

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

Appeal No- 58/ATVAT/18  
Date of decision: 17-12-2021

M/s Diageo India Pvt. Ltd.  
D-2, Southern Park,  
Saket Place,  
New Delhi-110017

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Representing the Appellant : Sh. Shashi Sharma, C.A.  
Counsel representing the Revenue : Sh. P. Tara

**JUDGMENT**

1. By way of present appeal, dealer-appellant, who is in the business of manufacturing and marketing of alcoholic beverages in India and registered under DVAT Act and Central Sales Tax Act vide TIN No. 07370182580, has challenged orders dated 13/11/2017 passed by the OHA, whereby the objections filed by the said dealer against the notice of Default Assessment of tax, interest and penalty (framed/imposed vide order dated 20/01/2015 passed by the Assessing Authority), were disposed of in the

*Narinder Kumar*  
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manner indicated therein, while allowing concession under F-Form No. 1512685 of the value of Rs. 1,14,103/-, and rejecting all other objections against the assessments.

2. This matter pertains to the tax period March'2011.
3. The assessment of tax and interest was framed under DVAT and CST Act, and penalty was imposed u/s. 9(2) of CST Act read with Section 86(12) of the Act, on the ground of tax deficiency.
4. It may be mentioned here that these appeals were entertained subject to deposit of Rs.7,00,000/- towards disputed amount of tax, interest and penalty. The order was complied with on 07/05/2019.
5. ~~Heard~~ <sup>heard</sup> Arguments. File perused.
6. While framing assessment of tax and interest, the Assessing Authority observed as under:-

“The dealer was engaged in trading of Alcoholic Beverages during the said period.

The dealer has reflected total turnover for Rs.703723899/- which includes local sale for Rs. 478655293/-, Central sale against C forms for Rs.152379609/- and stock transfer against F forms for Rs.72688997/- in his trading account submitted at the time of assessment. GTO of the dealer as per returns is 589730792/- which includes local sale for Rs. 478655293/-, Central sale against C forms for Rs. 111075499/- and nil stock transfer against F forms.

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Thus the dealer has reflected less sale for Rs.113993107/- in his returns for which now he claims that Rs. 41304110/- is sale against C forms and Rs. 72688997/- is stock transfer against F forms.

Section 28 of DVAT Act, 2004 empowers the dealer to furnish a revised return in case he discovers a discrepancy in a return furnished by him.

The dealer, however, has not revised his returns in this case. Hence, request of the dealer cannot be accepted at this stage and difference in sale for Rs. 113993107/- is now taxed @20% along with interest @15% PA. Penalty u/s 86(12) is also imposed on this account.

Further, the dealer has failed to submit C forms for Rs. 47372324/-, hence tax @20% is levied on the same along with interest @15% PA. Benefit of tax deposited @2% allowed."

Observing that it was a case of tax deficiency, assessment of penalty was also made vide separate order.

7. When the dealer filed objections before the Ld. OHA, Ld. CA representing the dealer put-forth his submissions. On the basis of said submissions and objections filed by the dealer, Ld. OHA framed the following two issues:-

"First issue is that the objector dealer did not include and reflect a turnover/ sales of Rs. 11,39,93,107/- in the periodical return filed with the Department during the FY 2010-11 which was noticed by the Assessing Authority while making default assessment of the tax under the relevant law and accordingly the said sales which was not disclosed by the objector dealer in the returns was taxed along

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with interest and penalty under the suitable provisions of law. The objector dealer has challenged the imposition of said tax, interest and penalty on above grounds.

*Second issue* is that, Assessing Authority imposed differential tax and interest under law on objector dealer for failure to produce/submit Central Forms (C forms) of Rs. 4,73,72,324/- against which concessional sales against C forms was claimed. The objector dealer also challenged the same on above mentioned grounds.”

8. As regards the first issue, Ld. OHA observed that the claim of the objector – dealer that non-disclosure of sale worth around Rs. 11 Crore was not intentional and was not to evade tax, was not acceptable, the reason being that the dealer had failed to correct the returns even after the disclosure of sales during the process of audit of books of accounts.

9. After having made above said observations, the Ld. OHA went on to observe that despite reasonable opportunities granted to the dealer, during the hearing on objections, dealer had failed to produce / submit any document issued by the State Excise Department of Delhi as well as Excise Department of importing State relating to movement of liquor outside Delhi, which defeated the arguments advanced on behalf of the dealer on the point of interstate sale/ stock transfer of liquor.

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10. From the impugned order, it appears that Ld. CA submitted there that the dealer was having certain central statutory forms ( C & F) which the dealer could not produce.

As regards this submission, from the impugned order, it further appears that 5 C-Forms were produced before Ld. OHA, and he rejected 4 C Forms for the following reasons, while allowing benefit of one C Form of the value of Rs.1,14,103/-:

“Regarding second issue in respect of failure to submit Central C forms of Rs. 4,73,72,324/-. The objector dealer submitted a written submission vide letter dated 06.07.2016 along with certain documents such as three original C forms (no.8609124 of Rs.6,58,657/-, no. 1512684 of Rs.3,76,315/-, no. 1512685 of Rs.1,14,103/- ), photocopy of a C form no. 8609125 claim of Rs. 1,69,401/- (even though value of C form is Rs.4,82,201/-), details of pending C forms as on 06.07.2016, copies of CST invoices along with some lorry receipts, copy of some tax invoices and stock transfer invoices. Vide said letter the objector dealer has claimed possession and production of C forms of Rs.1,12,49,635/- and pending C forms as on date of Rs.3,61,22,689/-. However, as is evident from above the objector dealer has produced only three original C forms. Further, from preliminary examination of C forms and other records produced, it is observed that there are many deficiencies in the C forms produced. C form No. 8609124 is issued for M/s Diageo India P. Ltd., Maharashtra and not for Delhi. C form No. 1512684 seems to be issued for Mumbai and not for Delhi as there is cutting on C form. C form no. 8609125 is not submitted in original and this C forms is coloured photocopy which is not

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allowed/acceptable under the CST Act/Rules. Therefore, only one C form no. 1512685 of Rs. 1,14,103/- submitted in original is acceptable and allowed. Further, no Good Receipts (GRs) for invoices no. 12210054 and 12210055 both dated 29.09.2010, for invoice no. 12210064 dated 13.10.2010 and for invoice no. 12210139 dated 29.12.2010 is made available by the objector dealer. Further, original or even photocopy of C form no.1247122 of rupees claimed as Rs.1,01,58,481/- has not been submitted by the objector dealer before the undersigned."

11. From the impugned order, it does not transpire if the dealer produced any F Forms before the Ld. OHA either with the objections or during the hearing on objections.

12. In the course of arguments before the Tribunal, Ld. CA for the appellant-dealer has not submitted any <sup>original</sup> F Forms or filed any application seeking permission for production of any F form.

13. When learned counsel for the Revenue has pointed out the dealer was granted various opportunities by the Learned OHA to produce concerned documents, including documents issued by Excise departments of Delhi and other states, in proof of movement of goods, Ld. CA for the appellant has been in agreement and submitted that dealer was duty bound to produce documents sought by the learned OHA. It is not in dispute that the dealer-appellant did not make available any document issued by Excise departments, before the Ld. OHA.

On account of non production of the said record/ document issued by the Excise Departments, an adverse inference has to be drawn against the dealer. As a result, it can safely be said that had any such document been produced before this Tribunal, that would have gone against the dealer-appellant.

14. In the course of arguments, on the point of movement of goods, Ld. CA has not put-forth submission that lorry receipts and copies of tax invoices were sufficient enough to prove movement of liquor / goods by the dealer outside Delhi *and should have been considered by Revenue.*

As regards rejection of four C forms by learned OHA, for the detailed reasons recorded in the impugned order, in the course of arguments, no challenge has been made thereto on behalf of the dealer.

15. In the given facts and circumstances, when the dealer did not file correct returns, even after the disclosure of sales, during the process of audit of its books of accounts, and before the Ld. OHA, the dealer failed to produce documents issued by State Excise Department of Delhi and those of the other concerned States, Ld. OHA rightly observed that the dealer had failed to prove movement of liquor/goods, and consequently failed to prove the factum of interstate sales.

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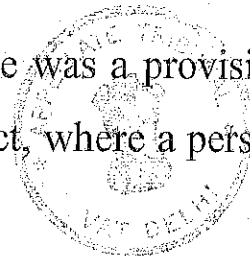
16. So far as levy of penalty is concerned, as noticed above, same has been imposed u/s. 86(12) of DVAT Act on the basis of tax deficiency.

Ld. CA for the dealer-appellant submits that there was no mala-fide intention on the part of the dealer in non-payment of the tax due, keeping in view that it could not revise the return within stipulated period and that this fact was brought to the notice of Ld. OHA but it did not find favour with the Ld. OHA. Ld. CA has therefore, submitted that lenient view may be taken on the point of penalty.

Admittedly, the dealer <sup>also</sup> ~~could~~ not revise return, even after having discovered or found that the correct turnover had not been depicted in the return.

It is true that the dealer must have come to know of this fact at the earliest, by the end of December 2012, and as provided u/s28 of DVAT Act, the dealer could have filed an application before the concerned Officer/Ward so as to revise his return, to depict actual sales, but no such application was filed. In absence of any revised return disclosing therein the correct turnover/sale, it is difficult to say that the dealer could put forth his claim <sup>only</sup> on the basis of statutory forms.

17. As regards penalty, upto 11/09/2013, there was a provision for the remission of penalty u/s 86 of DVAT Act, where a person



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was able to prove existence of a reasonable cause for the act or omission, giving rise to penalty, during objection of penalty u/s 17 of DVAT Act.

Herein, as per version of the dealer itself, on having come to know that the turnover/sale shown in the return was wrong, it intended to file a revised return, but it could not do so because the prescribed period for filing of revised return had expired.

It is not in the case of dealer that it came to know of the tax deficiency only after notice u/s 59 (2) of the Act was served upon the dealer. It is also not its case that it made payment of tax deficiency, soon after having come to know of the same.

As noticed above, the dealer must have come to know of the factum of wrong turnover/sale put forth by the dealer, at the maximum by December 31, 2012 or at the time its accounts were audited, but the dealer did not take any step for filing of revised return.

Assessing Authority issued notice u/s 59 (2) of the Act, in the year 2014. There is nothing on record to suggest that the dealer submitted to the Assessing Authority that it intended to revise the return but could not do so due to lapse of time. It was for the first time during objections that submission in this regard was made before Ld. OHA.

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18. In the given factum circumstances, there is no ground for leniency as regards the assessment of penalty imposed.

19. Consequently, these appeals are hereby dismissed, while upholding the impugned orders passed by Ld. OHA, so far as, its objections stand rejected.

20. 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 : 17/12/2021



*Narinder Kumar*  
17/12/2021

(Narinder Kumar)  
Member (J)

Appeal No. 58/ATVAT/18/1672-79

Dated: 21/12/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-208)  | (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

