

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

Appeal No.-1707/ATVAT/12 ✓

Date of Judgment: 06/4/2022

M/s Shakti Met-Dor Ltd.

C/o Shri P. S. Sarin, Advocate

C-141, Preet Vihar, Delhi-92.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. H. C. Bhatia

Counsel representing the Revenue : Sh. C. M. Sharma

JUDGMENT

1. Present appeal came to be presented on 28-03-2013. The matter pertains to tax period 2004-05. The dealer is feeling aggrieved by impugned order dated 18-01-2013 passed by learned Special Commissioner-Objector Hearing Authority, while disposing of following 3 objections filed by the dealer u/s 76(4) of DVAT Act, challenging the following demands :

| S. No. | Objection No. | Challenge to | Disputed amount |
|--------|----------------------|--|-----------------|
| 1. | 984/Obj/Z-VI/Spl.CTT | Default Assessment of tax & interest u/s 32 of the | Rs.31,70,443/- |

Narinder Kumar
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|----|----------------------|---|-----------------|
| | | DVAT Act | |
| 2. | 985/Obj/Z-VI/Spl.CTT | Assessment of penalty u/s 33 read with u/s 86(12) of the DVAT Act | Rs. 14,16,144/- |
| 3. | 986/Obj/Z-VI/Spl.CTT | Assessment of penalty u/s 33 read with u/s 86(4) of the DVAT Act | Rs. 1,00,000/- |

2. Learned Assessing Authority had issued notice dated 20-10-2011 to the dealer-assessee at its registered office in Secandrabad (AP). M/s Delhi Airport Metro Express Pvt. Ltd., (DAMEPL) Dwarka Depot, Near Sec-8, Metro Station, New Delhi-75, had filed DVAT 48 (TDS Return) indicating details of payment deducted at source. The dealer-appellant was found to have executed work on behalf of DAMEPL relating to supply and installation of doors and accordingly, DAMEPL had deducted TDS under Work Contract Act, Delhi against running account bills. Learned Assessing Authority treated the sale to be sale under Work Contract Act and accordingly, levied tax @12.5% with interest, while treating installation charges as labour and other like charges; and also allowing credit of TDS. Learned Assessing Authority also imposed penalties as mentioned above.

3. While deciding the objections filed by the dealer-objector, learned OHA observed that the work was done by the objector

for DAMEPL in Delhi; that DAMEPL had made deduction towards TDS; that it was a case of collusion of DAMEPL and that doors were supplied by the dealer-appellant to DAMEPL in Delhi from Secandrabad but even then when the doors were physically supplied, installed and fitted by the dealer in the coaches in Delhi, it was a case of execution of Works Contract by the Dealer and it was finalized in Delhi, making the dealer liable to pay tax here in Delhi.

4. At the same time, learned OHA issued following directions to learned Assessing Authority:

“Therefore, in the totality of the facts and circumstances of this case more particularly that the objector has clearly adverted to avoid payment of tax under the DVAT Act. The default assessments of the Assessing Authority on this account are upheld and confirmed. As regards arguments of the Ld. Counsel for the objector that because the default assessment orders, in place of the tax-period concerned, has mentioned the words “null null” and also that the works contract amounts received by the objector is spread over two different years, it is directed that the Assessing Authority of the Ward shall frame the assessment orders afresh but only to the extent that he will mention the tax-periods of the assessments clearly in the orders and also pass two orders year wise separately but not later than within a period of 15 days from the date of this order.”

5. Arguments heard. File perused.



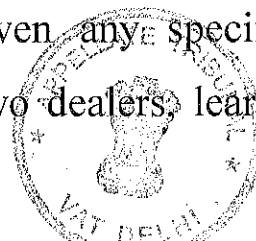
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6. Learned counsel for the dealer-appellant has submitted that this is a case of two distinct and separate contracts between the dealer-appellant- DAMEPL and that department could not club the two distinct and separate contracts, meaning thereby that work of installation of doors under the contract, could not in any way be connected to the supply of doors so as to say that it was a case of execution of works contract in Delhi. The contention is that learned OHA, for the first time, recorded findings that both the companies i.e. the dealer and the DAMEPL were in collusion in having entered into 2 separate contracts to evade payments of tax in Delhi, without conducting any enquiry or joining the other party in the proceedings and as such learned OHA erred in rejecting the objections filed by the Dealer.

The contention raised by the learned counsel for the dealer-appellant is that when learned OHA had issued direction to learned Assessing Authority to frame assessment orders afresh, year wise and separately, while specifying each year in each assessment, learned OHA should not have disposed of the objections on merits.

7. In the course of arguments, when we have enquired from the learned counsel for the Revenue as to whether learned Assessing Authority had also given any specific findings regarding collusion between the two dealers, learned counsel



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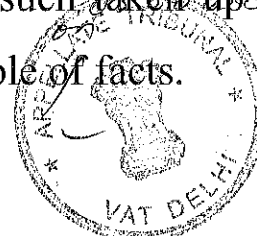
for the revenue has candidly admitted and rightly so that no such finding was recorded by learned Assessing Authority.

So, learned OHA recorded findings of collusion between the two dealers, for the first time while disposing of the objections but without conducting any enquiry on this point. The impugned order does not reveal that learned OHA issued any notice to DAMEPL or joined the said company in any such enquiry.

Therefore, finding recorded by learned OHA on the point of collusion between the two dealer^s cannot sustain.

8. A perusal of the assessment order passed by learned Assessing Authority would reveal that he placed reliance on 2 decisions by Hon'ble Apex Court reported in the year 1969-1970, to arrive at the conclusion that it was a case of manufacturing, supplying and installation of doors as per specification, and accordingly a work contract.
9. In the impugned order, learned OHA observed that judgments were relied upon by learned counsel for the dealer-objector but the same were not applicable, being distinguishable on facts.

However, in the impugned order particulars of any such decision do not find mention, and as such *it cannot be said* as to how those decisions were distinguishable of facts.



10. Furthermore, in the given situation, when learned OHA had directed learned Assessing Authority to frame fresh assessments in respect of each year separately and specifying the respective year therein, and when the turn- over of each year was yet to ^{be} ascertained, it can safely be said that the learned OHA should not have decided the objections on merits,
11. As a result, this appeal is disposed of and while setting aside the findings recorded by learned OHA disposing of the objection on merits, the matter is remanded to learned Assessing Authority for decision afresh, with the observation that in continuation of the directions already issued by learned OHA, the Assessing Authority may also conduct enquiry in accordance with rules, to find out, if it was a case of collusion between the two dealers, to have agreed to enter into two separate contracts for the purpose of evasion of demand of tax, or if it was a case of two distinct and separate contracts or a case of execution of works contract. Learned Assessing Authority to provide reasonable opportunity to the dealer- assessee of being heard. Learned Assessing Authority shall be at liberty to join DAMEPL in the proceedings, if so desired, for the purpose of making of enquiry, before making fresh assessments in accordance with law.

Appellant is hereby directed to appear before learned Assessing Authority on 20/04/2022.



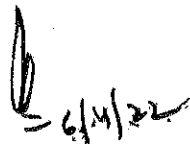
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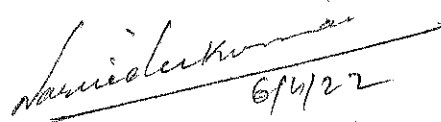
12. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 6/4/2022



(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)



Appeal No. 1707/ATWAT/13/3280-87

Dated: 11/4/22

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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. | |




REGISTRAR