

S. No. 132

PS

**BEFORE DELHI VALUE ADDED TAX, APPELLATE
TRIBUNAL DELHI**

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

Appeals No. 247-248/ATVAT/21 and
✓ Appeals No. 249-250/ATVAT/21

Date of Judgment: 13/12/2021

M/s, Network System
B-142, Swasthya Vihar,
New Delhi-110092,

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant :
Counsel representing the Revenue :

Sh. Shailendra Verma
Sh. N. K. Gulati

JUDGMENT

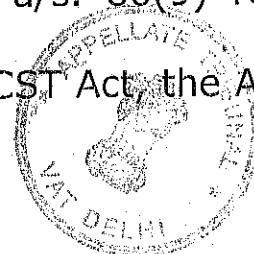
1. This common judgment is to dispose of four appeals captioned above i.e Appeal No. 247, 248, 249 & 250/21 filed by the dealer.

2. The matter pertains to tax period – 2nd & 4th Qtr. of 2013-14.

3. Vide notice of Default Assessment u/s. 86(9) read with Section 33 of DVAT Act, 2004 as well as CST Act, the Assessing

Narinder Kumar
13/12/2021

Rakesh Bali

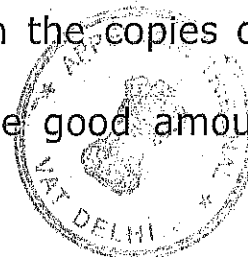


Authority levied penalty upon the dealer. Levy of penalty can be tabulated as under:-

S. No.	Tax Period	Objection Ref. No.	Impugned Notice Ref. No.	Disputed Amount of Penalty [In Rs.] [Under DVAT Act]	Disputed Amount of Penalty [In Rs.] [Under CST Act]
1	2	3	4	5	6
1	2 nd Qtr 2013-14	281840	250012232003	20,500	NA
2	2 nd Qtr 2013-14	281841	250012333953	NA	20,500
3	4 th Qtr 2013-14	281842	250012284656	8,500	NA
4	4 th Qtr 2013-14	281845	250012380498	NA	8,500

4. The penalty came to be imposed because the dealer failed to furnish returns on or before the due date of the relevant tax period.

5. Feeling dissatisfied with the levy of penalty, the dealer filed objections. Vide impugned order dated 08/07/21, Ld. OHA rejected the objections, while observing that as per details of turnover and tax payable, as available from the copies of the returns in Form DVAT -16, the dealer made good amount of



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sales during the relevant period and that the dealer had made default in furnishing the statutory returns on or before the due dates.

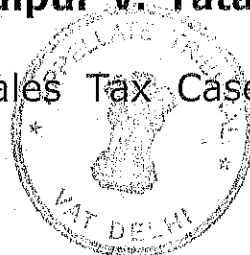
6. Hence these appeals.

7. Arguments heard. File perused.

8. It may be mentioned here that vide order dated 25/10/21, passed by this Tribunal on application u/s.76(4) of DVAT Act, the dealer has deposited a sum of Rs. 4000/- i.e. Rs.1,000/- in respect of each appeal.

9. Ld. Counsel for the appellant has submitted that the returns came to be filed late because the concerned advocate of the dealer failed to furnish the same within the prescribed period, the reason being that mother of the advocate left this world in August 2013 due to cancer and the advocate was upset emotionally. The submission is that when in support of this fact affidavit of the concerned advocate was submitted during objections, Ld. OHA should have set-aside the penalty.

In support of his contention, Ld. Counsel has relied on decision in **Commercial Tax Officer, Jaipur v. Tata Iron & Steel Company Ltd.** (1995) Vol.96 Sales Tax Cases, page 502).



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10. On the other hand, Ld. Counsel for the Revenue has submitted that mother of Advocate of the dealer died in August 2013, but the return for the second quarter was filed in much thereafter on 06/11/2013, and the returns for 4th quarter, due on 25/04/14, were furnished on 12/05/14. As further submitted by the learned counsel, there is nothing on record to suggest that the dealer had submitted all the relevant papers and the returns to the advocate for the purpose of furnishing of returns.

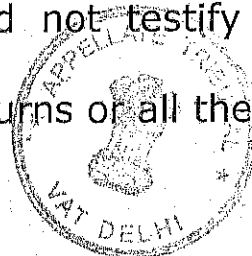
11. Undisputedly, returns for the 2nd quarter of 2013 were filed 41 days after the due date and the returns for the 4th quarter were filed late by 17 days.

12. Available on record is copy of affidavit dated 14/03/21 by Sh. Surjeet Singh, S/o. Sh. Tarlok Singh, advocate of the dealer to the effect that the returns were filed late by 41 days and 17 days respectively because his mother Smt. Bhupinder Kaur, was suffering from cancer and that ultimately she died on 28/08/13, due to which he was busy and upset and could not pay attention towards his clients.

13. In this affidavit, the deponent did not testify that the dealer had made available to him the returns of all the requisite

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documents required in connection with preparation and furnishing of returns.

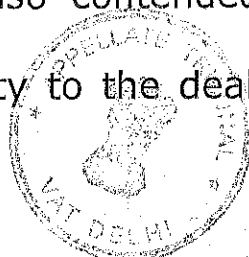
14. In Tata Iron & Steel Company Ltd. (Supra), it was submitted by the dealer before the Tribunal that returns were sent, duly completed, to the advocate by registered post for their submission in the office of the Commercial Taxes Officer and in support of his submission copies of forwarding letters were also submitted before the Tribunal. In this situation, the Tribunal observed that normally the dealer expected that its advocate would file returns in time as he was doing in the past, but unfortunately lapse was committed and returns could not be furnished in time. Consequently the Tribunal set-aside the levy of penalty.

Here, as noticed above, it is not the case of the dealer that returns were completed and sent by it to Sh. Surjeet Singh, its Advocate for its submission to the concerned VATO. In the absence thereof, the decision in Tata Iron & Steel Company Ltd. 's case (supra) does not come to the aid of the dealer.

15. Ld. Counsel for the dealer has also contended that no notice was issued by Assessing Authority to the dealer before

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levy of penalty, and on this ground also the impugned order deserves to be set-aside.

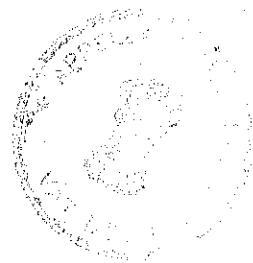
On the other hand, Ld. Counsel for the Revenue has submitted that in view of decision in Sales Tax Bar Association's case, which finds reference in the impugned order there is no requirement of any notice before levy of penalty.

In Sales Tax Bar Association (Regd.) v. Commissioner GNCTD. WP(C) No. 4236/2012, our own Hon'ble High Court observed that the proceedings before the Assessing Authority being unilateral proceedings, no prior notice is required to be issued to the dealer before levy of penalty. Even otherwise, opportunity of being heard has been availed of by the dealer before Ld. OHA, at the time of hearing of its objections.

16. While upholding the penalty levied by the Assessing Authority, Ld. OHA also took into consideration Form DVAT-16 placed on record on behalf of the dealer. As per the said returns, local turnover and central turnover, in the 2nd and 4th

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quarter of the year 2013-14 was as under:-

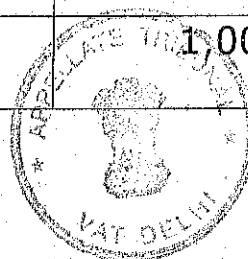
S No.	Tax Period	Local Turnover [In Rs.]	Central Turnover [In Rs.]	Tax Payable/Deposited [In Rs.]
1.	2 nd Qtr 2013-2014	25,91,082	4,50,268	1,12,602
2.	4 th Qtr 2013-14	28,70,509	4,35,954	1,40,000

17. However, keeping in view that there was delay of only 41 days as regards the furnishing of returns for the 2nd quarter and delay of only 17 days in furnishing of returns for the 4th quarter, we deem it a fit case to reduce the amount of penalty as under:-

S. No.	Tax Period	Reduced Amount of Penalty [In Rs.] [Under DVAT Act]	Reduced Amount of Penalty [In Rs.] [Under CST Act]
1	2	5	6
1	2 nd Qtr 2013-14	1,000	NA
2	2 nd Qtr 2013-14	NA	1,000
3	4 th Qtr 2013-14	1,000	NA
4	4 th Qtr 2013-14	NA	1,000

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18. With the above modification on the quantum of penalty, these appeals are disposed of.

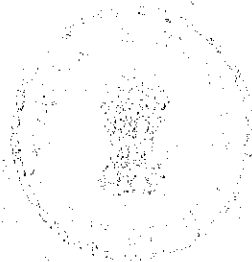
19. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

20. Copy of this judgment be also placed in files pertaining to other Appeal No. 249-250/ATVAT/21.

*Announced in open court.
on: 13th Dec. 2021.*

Narinder Kumar
13/12/2021
(Narinder Kumar)
Member (J)

[Signature]
13/12/21
(Rakesh Bali)
Member (A)



Appeal No. 249-250/ATVAT/2/1640-47

Dated: 13/12/21

Copy to:-

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| (1) VATO (Ward- 81) | (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