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

Appeal No.:279/ATVAT/2016

Date of Judgment: 28/03/2022

M/s. Power Machine (India) Ltd.,  
LGF 69/70, Vijaya Building,  
17, Barakhamba Road,  
New Delhi – 110 001.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. S. Duggal.

Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

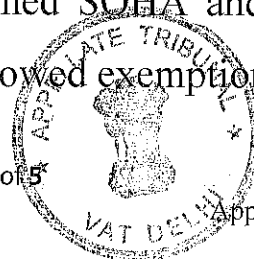
1. Dealer – appellant is feeling aggrieved by order dated 21/11/2016 passed by learned Special Objection Hearing Authority (SOHA) – VATO, whereby the objections filed by the said dealer have been disposed of in respect of the tax period Annual 2010, and demand of additional tax and interest, on the valuation of missing C+E1 forms has been upheld.

2. It may be mentioned here that some statutory forms were produced by the dealer before learned SOHA and keeping in view their valuation, the appellant was allowed exemption from tax.

*Narinder Kumar*  
28/3/22

*Rakesh Bali*  
28/3/22

Page 1 of 5



Appeal No. 279/ATVAT/2016

3. Prior thereto, vide order dated 30/3/2015, Assessing Authority – VATO (Ward 101) framed default assessment of tax of Rs. 7,50,87,101/- and that of interest of Rs. 4,44,04,249/-, under the provision<sup>5</sup> of Central Sales Tax Act (CST).

The notice of default assessment came to be issued because of failure on the part of the dealer to declare the status of Central Statutory Forms in respect of the concessional sales.

4. After disposal of the objections filed by the dealer-assessee, these appeals have been filed.

5. Arguments heard. File perused.

6. Ld. Counsel for the dealer-appellant submitted that the demand raised by the department is due to the reason that the dealer has failed to furnish statutory forms, but, actually no statutory form was required to be furnished by the dealer due to the reason that certain bills pertaining to value of Rs. 62,806,068/-, of the financial year 2010-11, were rejected, and the sales were reversed. In this regard, Ld. Counsel referred to Declaration Certificate available at Page 12 of the appeal file.

7. On the other hand, Ld. Counsel for the Revenue submitted



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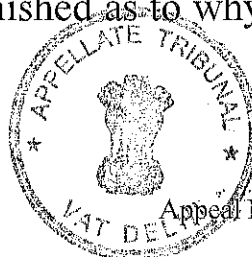
that as per document available at page A 47 of the paper book filed by the dealer-appellant, certain sales are stated to have been reversed by the dealer only on the last date i.e. on 31/03/2011.

8. Ld. Counsel for the Revenue has also pointed out that the four bills, shown to have been reversed, are stated to be of 26/07/2010, 06/08/2010, 09/06/2010 & 15/06/2010.

~~8.~~ So, it remains unexplained as to why the reversal was shown only on the last date i.e. on 31/03/2011. Admittedly, no revised return was filed by the dealer within the prescribed period.

Further, as rightly pointed out by the Ld. Counsel for the Revenue, sales vide bill dated 09/06/2010 and 15/06/2010 were partly reversed, and not in entirety. No justification has been put forth by the dealer-appellant for part reversal of the said bills.

It has also been rightly pointed out by learned counsel for the Revenue that the Declaration Certificate referred to above and available at Page 12 of the appeal file, is dated 12/01/2012, meaning thereby that no such Declaration Certificate was submitted by the dealer to the Ld.OHA, and as such the Ld. OHA had no occasion to consider the same while deciding the objections filed under section 74 of DVAT Act. No reason has been furnished as to why this document was not furnished earlier.



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9. Ld. Counsel for the dealer-appellant submitted that because of mistake of the accountant of the dealer-appellant the sales, which were reversed could not be shown by filing revised return, and that since no statutory forms were required to be filed by the dealer-appellant, the demand raised by the Revenue deserves to be set-aside.

10. We put specific query to Ld. Counsel for the dealer-appellant if any such plea or mistake on the part of the accountant in not depicting the reversal of sale, or any such justification for non-filing of the revised return, was raised before Ld. OHA. Thereupon, at the time of final arguments before us, Ld. Counsel placed on record only copy of DVAT 38.

We have gone through DVAT 38. It is noticed that no statement of facts, which is generally part of the objections - DVAT 38, has been filed. Ld. Counsel for the dealer candidly admitted that no statement of fact was submitted to the OHA in this regard, along with DVAT 38. The submission is that rather the dealer submitted along with DVAT 38, one statement depicting the value of the bills rejected.

On further perusal of DVAT 38, we find that the only objection raised by the dealer against the assessment was "that no opportunity provided to file the statutory forms received that some forms received after the due date."



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From the above said objection, it can safely be said that no such ground attributing mistake to the Accountant or justifying non - revision of the return was raised by the dealer in DVAT 38.

As noticed above, admittedly, no revised return was furnished by the dealer despite sufficient time provided by law. Even no such ground was put forth before Ld. OHA.

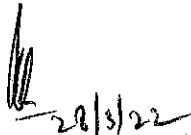
14. In the given facts and circumstances, we do not find any merit in the contention raised by the Ld. Counsel for the dealer that reversal of sale was ~~timely~~ <sup>in time</sup> not shown <sup>due</sup> to mistake on the part of the Accountant, or that the dealer-appellant was not liable to furnish any statutory form.

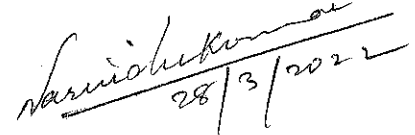
15. As a result of the above discussion, the appeal deserves to be dismissed. The Impugned order passed by Ld. OHA is accordingly upheld and the appeal is hereby dismissed.

16. File be consigned to 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 : 28/03/2022

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 279/ATVAT/16/3160-67

Dated: 30/3/22

Copy to:-

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|---|----------------|
| (1) VATO (Ward-10)  | (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. |                |



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