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

Appeal No : 354/ATVAT/2022
Date of Decision : *15th of March* 2022

M/s Continental Machinery Company,
3869 Behind MC School,
GB Road,
Delhi-1100 06.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Appellant : Mohd. Wahaj Ahmad Khan
Counsel representing the Revenue : Sh. *P. Tara*.

JUDGMENT

1. By way of present appeal, dealer – appellant has challenged order dated 17/1/2022 passed by learned OHA, whereby its objections against levy of penalty, were partly allowed and the amount of penalty, imposed by the learned Assessing Authority, was reduced from Rs. 50,000/- to Rs. 15,000/- only.
2. The penalty came to be levied u/s 86 (14) of Delhi Value Added Tax Act-2004 (here-in-after referred to as the DVAT Act) vide notice of assessment dated 29/1/2018 issued by the

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learned Assessing Authority.

3. Feeling aggrieved by the said assessment, the dealer filed objections, which were partly allowed, as noticed above.

4. Arguments heard. File perused.

5. Learned counsel for the appellant has contended that this is a case where no notice u/s 59(2) of DVAT Act was issued by the learned Assessing Authority and that in the notice dated 29/1/2018, the learned Assessing Authority did not mention ^{any} reason for imposition of the penalty, and as such the same deserves to be set-aside.

6. Learned counsel for the Revenue submits that from the provisions ^{galley} and i.e. section 86(14) of DVAT Act, it can safely be ^{covered} that the penalty was imposed because of non ^{since} compliance with the notice ^{by} the dealer.

7. It is true that provision i.e. section 86(14) finds mentioned in the notice dated 29/1/2018 issued by the learned Assessing Authority, but the same was not sufficient to apprise the dealer of the reason for ~~non~~ ^{imposition} of penalty. The learned Assessing Authority was required to specify ⁱⁿ the said order/notice dated 29/1/2018 that penalty was being imposed because of non-compliance with the provision ^{of sec.} ~~was~~ 59(2) of the Act. This aspect has not been rightly appreciated by learned

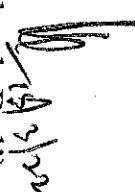
OHA while disposing of the objections. When it was specifically urged by the dealer that no notices u/s 59(2) of DVAT Act was issued by the learned Assessing Authority, the learned OHA should have ^{appraised} ~~decided~~ ^{objection} this aspect. Learned OHA should have also considered that no reason was given by the learned Assessing Authority for levy of penalty.


8. In view of the above discussion, we find that the imposition of ~~penalty u/s 33~~ ^{penalty u/s 33 of DVAT Act} of DVAT Act, deserves to be set-aside. As a result, this appeal is allowed and the impugned order upholding part of the penalty, and the assessment order, vide which penalty was imposed, are hereby set-aside.

9. 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 : 15-14 of March 2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 354/ATVAT/22/3024-3)

Dated: 17/3/22

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| (1) | VATO (Ward-24) | (6) | Dealer |
| (2) | Second case file | (7) | Guard File |
| (3) | Govt. Counsel | (8) | ACQ(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. | | |

REGISTRAR

