

Sl. No. 134

PS

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial)

Appeal No :73/ATVAT/2019

Date of decision: 16-12-2021

M/s Schneider Electric India Pvt. Ltd.  
C-56, One Basement Ground,  
First and Second Floor,  
Mayapuri Industrial Area,  
Phase-2, New Delhi-110064

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

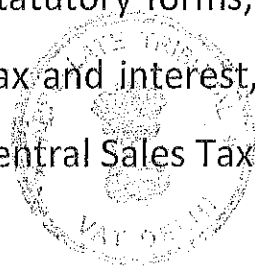
Counsel representing the Appellant : Sh. M. K. Gandhi  
Counsel representing the Revenue : Sh. P. Tara

**JUDGMENT**

1. The dealer-appellant is a Private Limited Company registered with Department of Trade & Taxes vide TIN No. 07920179319 and engaged in trading of Electrical goods.

2. Dealer has challenged the order dated 13.08.2019 passed by Ld. OHA-VATO (Ward-105). Vide impugned order, Ld. OHA has allowed certain exemptions to the dealer in respect of some statutory forms produced before him, during the hearing on objections. However, as regards the missing statutory forms, he has upheld notices of the default assessment of tax and interest, issued by Assessing Authority on 18.07.2017, under Central Sales Tax Act.

*Narinder Kumar*  
16/12/2021



As per impugned order, appellant has been required to pay additional tax to the tune of Rs.46,35,698/- and interest to the tune of Rs. 36,93,953/-.

Hence this appeal.

It may be mentioned here that with the appeal, an application u/s 76(4) of DVAT Act was also filed. On the said application, the appeal was entertained subject to the condition of pre-deposit of 15% of the disputed demand towards tax and interest, within 25 days time.

Compliance report has already been filed as regards the condition u/s. 76(4) for entertainment of appeal.

3. Arguments heard. File perused.

4. Ld. Counsel for the appellant has submitted that the Assessing Authority should not have levied interest while levying tax. Ld. Counsel has raised this argument on the ground that word 'liable' available u/s. 42(2) of DVAT Act does not convey the sense of an absolute obligation and that the revenue authorities should exercise discretion on this point. In support of this submission, Ld. Counsel has referred to decision in **Superintendent and Remembrancer of Legal Affairs to Government of West Bengal v. Abani Maity** (1979) 4 Supreme Court Cases 85 and in **State of Odisha, represented by the Commissioner of Sales Tax, Odisha, Cuttack v. M/s. Parekh Integrated Services Pvt. Ltd., Cuttack**, SA No. 8 (C) of 2017-18. Accordingly, Ld. Counsel has urged that since it was not desirable

in the instant case to levy interest on the dealer for non filing of statutory forms, the impugned order deserves to be set aside as regards levy of interest.

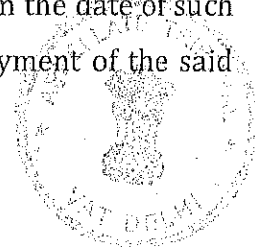
5. As noticed above, the Assessing Authority, vide order dated 18/07/17, allowed certain exemptions to the dealer on production of certain statutory forms, but at the same time he levied tax and interest as regards the statutory forms which were not submitted by the dealer.

6. The matter pertains to the tax period annual 2013. When the objections were filed by the dealer before Ld. OHA, some more statutory forms were produced and keeping in view decision in **M/s. Kirloskar Electric Co. Ltd. v. Commissioner of Sales Tax**, 1991 Vol.83 of Sales Tax Cases, 485, Ld. OHA allowed further exemptions to the dealer as regards the said statutory forms produced before him, but at the same time upheld levy of tax and interest as regards the statutory forms which the dealer failed to produce even with or during the objections.

7. Section 42(2) of DVAT Act is the relevant provision for levy of interest. It reads as under:-

"42 (2) : When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount."

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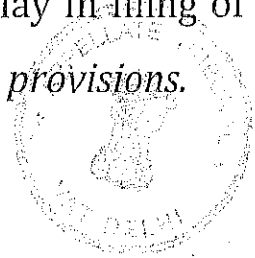
While referring to the above provisions, Ld. Counsel for the Revenue submitted that the Assessing Authority has to mandatorily levy interest in case the dealer makes default in making the payment of any tax, and as such, it cannot be said that this provision regarding levy of interest is discretionary, and not mandatory.

8. It is true that in sub-section (2) of Section 42 of DVAT Act word 'shall' has been used as regards liability of the defaulter to pay simple interest on the amount due by way of tax, penalty or other amount, but which is not paid.

9. In **Abani Maity's** case (supra), Hon'ble Apex Court while dealing with criminal matter, alleging violation of provision of Section 63(2) and powers of Magistrate u/s. 64(1) of Bengal Excise Act, 1907, adopted construction of expression "shall be liable to confiscation" used in Section 63(2) and 'may' in sub-section(1) of Section 64, which will preserve the efficacy of the provisions as an instrument for combating these anti-social activities, and rejected the other which was to render them ineffective.

10. In **M/s. Parekh Integrated Services Pvt. Ltd.'s** case (Supra), Ld. Tribunal observed that it was not desirable to levy interest upon the dealer for non filing or due to delay in filing of the statutory forms, *in absence of any clear statutory provisions.*

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Herein, as noticed above, there is a specific statutory provision for liability of the defaulter, to pay interest in addition to the amount assessed.

Furthermore, as noticed above, the case pertains to the year Annual 2013. The dealer has already been allowed concession by the Assessing Authority vide notice of Default Assessment dated 18/07/17, and thereafter also by Ld. OHA vide impugned order 13/08/19. This is a case where no other statutory forms were filed with this appeal. No statutory form has been produced before the Tribunal during pendency of this appeal.

11. In the given facts and circumstances, levy of interest by the Assessing Authority, and by the Ld. OHA, is held to be in accordance with law.

12. Ld. Counsel for the appellant – dealer has referred to the notice of Default Assessment dated 18/07/17 on the point that the Assessing Authority framed this assessment while observing “the dealer has not furnished returns/ furnished incomplete returns or incorrect returns/ furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004 / any other reason,” and assailed the assessment even on this ground.

It is true that the Assessing Authority should have, while recording his satisfaction, ~~should have~~ specified the ground, but a perusal of the second paragraph of the said notice of default assessment makes it obvious as to on which ground the said

assessment came to be framed resulting in levy of tax and interest. Had these reasons not been given in the 2<sup>nd</sup> paragraph, then the things would have been otherwise.

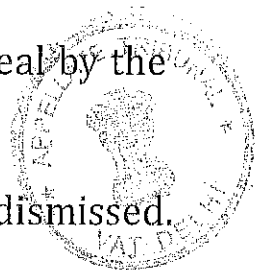
13. Ld. Counsel for the dealer has then referred to the 3<sup>rd</sup> paragraph of the impugned order passed by Ld. OHA wherein he observed to have reviewed the assessment order dated 18/07/18 passed by the Assessment Authority. The contention is that review of assessment is permissible only by the authority which makes the assessment, and that on this ground the impugned order deserves to be set-aside.

On the other hand, Ld. Counsel for the Revenue has submitted that this paragraph regarding review appears to be part of a format but actually this is not a case where the Ld. OHA has exercised powers of review.

Undisputedly, the impugned order came to be passed by the Ld. OHA while deciding objections filed by the dealer u/s.74 of DVAT Act. Therefore, there was no question of exercise of any powers for review of any order. Furthermore, the dealer has taken advantage of the exemption allowed by Ld. OHA vide impugned order. In this situation, as rightly submitted by the Ld. Counsel for the Revenue the dealer cannot be allowed to have the cake and eat it too.

No other argument has been advanced in this appeal by the Ld. Counsel for the parties.

14. In view of the above findings, this appeal is hereby dismissed.



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15. 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.

Dated: Dec. 16<sup>th</sup>, 2021.



*Narinder Kumar*  
16/12/2021  
(Narinder Kumar)  
Member (Judicial)

Appeal No. 73/ATVAT/2019/1656-1663

Dated: 20/12/21

Copy to:-

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|--------------------------------------------------------------------------------------------------------|----------------|
| (1) VATO (Ward-105)                                                                                    | (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)                                                                                 |                |



*[Signature]*  
for REGISTRAR