

S1. No. 151

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

Appeal No. 212-213/ATVAT/21
Date of Judgment: January 5, 2022.

M/s Rinish Overseas Pvt. Ltd.,
Plot No. 2/A-1, Sector-8, Rohini,
Delhi – 110 085.

.....Appellant

V

Commissioner of Trade & taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. S. C. Jain.
Counsel representing the Revenue : Sh. M. L. Garg.

JUDGMENT

1. Dealer-Appellant is feeling aggrieved by order dated 28.8.2018 passed by Ld. OHA-VATO, whereby its objections u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), pertaining to disputed demand of Rs. 3,13,506/- as regards 2nd Quarter of 2012-2013, have been dismissed.
2. The objections came to be filed by the Dealer against notice of default assessment of tax and interest and separate notice

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of assessment of penalty.

3. Vide said assessments, the dealer was called upon to pay Rs. 3,81,017- towards Tax & Interest under section 32 of DVAT Act, and Rs 3,13,506/- towards penalty, u/s 86 (10) read with section 33 of DVAT Act.
4. The reason for framing of default assessment of tax and interest and imposition of penalty is that there was mismatch in 2A& 2B, as regards the transactions stated to have been entered into by the Dealer-Appellant with the selling dealer M/s Pilot Industries Ltd.
5. Ld. OHA while disposing of the objections observed that the mismatch was more than 5 years old and the dealer also stood cancelled and further that there was no mention of the name of the dealer-objector in 2B furnished by M/s Pilot Industries Ltd., for the month of July 2012, and also that it was not possible to establish a fair transaction between these two dealers.
6. Arguments heard. File perused.
7. Ld. Counsel for the appellant has submitted that the selling dealer revised its 2B and at that time omitted to depict the said transactions, with the dealer-appellant, and rather depicted the turnover of said transactions in the turnover of transactions said to have taken place with another buyer,

namely M/s Base Corporation Ltd.

8. Ld. Counsel has further submitted that the dealer placed before Ld. OHA all the relevant documents like copy of the ledger account of the selling dealer and 3 tax invoices, to prove that transactions worth Rs. 62,70,125/- had actually taken place between the dealer-appellant and the selling dealer-M/s Pilot Industries Ltd. in July 2012, but the Ld. OHA did not properly assess the entire material placed before him.
9. Ld. Counsel for the Revenue has contended that as per copy of 2B submitted by the dealer today, for the tax period July-2012, local sales to the tune of Rs. 2,99,96,925/- were subject to levy of tax @ 5% and sales to the tune of Rs. 12,04,72,000/- were liable to tax @ 12.5%, and these turnovers find mentioned in this document, but it can^{not} be said that the amount of the transactions between dealer-appellant and M/s Pilot Industries Ltd. stands included in any of these two entries. Ld. Counsel further submits that it was for the Dealer-Appellant to establish before Ld. OHA, by taking appropriate steps, that M/s Pilot Industries Ltd. wrongly depicted the turnover of the transaction between the dealer-appellant and M/s Pilot Industries while submitting revised 2B for the said tax period, but it failed to do so.

10. On the other hand Ld. Counsel for the dealer-appellant submits that proper opportunity be afforded to the dealer-appellant before Ld. OHA to establish that the turn over – local sales of Rs. 2,99,96,925/- ~~stands~~ included in the turn over-local sales by M/s Pilot Industries Ltd. to the dealer-appellant, to the tune of Rs. 62,70,125/-.
11. While going through impugned order passed by the Ld. OHA, we find that the Ld. OHA nowhere mentioned as to which documents were furnished by the dealer-appellant with the objections or during the objection-proceedings going on there.
12. As regards the transaction to the tune of Rs. 62,70,125/- the order also does not reveal as to ^{for what} ~~due to which~~ reason establishing of fair transaction was not possible, especially when the selling dealer had revised its 2B. In the order, it does not find mention as to what had led to revising of 2B by the selling dealer. In the order, it ^{also} ~~does~~ not find mentioned if the entire turnover of Rs. 2,99,96,925/- was in respect of the transactions between M/s Pilot Industries Ltd. and Base Corporation Ltd.
13. Even though Ld. Counsel by the Dealer-appellant submits before us that all the relevant documents were submitted by the dealer before Ld. OHA, but in absence of any convincing material or copy of index of any such document,

it cannot be said that all the relevant documents were submitted by the dealer-appellant before Ld. OHA.

14. In the given circumstances, we ~~are~~ deemed it a fit case to accede to the request of learned counsel for the appellant to remand the matter to Ld. OHA for decision afresh, on the objections, after affording reasonable opportunity to the appellant, of being heard, including that of production of relevant documents, pertaining to the transaction in question between the dealer-appellant and M/s Pilot Industries Ltd., which are stated to have ~~been~~ taken place in 2nd Qtr 2012-2013.

15. As a result, this appeal is disposed of, the impugned orders dated 28.8.2018 levying tax, interest and penalty are set-aside, and the matter is remanded back to Ld. OHA, subject to deposit of costs by the dealer, which we quantify at Rs. 10,000/-. Costs to be deposited with the Revenue under the relevant head within 20 days. Appellant to appear before Ld. OHA on 3.2.2022. Learned OHA to decide the objections afresh, after affording reasonable opportunity to the appellant, of being heard, including that of production of relevant documents, pertaining to the transaction in question between the dealer-appellant and M/s Pilot Industries Ltd., which are stated to have ~~been~~ taken place in 2nd Qtr 2012-2013.

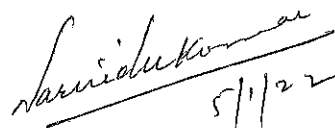
16. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy is sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : January 5th, 2022



(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)

Appeal No. 212-213/DT-VAT/21

Dated: 16/1/22

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) | |


REGISTRAR