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

Appeal No : 289-292/ATVAT/2016 &
Appeal No : 293-296/ATVAT/2016
Date of Decision : 01/04/2022

M/s Aditya Birla Retail Ltd.,
E Block, Gali No. 6,
Khasra No. 21/9/21/22,
Swaroop Nagar,
Burari Road,
New Delhi-1100 42. .....Appellant

V

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

Counsel representing the Appellant : Sh. M.K. Gandhi
Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

1. This common judgment is to dispose of 8 appeals, captioned above. One set of appeals No. 293-296, pertains to default assessment of tax and interest u/s 32 of Delhi Value Added Tax Act (hereinafter refer to DVAT Act), whereas the second set of appeals No. 289-292, pertains to levy of penalty u/s 33 read with section 86(10) of DVAT Act.

Narinder Kumar 1/4/2022

1/4/22

APPELLATE TRIBUNAL VAT DELHI

First Qtr. 2013

2. It may be mentioned here that initially, vide default assessment dated 01-03-2014, the learned VATO (ward-56) had raised demand of Rs. 74,78,745/- towards additional tax and interest, while observing in the manner as:

> "Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure-2B filed by respective selling dealers reveals that more Input Tax Credit has been claimed than the corresponding Output Tax, if any, reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of section 9 of Delhi Value Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section 32 of DVAT Act, 2004."

Thereafter, learned VATO (ward 56), on 15-06-2015, vide notice of default assessment issued u/s 32 of DVAT Act, raised demand of additional tax of Rs. 93,62,516/- and interest of Rs. 26,70,240/-, in respect of first quarter of 2013-14, on the ground that the dealers i.e. buyers/sellers had revised their online 2A/2B, after framing of default assessment u/s 32 of DVAT Act on 01-03-2014, for the said tax period.

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The dealer filed objections under the said default assessments.

On 18-01-2017, learned SOHA-VATO, disposed of objections filed by Dealer-Assessee-Appellant herein and observed that still there was mismatch in 2A and 2B of Rs. 14,50,441/-. Accordingly, learned OHA upheld demand of tax and interest, as regards the said amount of mismatch.

Vide separate notice u/s 33 of DVAT Act, the Assessing Authority had levied penalty upon the dealer for the said tax period, on the ground that the return filed by the dealer was false, misleading and deceptive regarding the amount claimed as input tax credit.

Second Qtr. 2013

Initially, vide default assessment dated 01-03-2014, learned VATO (ward-56) had raised demand of Rs. 1,24,27,437/- towards additional tax and interest, while observing in the manner as:

> "Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure-2B filed by respective selling dealers reveals that more Input Tax Credit has been claimed than the corresponding Output Tax, if any,

reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of section 9 of Delhi Value Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section 32 of DVAT Act, 2004."

Thereafter, learned VATO (ward 56), on 15-06-2015, vide notice of default assessment issued u/s 32 of DVAT Act, raised demand of additional tax of Rs. 3,82,722/- and interest of Rs. 94,684/-, in respect of ~~first~~ Second **quarter of 2013-14**, on the ground that the dealers i.e. buyers/sellers had revised their online 2A/2B, after framing of default assessment u/s 32 of DVAT Act on 01-03-2014, for the said tax period.

On 18-01-2017, learned SOHA-VATO, disposed of objections filed by Dealer-Assessee-Appellant herein and observed that still there was mismatch in 2A and 2B of Rs. 2,05,941/-. Accordingly, learned OHA upheld demand of tax and interest, as regards the said amount of mismatch.

Vide separate notice u/s 33 of DVAT Act, the Assessing Authority levied penalty upon the dealer for the said tax period, on the ground that the return filed by the dealer was false, misleading and deceptive regarding the amount claimed

as input tax credit.

Third Quarter 2013

It may be mentioned here that initially, vide default assessment dated 16-04-2014, the learned VATO (ward-56) had raised demand of Rs. 23,77,322/- towards additional tax and interest, while observing in the manner as:

> "Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure-2B filed by respective selling dealers reveals that more Input Tax Credit has been claimed than the corresponding Output Tax, if any, reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of section 9 of Delhi Value Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section 32 of DVAT Act, 2004."

Thereafter, learned VATO (ward 56), on 15-06-2015, vide notice of default assessment issued u/s 32 of DVAT Act, raised demand of additional tax of Rs. 5,24,453/- and interest of Rs. 1,09,919/-, in respect of third quarter of 2013-14, on the ground that the dealer i.e. buyers / sellers had revised their online 2A/2B, after framing of default assessment u/s 32 of

DVAT Act on 16-04-2014, for the said tax period.

On 18-01-2017, learned SOHA-VATO, disposed of objections filed by Dealer-Assessee-Appellant herein and observed that still there was mismatch in 2A and 2B of Rs. 3,27,731/-. Accordingly, learned OHA upheld demand of tax and interest, as regards the said amount of mismatch.

Vide separate notice u/s 33 of DVAT Act, the Assessing Authority levied penalty upon the dealer for the said tax period, on the ground that the return filed by the dealer was false, misleading and deceptive regarding the amount claimed as under the tax credit.

Fourth Quarter 2013

Initially, vide default assessment dated 15-06-2015, the learned VATO (ward-56) had raised demand of Rs. 4,23,307/- towards additional tax and interest, while observing in the manner as:

> "Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure-2B filed by respective selling dealers reveals that more Input Tax Credit has been claimed than the corresponding Output Tax, if any, reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of section 9 of Delhi Value

Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section 32 of DVAT Act, 2004."

On 18-01-2017, learned SOHA-VATO, disposed of objections filed by Dealer-Assessee-Appellant herein and observed that still there was mismatch in 2A and 2B of Rs. 1,59,540/-. Accordingly, learned OHA upheld demand of tax and interest, as regards the said amount of mismatch.

Vide separate notice u/s 33 of DVAT Act, the Assessing Authority levied penalty upon the dealer for the said tax period, on the ground that the return filed by the dealer was false, misleading and deceptive regarding the amount claimed as under the tax credit.

3. Feeling dissatisfied with the impugned orders passed by learned SOHA, dealer has come up in 8 appeals as regards all the 4 tax periods.

4. As per statement of facts, case of the dealer-appellant is that owing to certain data entry errors on part of the Appellant in entry of its purchase data in the Annexure 2A filed for the said period, data entry errors on part of the selling dealers of the corresponding sales in the Annexure 2B filed by them for the

said period and partly on account of purchases and sales being reflected in different tax periods by the Appellant and the seller(s) incorrectly reflected data in Seller(s) returns filed for the said period, a mismatch of ITC claim was reflected in the system generated mismatch report for the said periods; that the Appellant in its submissions clearly explained that the mismatch as appearing in the system generated mismatch reports was not on account of non-payment of government dues by the Selling Dealer(s) but on account of incorrect TIN entered during data entry, purchases and sales being reflected in different tax periods by the Appellant and the seller(s) and incorrectly reflected data in the Seller(s) returns.

5. Arguments heard. File perused.

6. Learned counsel for the dealer – objector – appellant has submitted that vide impugned orders, learned SOHA has consciously passed reviewed orders u/s 74B(5) of DVAT Act, in place of passing an order u/s 74 of DVAT Act thereby disposing of its objections. Further, it has been submitted that the impugned orders are not reasoned orders. Therefore, the contention is that the impugned orders deserve to be set-aside.

In support of the contentions, learned counsel has referred to following decisions ;

1) M/s. Janak Sons v. Commissioner of Trade & Taxes, Delhi, appeal Nos. 167-169/ATVAT/2014-15 decided on 10/10/2017 by this Appellate Tribunal.

2) M/s. S. Oliver Fashion India Pvt. Ltd. v. Commissioner of Trade & Taxes, Delhi, appeal Nos. 88-89/ATVAT/2019-20 decided on 1/7/2021 by this Appellate Tribunal.

3) Samsung India Electronics (P) Ltd. v. Govt. of NCT of Delhi, 2016 SCC Online Del 2231.

7. On the other hand, learned counsel for the Revenue has contended that the impugned orders have been passed by learned SOHA while disposing of objections filed by the dealer – objector u/s 74 of DVAT Act, and as such it cannot be said that learned SOHA has reviewed any order, as find mentioned in the said orders.

As regards reasons, learned counsel for the Revenue has submitted that learned SOHA has given "mis-match" as the reasons for upholding the assessment framed by the Assessing Authority. Accordingly, learned counsel has urged that decisions cited by learned counsel for the appellant do not come to the aid of the dealer – appellant.

8. As noticed above, initially the assessments were made by the Assessing Authority vide order dated 1/3/2014 and demands of tax and interest were raised on the ground that the dealer had

claimed excess input tax credit, in violation of provisions of clause (g) of sub-section (2) of section 9 of DVAT Act.

It was thereafter, that the online 2A/2B data is stated to have been revised by the buyer/ seller and accordingly the Assessing Authority vide orders dated 15/6/2015 revised the assessments and raised demand towards additional tax, interest and penalty, while modifying the previous demand. That is how, objections came to be filed before learned SOHA.

Objections are filed u/s 74 of DVAT Act. Undisputedly, the dealer had filed objections u/s 74 and same were to be disposed of by learned SOHA. No orders prior to the impugned orders were passed by learned SOHA in this matter. Question of review arises only in case of an order passed by the same authority. Here, when no orders were earlier passed by learned SOHA, it cannot be said that learned SOHA passed the impugned orders by exercising of powers u/s 74B(5) of DVAT Act. In the course of arguments, learned counsel for the appellant has himself submitted that orders are passed by the Revenue Authorities generally in formats. So, it appears that these words as regards reviewing the assessment order have correct in due to format made available to learned SOHA, and no care was taken to delete this paragraph as regards review from the impugned orders. In the given situation, the

decisions cited by learned counsel for the dealer – appellant do not come to the aid of the dealer.

9. As regards, the contention that the impugned order is not a reasoned order, suffice it to state that learned SOHA has specified in the impugned orders that even though counsel for the dealer had submitted copy of 2A/2B, still it was found to be a case of "mis-match". Therefore, "mis-match" was the reason given by learned SOHA for raising of the demand of tax and interest. Therefore decision **in Kranti Associates (P) Ltd. & Anr. v. Masood Ahmed Khan & Ors.**, (2010) 9 SCC 496, (2010) 3 SCC (civ) 852; and **M/s. Prestige Cable Industries v. Commissioner of Trade & Taxes, Delhi,** appeals No. 87-92/ATVAT/2011 decided on 7/2/2022, do not come to the aid of the dealer.

10. Learned counsel for the appellant submitted that when the 2A/2B documents submitted by the dealer were found to be in order, it could not be said to be a case of mis-match.

In this regard, suffice it to state that finding some document in order is one thing relating to completion of document, and on their perusal and comparison finding of mis-match is a totally different thing.

11. Learned counsel for the dealer – appellant has referred to the

impugned order dated 18/1/2017 raising demand of additional tax and interest pertaining to 1st quarter of 2013 and pointed out that herein, turnover return by the dealer has been shown as 'zero', but even then demand of tax and interest has been raised.

It is true that in this impugned order pertaining to 1st quarter 2013, 'zero' has been typed in column meant for turnover return by the dealer, but, as noticed above, learned SOHA specified in the impugned order that it was still a case of mis-match.

Learned counsel for the appellant has referred to decision in **M/s. Honeywell Automation India Ltd. v. Commissioner of Trade & Taxes Delhi,** Appeal No. 08-11/ATVAT/2019 decided by this Appellate Tribunal on 13/8/2021 and decision in **Suvasini Charitable Trust v. Govt. of NCT of Delhi,** WP(C) 4086/2013, referred to therein.

Has it been explained in the impugned orders as to how the mis-match was still there?

12. So far as finding recorded by learned SOHA in the impugned order that there was still mis-match to the extent of figures specified in each impugned order, it is significant to note that it was for learned SOHA to explain as to how it was a case of

mis-match i.e. whether it was a case where the selling dealer had deposited less tax than actually due to be deposited or whether it was a case of claim of excess input tax said to have been paid by the purchasing dealer to the selling dealer, whereas selling dealer was liable to pay lesser tax.

So there is no clarity in the impugned orders dated 18/1/2017 as regards tax and interest, as to why it was a case of mis-match. In absence of any specifications in this regard in the impugned orders, as regards tax and interest, we find that proper enquiry has not been conducted in this regard. The matter needs to be enquired by learned SOHA afresh as to whether still it is a case of mis-match. Learned SOHA shall also have to take into consideration decision by our own Hon'ble High Court in case of **Quest Merchandising India Pvt. Ltd. v. Govt. of NCT of Delhi &Ors,** (2017) 245 DLT 615.

As a result, the impugned orders as regards tax and interest deserve to be set-aside and matter is required to be remanded to the learned SOHA for due enquiry on the point of mis-match, after providing reasonable opportunity of being heard to the dealer – objector, and for decision of the objections u/s 74 of DVAT Act, in accordance with law.

13. As regards, the impugned orders regarding penalty, learned

counsel for the dealer – appellant has referred to following two decisions in **Bansal Dye Chemicals Ltd. v Commissioner Value Added Tax, Delhi** (2015) SCC online Del 12480; and **Amrit Foods v. Commissioner of Central Excise, UP** (2005) 13 SCC 419, and contended that in the assessment no where it was pointed out as to under which clause of section 86(10) of DVAT Act, the penalty was being imposed.

On the other hand, learned counsel for the Revenue has submitted that reasons were given in the assessments of penalty and as such non mentioning of clause of sub-section (10) of section 86 does not adversely affect the impugned order or penalty.

However, In view of the above observations that the point of mis-match needs to be decided afresh after proper enquiry, the impugned orders regarding imposition of penalty cannot stand and same deserve to be set-aside, for fresh assessment even on this point in accordance with law, after providing reasonable opportunity to the objector – appellant of being heard.

Result

14. In view of the above findings, all these appeals are disposed of and while setting aside the impugned orders passed by learned SOHA as regards tax, interest and penalty, matter is remanded

to learned SOHA with a direction for enquiry on the point of mis-match and on the point of penalty, if any after providing reasonable opportunity of being heard to the dealer – appellant.

15. Dealer is hereby directed to appear before learned SOHA on 22/4/2022.

16. 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. Copy of this judgment be also placed in other set of Appeal No. 293-296/2016.

Announced in open Court.

Date : 01/4/2022

1/4/22

(Rakesh Bali)
Member (A)

1/4/2022

(Narinder Kumar)
Member (J)

Appeal No. 289-292/ATVAT/2016 /3216-23
293-296/ATVAT/2016

Dated: 4/4/22

Copy to:-

(1) VATO (Ward-56)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR

APPELLATE TRIBUNAL VAT DELHI