

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

Appeal No. 291/ATVAT/21
 Date of Judgment: 7/4/2022

M/s Kohli Tyre Trading Company,
 CW-610 Sanjay Gandhi Transport,
 New Delhi -110042.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

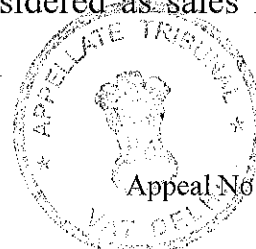
.....Respondent

Counsel representing the Appellant : Sh. R.K.Chauhan
 Counsel representing the Revenue : Sh. S.B.Jain

JUDGMENT

1. Dealer-appellant, which deals in all types of tyres and tubes and flaps of reputed companies, and stands registered vide TIN No. 07860291969 is feeling aggrieved by order dated 14/10/20 passed Ld. OHA, whereby the objections filed by the said proprietorship have been disposed of while observing in the manner as:-

- I. "Objections Ref. No. 211/ACTT/IX dated 05.03.2013 is hereby partially allowed to the extent that "short cash" variation discovered by survey team and considered as sales is to dropped from taxable turnover assessed.; And



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- II. Objection against review petition in r/a objection vide ref. no 70000000006297 dated 08.04.2013 is hereby partially allowed and penalty is reduced by 50% to Rs.2,35,934/-
- III. Impugned notice of default assessment of tax & interest for the tax period 2nd quarter 2012-13 vide no 041393311213/3324 dated 02.03.2013 and penalty vide ref. no 041393641213 dated 02.03.2013 are partially upheld to the extent as clarified above;
- IV. The objector dealer is directed to deposit the modified tax/interest/penalty within 15 days of receipt of this order.
- V. Ward Authority is directed to give effect to the order by reducing the amount to the extent as ordered above and ensure the compliance of aforementioned directions and to report the same to this office.”
2. The dealer preferred objections before Ld. OHA feeling dissatisfied with the notice of default assessment of tax and interest issued on 02/03/13, by the Assessing Authority.
3. The matter pertains to tax period August 2012.

As per the case of revenue available from the notice of default assessment of tax and interest, a survey of M/s Kohli Tyre Trading Co., (TIN-07860291969), CW-610, Sanjay Gandhi Transport Nagar, Delhi was conducted by Enforcement-I Branch on 17.08.2012 and statement of Sh. Jaspreet Singh Kohli, Proprietor of the firm was recorded. Sh. Jaspreet Singh Kohli in his statement before the survey team of the Enforcement Branch

of Trade and Taxes Department confirmed the fact that M/s Khohli Tyre Trading Co., (TIN-07860291969) is a registered dealer of Ward-71 and is engaged in trading of Tyre & Tubes taxable @12.5% VAT. It was reported in the Survey Report of Enforcement-I Branch that there is a variation in stock of Rs.35,99,968/- (Short), and variation in cash of Rs.1,74,972/- (short).

4. On the basis of the said survey report, Assessing Authority issued a notice u/s 59(2) of DVAT Act to the dealer vide notice dated 08/01/2013 to explain the stock variation and cash variation detected by the enforcement team during survey.
5. As available from the notice of default assessment, the dealer came up with the following version:-

“Regarding variation in stock, the dealer has submitted that variation is due to the reason that the trading account was prepared provisionally based on GP Ratio and correct valuation of stock was not given. But in his statement before the enforcement team proprietor of the firm not mentioned anything regarding this. Hence, the contention of the dealer is not acceptable and debarred by his own statement. Accordingly, the entire variation in stock is taxable. As regards cash variation, the dealer has submitted that difference is due to non accounting of some vouchers and impressed money lying with his father and manager.”

The Assessing Authority was not satisfied with the version put-forth by the dealer and accordingly, he directed the dealer to pay

a tax of an amount of Rs. 510070/- (Five lakh ten thousand and seventy only), by observing in the manner as:

“The dealer is engaged in trading of tyre and tubes taxable @ 12.5%. GTO is calculated by adding variation in stock of Rs. 35,99,968/- and variation in cash of Rs. 1,74,972/- (total variation Rs.3774940/-) and are taxed @12.5% with interest @ 15% as it appears that the dealer is engaged in un-vouched sale purchase. Further, penalty is imposed u/s.86(15) for preparing records and accounts in a manner which is false, misleading or deceptive is also imposed upon the dealer.

Vide separate notice, the Assessing Authority imposed penalty to the tune of Rs. 471868/-, for the same quarter.

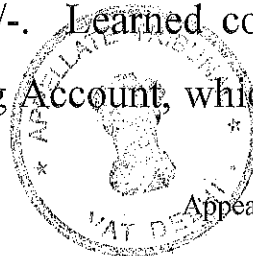
6. While dealing with the objections filed by the dealer against notice of default assessment of tax and interest and separate notice of penalty, the Ld.OHA observed in the manner as :-

a) The objector has furnished that the value of stock calculated on 17.08.2012 was provisional on the basis of G.P. Ratio and after audited balance sheet the correct figure of stock was for Rs.51,76,720/- in place of Rs. 90,15,831/-. The objector has claimed stock value on date of survey to be Rs.37,84,932/-. The objector has produced copy of audited balance sheet for 2012-13, copy of inventory prepared by the survey team. The variation of stock is attributed to valuation method adopted by the survey team.

- b) The objector has submitted that the variation in cash was on lower ^{side} ~~said~~ as cash in hand was less than cash as per books and short cash availability at the time of survey cannot be attributed to ~~as~~ sale. The contention of the dealer regarding short cash ~~is~~ seems tenable as considering it as sale is harsh and like double taxation.
- c) Perusal of relevant documents placed on records at the time of hearing ^{place} ~~place~~ by the Ld. Counsel and oral arguments made, the contention of the objector seems tenable in r/o short cash variation. During enforcement survey by ENF-1 team of the department, it is the practice to evaluate the stock at the premises. The valuation is done in presence of the dealer/proprietor/AR.
- d) In the instant case, the Statement of Sh. Jaspreet Singh Kohli, Proprietor of the firm was recorded and the facts and figures pointed out by the survey team were fully in knowledge of the proprietor. Stock variation calculated at the time of survey is based on physical stock and the valuation was done in front of the proprietor as is visible from signature of proprietor on the inventory list and the questioning the rationale behind valuation of stock on the basis of G.P ratio, balance sheet is afterthought concocted and cannot be relied upon at this juncture. Balance sheet is prepared at the end of financial year and it can be manipulated at any time of the year before its completion.
- e) As far as notice of penalty is concerned, Ld Counsel has concluded his argument and I am of the view that penalty should be reformatory rather than being punitive. The penalty has been imposed on maximum side which is justifiable to be reduced as per present prevailing situation.
- f) In view of above discussion and perusal of the findings of the then AA in light of the report of survey team, I am of the view that

impugned notices have been issued mostly in accordance with law and liable to be upheld partially. ✓

7. Arguments heard. File perused.
8. Learned counsel for the dealer – appellant has submitted that stock variation occurred because the trading account submitted by the dealer to the Enforcement Team, which conducted survey, was prepared on provisional basis and calculated on the basis of GP ratio. He further submitted that wrong figure appeared as regards stock, in the trading account, because the accountant of the dealer was not present. Learned counsel further submitted that it was only when the books were got audited in September, 2012 that the dealer came to know that wrong figure of Rs. 90,15,831/- was submitted in the trading account, given to the Enforcement Team, and that the correct figure of the stock was Rs. 51,76,720/- .
9. Today, learned counsel for the appellant has submitted copy of audited Trading Account of the dealer as on 31/3/2012. As per this document, closing stock has been shown as Rs. 51,76,720.03. Learned counsel has also submitted copy of Trading Account of the dealer – appellant as submitted by the dealer to the Enforcement Team, at the time of survey i.e. on 17/8/2012. As per this document the closing stock was shown as of the value of Rs. 73,84,900/-. Learned counsel has also submitted another copy of Trading Account, which according to



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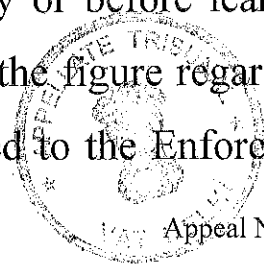
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him depicts the correct figure of the closing stock as on 17/8/2012 i.e. at the time of survey. As per this document, the closing stock as on 17/8/2012 was of the value of Rs. 37,84,932/-.

10. From the submissions put-forth by learned counsel for the dealer – appellant, it can safely be said that the dealer admits that the value of the closing stock as shown in the trading account, as on 17/8/2012, and shown to the Enforcement Branch, was incorrect and that the actual closing stock, to be shown in the Trading Account, as on the said date i.e. 17/8/2012, was actually Rs. 37,84,932/-.
11. It may be mentioned here that in the notice of default assessment, u/s 32 of DVAT Act, framed by the learned Assessing Authority, it does not find specific mention that learned C.A. representing the dealer submitted to the learned Assessing Authority, copy of the audited Trading Account. What stands recorded in the notice of default assessment is that learned CA had submitted relevant record of the firm.
12. However, in the impugned order passed by learned OHA, there is a specific mention that the dealer – objector produced copy of audited balance sheet.
13. Before learned Assessing Authority or before learned OHA, it was not the case of the dealer that the figure regarding value of the stock as on 17/8/2012 submitted to the Enforcement Team,

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was provisional and that it so because no accountant of the dealer was available.

Before learned OHA, the objector claimed that the variation of stock was due to wrong valuation method adopted by the survey team. However, this point was never raised before learned Assessing Authority.

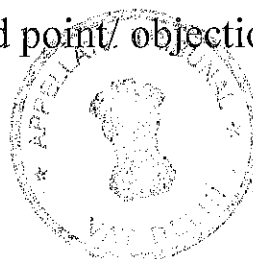
In the course of argument, before this Appellate Tribunal, learned counsel for the dealer – appellant has not argued that this is a case where proper valuation method was not adopted by the survey team or that is why there was variation in stock.

14. This is a case where statement of the Proprietor of the concern was recorded by the Enforcement Team, at the site. Stock variation was reported by the survey team, on physical checking of the stock, and valuation was done in the presence of the said proprietor. The inventory list was admittedly prepared in the presence of the proprietor and he signed the same.

It is not a case of the dealer that at the time of survey he lodged protest with the Enforcement Team regarding physical checking of the stock and its valuation or as regards the inventory list. Soon after the survey, the dealer never lodged any protest with the concerned ward on any of the said point/ objection.

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The audit of the account books of the dealer admittedly took place in September, 2012. Even at that time, the dealer did not submit to the concerned ward or the concerned learned VATO that the wrong figure as regards stock as on 17/8/2012 submitted before the Enforcement Team was a provisional one or that its accountant was not available on that date.

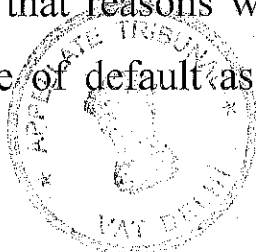
All this goes to show that the dealer was not maintaining his accounts in accordance with Law/ Rules.

15. In view of the above discussion, we do not find any merit in the contentions raised by learned counsel for the dealer – appellant or any illegally or irregularity in the impugned order passed by learned OHA as regards levy of tax and interest on the point of stock variation.

Penalty

16. Vide impugned order, learned OHA reduced the quantum of penalty to 50% i.e. Rs. 2,35,934/-.

Penalty was imposed vide notice of assessment dated 2/3/2013, on the ground of violation of provisions of section 86(15) of the Act. However, on perusal of the said notice of assessment, we find that learned Assessing Authority has not given any reason for imposition of penalty. Learned Assessing Authority simply recorded that reasons were available in form DVAT-24 i.e. in the notice of default assessment of tax and interest, u/s 32 of




DVAT Act. Learned Assessing Authority was required to give reasons for levy of penalty as well and that too in the order regarding levy of penalty. In absence of reasons in this notice of assessment dated 2/3/2013, the order of penalty deserves to be set-aside. Consequently the notice of assessment of penalty is hereby set-aside.

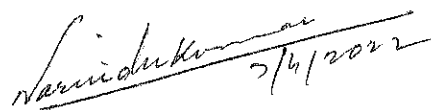
Result

17. As a result of the above findings, the appeal filed by the dealer challenging the impugned order as regards tax and interest is hereby dismissed but as regards imposition of penalty, the same is allowed.
18. 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: 7/4/2022


(Rakesh Bali)
Member (Administrative)


(Narinder Kumar)
Member (Judicial)



Appeal No. 291/ATVAT/21/3988-95

Dated: 11/4/22

Copy to:-

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| (1) VATO (Ward-) | (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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