001.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

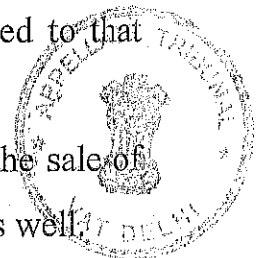
Counsel representing the Appellant : Sh. Shammi Kapoor.  
Counsel representing the Revenue : Sh. C. M. Sharma.

### JUDGMENT

1. This common judgment is to dispose of the appeals (only some of the above mentioned appeals), by which challenge has been made in respect of imposition of penalty only, as same point is involved in the said appeals for adjudication.

2. Vide judgment dated 24/05/16, this Tribunal disposed of all appeals No. Appeal No. 1038-1077/ATVAT/11, Appeal No. 637-644/ATVAT/13 Appeal No. 645-648/ATVAT/13 by summing up as under:-

- a) "Imposition of tax, interest and penalty on account of sale of repossessed vehicle is upheld and the appeals are dismissed to that extent.
- b) Charging of interest on account of delay in paying tax on the sale of bullion is upheld and the appeal is dismissed to that extent as well.



- c) Imposition of tax, interest and penalty in respect of sale of Capital Goods is set aside and the appeals are allowed on that count.
- d) Matter regarding imposition of tax, interest and penalty due to non-deduction of the TDS is remanded back to the Ld. VATO who shall reframe the assessment in view of the law explained in pre-paras.
- e) Matter regarding sale made against F Forms is also remanded back to the VATO who shall reframe the assessment in view of law as explained in pre paras.

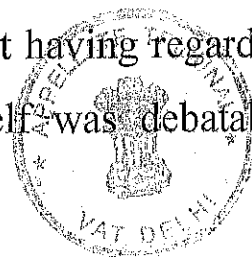
In respect of matters remanded back to the VATO, appellant was directed to appear before the Ld. VATO on 15.06.2016 and the Ld. VATO was required to decide the matter within four months of the first appearance of the appellant.”

3. The said judgment came to be challenged by the dealer – appellant before the Hon’ble High Court by way of VAT Appeal No. 26/16 & 27/16.

4. Hon’ble High Court remanded the matter to this Tribunal, vide judgment dated 26/09/2016, only on the limited question of extent of penalty to be properly levied in the given circumstances. That is how, we are seized of some of the appeals only on the question of extent of penalty.

5. Arguments heard. File perused.

6. As is available from the decision by the Hon’ble High Court, in the above referred to two VAT Appeal No. 26/16 & 27/16 the contention raised on behalf of the dealer was that having regard to the circumstances, the fact that the levability itself was debatable, as



evident from the judgment in Citi Bank Vs. Commissioner of Sales Tax 2016 (1) AD(DEL) 581, and in the absence of clarity, imposition of 200% penalty was not justified and was facially disproportionate.

7. Ld. Counsel for the appellant has submitted that the impugned order passed by the Ld.OHA is disproportionate in the given circumstances, and as such the impugned order deserves to be modified.

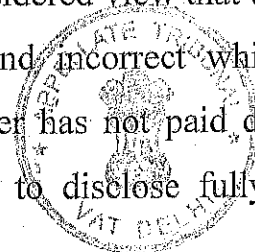
8. On the other hand, Ld. Counsel for the Revenue has submitted that there is nothing to suggest that the penalty imposed by the Assessing Authority upheld by Ld. OHA is disproportionate, when considered having regard to all the facts and circumstances, which led to the levy of tax, interest and imposition of penalty.

9. A perusal of the notice of Assessment of penalty u/s . 33 of DVAT Act would reveal that penalty came to be imposed u/s. 86(10), 86(12) & 86(15) of DVAT Act.

10. Reasons for imposition of penalty find mentioned in Annexure 'P' which forms part of notice of default assessment order.

11. Assessing Authority, while imposing penalty observed in the manner as :-

"After examining each and every issue in detail and applying the provisions of the DVAT Act, I am of the considered view that the returns filed by the dealer are incomplete, false and incorrect which attract penalty u/s 86 (10) of DVAT Act. The dealer has not paid due tax by reasons of concealment and has also failed to disclose fully material



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particulars of sales by not including the turnover of repossessed vehicle fixed assets in the returns filed in Form DVAT-16. Further due to the reasons stated above, there is a tax deficiency which attract penalty u/s 86(12) of DVAT Act. Moreover the dealer has prepared records and accounts in a manner that is false misleading or deceptive, so it attract penalty u/s 86(15) of DVAT Act 2004. Besides, the dealer has not deducted and deposited TDS, disclosed bullions sale very late and above all offered no plausible comments/explanation on the auditors findings as to why default assessment be not carried out u/s 32 for furnishing deceptive, incorrect and false returns. Moreover the dealer has miserably failed to prove how he is facilitator.

In view of my findings above, the dealer has separately been assessed; u/s 32 for non-payment for tax @ 12.5% on turnover of sales amounting to Rs. 2,30,02,959/- pertaining to repossessed vehicle & fixed assets during the month of Dec. 2005, which is an admitted liability, payable with penalty u/s 86 (10) , (12) & (15) of DVAT Act 2004 as the dealer has not come forward to deposit the deficient tax with interest. Since the tax deficiency has now been detected & assessed, the dealer is liable to pay the penalty on deficiency of tax, as per the provisions of sec 86 (10), (12) & (15) of DVAT Act 2004."

12. U/s. 86(10) of the Act, a person becomes liable to pay, by way of penalty, a sum of ten thousand rupees or the amount of the tax deficiency, whichever is the greater, where it is found that the said person had furnished the return under this Act which was false, misleading or deceptive in material particular or that the said person omitted from return a material particular.

13. Section 86(12) of the Act provides that where a tax deficiency arises in relation to a person, the person shall be liable to pay, by way of penalty, a sum equal to one per cent of the tax deficiency per week or a sum equal to rupees one hundred per week, whichever is higher, for the period of default.

14. In the given facts and circumstances when the Assessing Authority levied penalty u/s. 86(10), we are of the view that imposition of penalty u/s. 86(12) could be, and should have been, avoided.

15. In the given situation, keeping in view the imposition of penalty u/s. 86(10) and 86 (15) of DVAT Act, we find that interest of justice would be met by setting aside the penalty imposed u/s. 86(12) of the Act and by upholding <sup>the penalty imposed</sup> only u/s 86(10) & 86(15) of DVAT Act.

16. As a result, the appeals referred to above are disposed of with modification on the point of penalty i.e. by setting aside the penalty under section 86(12) of the Act, and while upholding the penalty under other two provisions i.e. under section 86(10) and 86(15) of the Act.

17. 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.

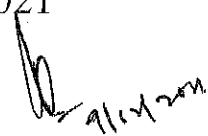
18. Copy of this judgment be also placed in files pertaining to other Appeal No. 637-644/ATVAT/13 & Appeal No. 645-648/ATVAT/13.

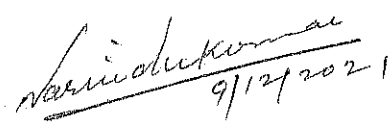


19. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 09/12/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 1038-1077/DVAT/11 / 637-644/DVAT/13 / 608-1615  
645-648/DVAT/13

Dated: 17/12/21

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**