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5ND-162

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

Appeal No : 286/ATVAT/2021  
Date of Decision : January 24<sup>th</sup>, 2022

M/s Pragati Engineers,  
Shop 271, Dhaka,  
Bhatnagar House,  
Kingsway Camp,  
New Delhi-1100 09.

..... Appellant

v

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. Rohit Gautam.  
Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

1. Dealer – Appellant, a proprietorship concern – registered with Department of Trade & Taxes, New Delhi, vide Tin No. 07760267386, (ward-72), has challenged order dated 07/09/2021 passed by learned Objection Hearing Authority (OHA)-VATO, whereby its objections u/s 74 of Delhi Value Added Tax Act-2004 (here-in-after referred to as DVAT Act), against notice of default assessment of tax and interest (framed

*Narinder Kumar*  
24/1/2022

*Rakesh Bali*  
24/1/22

under CST Act), have been disposed of and the dealer has been directed to pay a sum of Rs. 4,17,762/- in respect of 3<sup>rd</sup> quarter - 2012.

2. It may be mentioned here that vide impugned order, learned OHA also allowed exemption to the dealer, as regards one C-form of the value of Rs. 15,90,000/-, in view of decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, decided by Hon'ble High Court of Delhi, and as regards the missing C-forms of the value of Rs. 17,35,236/- upheld levy of tax @ 10.5% under CST Act, with interest.
3. The above said default assessment of tax and interest was framed by the Assessing Authority – AVATO, u/s 9(2) of CST Act and the dealer was directed to pay Rs. 5,71,697/-.
4. Feeling aggrieved by the impugned order passed by learned OHA, the dealer has filed this appeal.
5. The only contention raised by learned counsel for the appellant is that the default assessment was passed on 20/3/2017 in respect of 3<sup>rd</sup> quarter of 2012 and as such the assessment so framed was beyond the period of limitation provided u/s 34 of DVAT Act. While referring to decision in **(1) Samsung India Electronics (P) Ltd. v. Government of NCT of Delhi**,

MANU/DE/0826/2016; (2) **M/s. Protean Computers Industries (P) Ltd. v. Commissioner of Trade & Taxes**, Appeal Nos. 1414-1416/ATVAT/11-12; (3) **Art Yarn v. Commissioner of Trade & Taxes 52 DSTC**, Learned counsel for the appellant has submitted that the impugned order deserves to be set-aside.

6. Section 34 of DVAT Act provides the maximum period within which assessment or re-assessment can be made. At the relevant time section 34 read as under –

1. "No assessment or re-assessment u/s 32 of this Act shall be made by the commissioner after the expiry of four years from –

- (a) The date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or
- (b) The date on which the commissioner made an assessment of tax for the tax period, whichever is the earlier;

Provided that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

2. Notwithstanding sub-section (1) of this section, the commissioner may make an assessment of tax within one year after the date of

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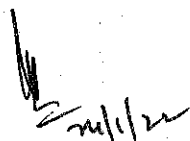
any decision of the Appellate Tribunal or Court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.”

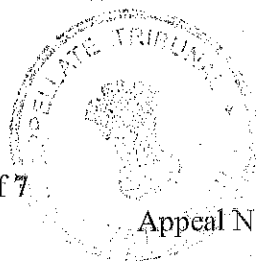
7. In this case, as per case of the appellant, return was furnished on 3/2/2013 and the limitation for making of assessment, as per provision of section 34 of DVAT Act, expired on 3/2/2017.

On the other hand, learned counsel for the Revenue has submitted that this is a case where the dealer furnished revised return on 21.11.2013, and as such the period prescribed u/s 34 of DVAT Act, for the purpose of calculation of limitation, shall begin from the date of filing of revised return and not from 3/2/2013 i.e. date when online return was initially furnished by the applicant.

8. In the course of arguments, learned counsel for the dealer-appellant has admitted to have furnished revised return on 21.11.2013, but his contention is that in view of provisions of section 34 of the Act, the prescribed period of four years having begun from the date of filing of return initially, the assessment made by the Assessing Authority deserves to be set aside.
9. It is true that as per provisions of section 34 of the Act, the prescribed period of 4 years, if calculated from the date of initial return furnished by the dealer, expired on 3.2.2017. But,

when the dealer admittedly furnished revised return and that too of its own, for one reason or the other, there is no merit in the contention on behalf of the appellant that the prescribed period of 4 years shall be counted from the date of the return initially filed. Dealer cannot be allowed to eat the cake and have it too. In other words, once the dealer himself makes fresh self assessment on the basis of revised return, the previous return goes beyond consideration, and he cannot be allowed to say that the prescribed period of 4 years for framing of assessment shall run from the return initially furnished. Let's take a case where the dealer furnishes revised return only a day before the last date of submission of revised return. Can the dealer, in such a situation, still urge that the Assessing Authority had only 3 years and 1 day time to make assessment on the basis of the return initially filed. When the law allows the dealer to revise return and the dealer opts to revise within the prescribed period, in the interest of justice, Assessing Authority is empowered to frame assessment on the basis of turnover etc. furnished in the revised return and as such the period of 4 years shall start running from the date of filing of revised return, and the Assessing Authority cannot be expected to frame assessment on the basis of turnover etc. furnished in the return initially furnished.

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10. In **Samsung India Electronics (P) Ltd. case (supra)**, no revised return was filed and the period of four years from the date of original return, as depicted in the table available in para 32 of the decision, was taken into consideration. Therefore this decision does not come to the aid of the dealer.
11. In **M/s. Protean Computers Industries (P) Ltd. case (supra)**, reliance was placed on decision in **Sunrise Luxury Retail Pvt. Ltd. v. Commissioner of Value Added Tax**, ST. Appl. 17/2011, by our own Hon'ble High Court on 20.12.2011. Therein the original return filed by the appellant for the 2<sup>nd</sup> quarter was treated as valid return and he revised return was treated as null and void return, and as such said decision being on distinguishable facts, does not come to the aid of the dealer-appellant.
12. In **Art Yarn case (supra)**, the question pertained to invocation of extended period of six years and fulfillment of the requisite condition. It was observed therein that order passed beyond the period of four years but with no reason as visualized by proviso to section 34 mentioned in the default notice, was barred by limitation and therefore, quashed. This decision is also distinguishable on facts and the relevant provisions applicable to the present case.
13. No other point has been argued on behalf of the dealer-

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appellant.

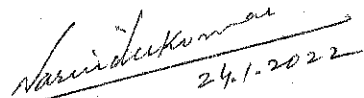
14. In view of the above discussion, the appeal deserves to be dismissed. Same is hereby dismissed.
15. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

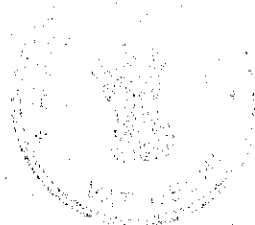
Date : January 24, 2022



(Rakesh Bali)  
Member (A)



(Narinder Kumar)  
Member (J)

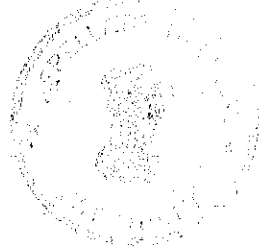


Appeal No. 286/PATVAT/21/1880-87

Dated: 28/1/22

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| (1) VATO (Ward-72)   | (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**