

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

Appeal No : 118-132/ATVAT/15

Date of Judgment : 09/12/2021

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

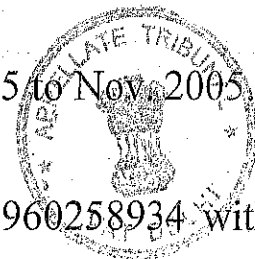
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Commissioner of Trade & Taxes, Delhi Respondent

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

JUDGMENT

1. This common judgment is to dispose of appeals No. 118-132 filed by the dealer – appellant challenging order dated 13/04/2015, passed by Learned Commissioner, VAT, u/s 74A of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the DVAT Act).
2. The matter pertains to tax period April, 2005 to Nov. 2005
3. Dealer stands registered vide Tin No. 07960258934 with the Department of Trade & Taxes. The impugned order has



Narinder Kumar
9/12/21

Rakesh Bali
9/12/21

been passed by the learned Commissioner exercising powers of revision, suo-moto, while examining legality / illegality of orders dated 15/12/2011 passed by Learned Spl. Commissioner-III (here-in-after referred to OHA).

4. The OHA, vide order dated 15/12/2011 held that the assessment order dated 27.5.2021 passed by VATO (KCS) was barred by limitation. Consequently the assessment order was set-aside and the Assessing Authority was directed to pass afresh orders tax-period-wise for the tax periods not barred by limitation.
5. It may be mentioned here that on the basis of the special audit, dealer – appellant, u/s 58(A) of DVAT Act for the year 2005-06, and findings arrived at on audit, the Assessing Authority raised the following demands towards tax, interest and penalty are as under –

| S.No. | Tax Period | Date of Notice of Default Assessment of Tax | Total Demand i.e. Tax + Interest (Rs. In lakh) |
|-------|----------------|---|--|
| 1. | April, 2005 | 27/5/2011 | 47,174.06 |
| 2. | May, 2005 | 24/6/2011 | 25.13 |
| 3. | June, 2005 | 25/7/2011 | 113.00 |
| 4. | July, 2005 | 26/8/2011 | 55.58 |
| 5. | August, 2005 | 28/9/2011 | 66.53 |
| 6. | Sept., 2005 | 28/10/2011 | 96.00 |
| 7. | October, 2005 | 23/11/2011 | 421.34 |
| 8. | November, 2005 | 20/12/2011 | 60.47 |

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| S.No. | Tax Period | Date of Notice of Default Assessment of Penalty | Demand (Rs. In lakh) |
|-------|----------------|--|-------------------------|
| 1. | April, 2005 | 28/10/2011 | 53.14 |
| 2. | May, 2005 | -- | 0.00 |
| 3. | June, 2005 | 26/8/2011 | 19.63 |
| 4. | July, 2005 | 27/7/2011 | 38.99 |
| 5. | August, 2005 | 07/12/2011 | 40.75 |
| 6. | Sept., 2005 | 04/11/2011 | 68.97 |
| 7. | October, 2005 | 23/11/2011 | 324.02 |
| 8. | November, 2005 | 20/12/2011 | 38.19 |
| | | | 583.69 |

6. Feeling dissatisfied with the assessment of tax, interest and penalty, the dealer had filed objections before the Special Commissioner on the ground that the same was barred by limitation. As noticed above, learned OHA upheld the objection raised by the dealer that the assessment order was barred by limitation. On revision of the said order, Learned Commissioner held that the assessment framed was within time. Hence these appeals by the dealer.

7. Arguments heard. File perused.

8. Learned counsel for the dealer – appellant has submitted impugned order passed by Commissioner, VAT passed on 13/4/2015 deserves to be set-aside as the same has been

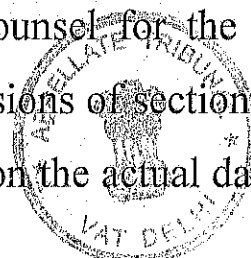
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passed in violation of provision u/s 26 of DVAT Act. The submission is that as per section 26 of the Act every registered dealer, who is liable to pay tax under the Act is required to furnish return for each tax period and by such dates as may be prescribed and in the prescribed form and manner. Further, it has been submitted keeping in view the turnover of the dealer, as per rule 26 of DVAT Rules, the dealer – appellant was required to file return monthly, and as such the return for the month of April 2005 was to be filed by 28/5/2005 and similarly returns for the month of May, June, July, August, September, October and November, 2005 were required to be filed by 28/6/2005, 28/7/2005, 28/8/2005, 28/9/2005, 28/10/2005, 28/11/2005 and 28/12/2005 respectively, but herein the notice of default assessment of tax, interest and penalty came to be issued on the dates described in the table above i.e. beyond the maximum period of six years.

The main thrust of learned counsel for the appellant is that the prescribed period of six years was to be calculated from the date when the return was due to be filed, and not from the date of actual filing of the return i.e. 30/12/2005.

9. On the other hand, learned counsel for the Revenue has submitted that in view of provisions of section 34 of DVAT Act and taking into consideration the actual date of filing of



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the return i.e. 30/12/2005, learned Commissioner, VAT has rightly held that the limitation period for making of assessment expired on 29/12/2011 and that the assessment was framed within the prescribed period of limitation. The contention is that the notices of assessment of tax, interest and penalty have been rightly held to be within limitation.

10. At the relevant time, Section 34 of DVAT Act read as under

—
No assessment or re-assessment u/s 32 of this Act shall be made by the Commissioner after the expiry of four years from

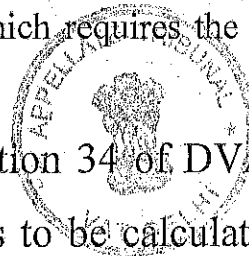
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(a) the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period, whichever is earlier;

Provided that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or Court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.”

11. In view of the provisions of section 34 of DVAT Act that the period of 4 years / 6 years is to be calculated from the

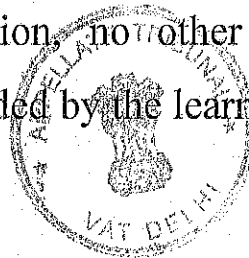


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date the dealer furnishes a return u/s 26, we find that the learned Commissioner, VAT has rightly held that the notices of default assessment tax, interest and penalty were issued within the prescribed period of limitation. Consequently, vide impugned order passed u/s 74 of DVAT Act, exercising powers of revision, Learned Commissioner has rightly set-aside the order dated 15/12/2011 passed by learned OHA, on the point of limitation.

12. It may be mentioned here that while setting aside the order passed by learned OHA, learned Commissioner, VAT also upheld the orders passed by the Assessing Authority i.e. regarding assessment of tax, interest and penalty.
13. Learned counsel for the appellant has submitted that once the order passed by learned OHA was set-aside by learned ~~Special~~ ^{VAT} Commissioner, the matter was required to be remanded to the learned OHA, by the learned Commissioner, VAT for decision on the other grounds of objections raised by the dealer in the objections.
14. Learned counsel for the Revenue has submitted that when the dealer pressed only one objection i.e. the assessment framed were barred by limitation, no other ground of objection was required to be decided by the learned OHA.

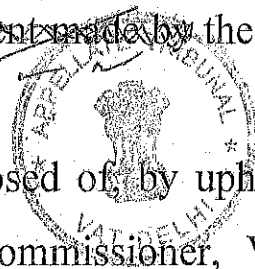


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15. A perusal of copy of the objections filed by the dealer before learned OHA would reveal that the ground of limitation was one of the objections raised by the dealer. In other words, various other grounds were also raised by the dealer while submitting DVAT-38. In the order dated 15/12/2011, learned OHA nowhere specifically mentioned that none of the other grounds was pressed by learned counsel for the objector, at the time of hearing on objections.
16. In the given situation, it appears that the learned OHA decided only the ground of objection that the assessments were barred by limitation, and that he did not decide any other ground of objections raised by the dealer. Had the learned OHA decided the other grounds of objection as well, then the matter would have been otherwise.
17. In the given situation, learned Commissioner, VAT should have remanded the matter to learned OHA for decision as regards other grounds of objections raised by the dealer – appellant.
18. So, learned Commissioner, VAT fell in error by upholding assessments made by ~~the assessment made by~~ the Assessing Authority.
19. As a result, the appeals are disposed of by upholding the findings recorded by learned Commissioner, VAT vide

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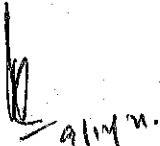


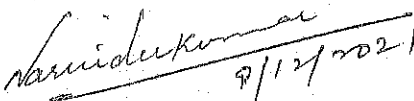
which he set-aside the orders passed by learned OHA as regards the point of limitation, but the second part of the impugned order, upholding the assessments made by ~~learned OHA~~ ^{Assessing Authority}, is hereby set-aside. Consequently the matter is remanded to learned OHA for decision on the other ~~g~~ grounds of objections i.e. other than on the point of limitation, after providing reasonable opportunity of being heard to both the parties, in accordance with law. Parties to appear before learned OHA on 27/12/2021.

20. Files 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. 118-132/ATVAT/15/1616-23

Dated: 14/12/21

Copy to:-

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| (1) VATO (Ward-42) | (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) | |


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