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

Appeal No : 112/ATVAT/2019

Date of Decision : 21/12/2021

M/s Dalmack Auto India,
Plot No.6, Pocket N,
Sector-2, Bawana Indl. Area,
Bawana, Delhi-1100 39.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. S.K. Khurana.

Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. Present appeal has been filed challenging order dated 3/3/2020 passed by learned Objection Hearing Authority (OHA) - Joint Commissioner, while disposing of objection No. 280727 dated 8/9/2017 filed by the dealer, in respect of tax period – 1st quarter 2014-15.
2. Vide impugned order, learned OHA, has upheld the adjustment order dated 18/7/2017 passed by the Assessing Authority, whereby against the disputed demand of Rs. 8,10,6651/-, a sum of Rs. 6,60,534/- was adjusted and demand of Rs. 1,50,117/-

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was shown as pending.

3. At the stage, it would be appropriate to describe as to how the said demand of Rs. 8,10,651/- was created by the Revenue on 04/11/2016, even though some times before i.e. on 15/9/2016, the Assessing Authority – VATO (Ward-63) had observed that there was no demand against the dealer for the following four quarters :

Tax Period	Turnover reported by the dealer	Turnover assessed	Tax reported / paid
(1)	(2)	(3)	(4)
First Quarter – 2014	48,68,576/-	0	0
Second Qtr. – 2014	35,00,053/-	0	0
Third Qtr. – 2014	94,90,723/-	0	0
Fourth Qtr. – 2014	72,62,597/-	0	0

4. It so happened that on 4/11/2016, learned VATO (Ward-63) reviewed the previous assessment order dated 15/9/2016, referred to above, and raised demand of Rs. 8,10,651/-, by observing in the manner as –

“Sh. A.C Gupta, Advocate appeared with POA for assessment for the year 2014-15 and submitted the documents of sales summary, DVAT-31 & 31 and Trading Account for the tax period 1st QTR 2014-15. He also filed the export documents like Invoice, shipping bill, bill of lading and CA Certificate for export of Rs. 48,68,576/- in 1st QTR, 14-15. However, the dealer has shown the High Seas Sale of Rs. 48,68,576/- in his return for the tax period 1st QTR, 14-15 as

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the central sales instead of Export sale. In view of the above I am reviewing the order vide ref. no. 150082100226 dated 15.09.2016 for the period of 1st QTR, 2014-15 u/s 74B(5) of DVAT Act and taxed Rs. 48,68,576/- @ 12.50% with interest treating it a local sales as the dealer could not produce the document of High Seas Sale”.

Feeling aggrieved by the said demand, the dealer filed objections No. 215152 dated 5/11/2016.

After hearing, counsel for the dealer – objector and calling for report from the AC (ward-63), learned OHA, vide order dated 27/4/2017, was of the considered view that in the interest of justice, another opportunity of being heard and for production of documents by the dealer was required to be given.

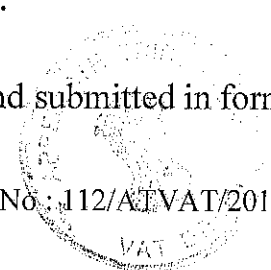
With the said observation, learned OHA remanded the matter to the Assessing Authority – AC / AVATO (ward-63).

Consequently, the dealer appeared before the Assessing Authority and submitted an application dated 1/5/2017 with prayer for disposal of his claim for refund, because the matter stood remanded by the learned OHA vide order dated 27/4/2017.

However, the Assessing Authority, vide order dated 18/7/2017 (adjustment order), observed in the manner as :

“This is in response to your application for refund submitted in form

Handwritten signature and date 21/11



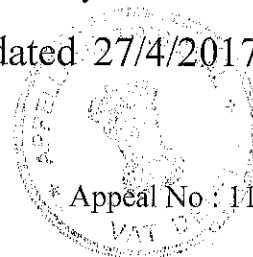
DVAT-16, claiming a refund of Rs. 5,74,713/- (Rs. Five Lakh Seventy Four Thousand Seven Hundred Thirteen). The said application has been examined by the Department. However, the refund (Refund allowed) of Rs. 0/- (Rs. Zero only) cannot be granted to you because of following reasons:

The amount of refund claimed by you has been adjusted completely against the following outstanding demand.”

Type	ID	Demand Amount	Adjustment Amount	Pending Amount
Demand	150082109996	8,10,651/-	1,50,117/-	6,60,534/-

5. As noticed above, the Assessing Authority was required to provide an opportunity to the dealer to produce requisite documents in support of its claim, and another opportunity of being heard, because of remand of the matter by learned OHA. In this way, the Assessing Authority was required to decide afresh the factum of assessment of tax and interest, for the first quarter of 2014-15, as the previous assessment framed by the Assessing Authority on 4/11/2016 raising the said demand of Rs. 8,10,651/- stood set-aside, consequent upon remand of the matter.

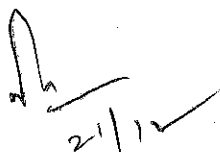
The grievance of the dealer in this appeal is that the Assessing Authority did not provide any opportunity to the dealer so as to comply with the order of remand dated 27/4/2017, and rather



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passed the adjustment order dated 18/7/2017. Further grievance of the dealer is that the learned OHA, instead of setting aside the adjustment order, vide impugned order dated 3/3/2020, upheld the same and at the same time expressed his helplessness as regards non-compliance with the directions earlier issued by learned OHA vide order dated 27/4/2017, Delhi Value Added Tax Act-2005 (here-in-after referred to as the Act).

6. It may be mentioned here that non-compliance of the previous directions contained in order dated 27/4/2017 passed by learned OHA is one thing and non framing of fresh assessment as regards the first quarter of 2014-15, after providing opportunity to the dealer, is another thing.
7. In the given situation, when the Assessing Authority did not decide the matter afresh as regards assessment for the first quarter of 2014-15, it remains unexplained as to how the Assessing Authority could pass adjustment order. In this situation, the learned OHA fell in error in upholding the said adjustment order.
8. In the given facts and circumstances, the impugned order dated 3/3/2020 passed by learned OHA and adjustment order dated 18/7/2017 passed by the Assessing Authority deserve to be set-aside, and matter needs to be remanded to the Assessing

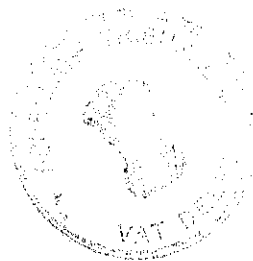

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Authority, so as to ensure compliance with the directions already issued by learned OHA vide order dated 27/4/2017.

9. Consequently, this appeal is disposed of and while setting aside the impugned order dated 3/3/2020 passed by learned OHA and also the adjustment order dated 18/7/2017 passed by the Assessing Authority, the matter is remanded to the Assessing Authority – VATO (Ward-63) for compliance with the previous order dated 27/4/2017 passed by learned OHA, as regards the first quarter of 2014-15, and take decision afresh after providing reasonable opportunity of being heard, to the parties.
10. Parties to appear before the Assessing Authority on 07/01/2022.
11. 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 : 21/12/2021



Narinder Kumar
21/12/2021
(Narinder Kumar)
Member (J)

Appeal No. 112/ATVAT/2019/1688-95

Dated: 22/12/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-63) | (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) | |



Dr
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