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BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Sh. Narinder Kumar, Member (Judicial)

Appeal No. 339/ATVAT/22

Date of Order : 22/04/2022

M/s. GUPTA TRADERS,
108, Building No. 4, Vardhman Shopping Centre,
Derawal Nagar, New Delhi – 110 009 Appellant

v.

Commissioner of Trade & Taxes, Delhi. Respondent

Representing the Appellant- Applicant : Sh. H.L.Madan
Counsel for the Respondent : Sh. C. M. Sharma

JUDGEMENT

1. Dealer-appellant-assessee, a proprietorship concern is feeling aggrieved by order dated 08/11/2021 passed by Learned Special Commissioner/ Objection Hearing Authority (herein after referred to as OHA), whereby its objection u/s. 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) against refund order dated 12/07/21, have been dismissed and the refund order has been upheld.

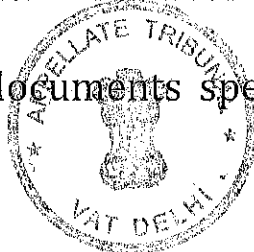
2. Arguments heard. File perused.

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3. It may be mentioned here that vide notice of default assessment of tax and interest dated 03/07/21, in respect of the first quarter of 2017, Learned Assessing Authority framed assessment u/s. 32 of DVAT Act. In the course of arguments, Learned counsel for the dealer-appellant has admitted that the dealer is not feeling aggrieved by the said default assessment of tax and interest relating to first quarter 2017. Learned Counsel for the dealer has submitted that the only grievance of the dealer-appellant is that while allowing refund of Rs.15,95,874/- the department has not allowed interest to the dealer from the date of filing of return i.e. 26/03/2019, and Learned OHA has upheld the refund order thereby not granting any interest to the dealer appellant.

4. Learned Counsel for the dealer – appellant has referred to notice dated 30/03/2019 purported to have been issued by VATO, Delhi to the dealer – appellant u/s. 59 of DVAT Act, whereby the dealer was directed to produce/ caused to be produce the 15 documents specified therein in support of



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prayer for refund, and challenged its validity by submitting that it is an unsigned notice simply displayed on the portal. In support of the submission, Learned Counsel has referred to decision in **M/s. Bhumika Enterprises v. Commissioner, Value Added Tax**, (2015) 85 VST 367 (Delhi); decision in **Umashankar Mishra v. Commisisoner of Income Tax**, 1982 136 ITR 330 MP ; decision by this Appellate Tribunal on 05/07/2021 In Appeal No. 170/ATVAT/19-20 in **M/s. City Drugs Private Ltd., v. Commissioner of Trade & Taxes**, and Circular No. 24 of 2015-16 dated 10/09/2015 by Special Commissioner (Policy), Department of Trade & Taxes, GNCT of Delhi.

5. In Bhumika Enterprises's case (Supra) the common issue under consideration before the Hon'ble High Court was as regards issuance of notice u/s. 59(2) of DVAT Act, which notices were 'system generated' and whereby the petitioners named therein were required to produce documents relating to purchase specified therein.



Hon'ble High Court took notice of the fact that as per the said notices, documents were to be produced for 26/06/2015 but notices for default assessment were issued ~~on~~^h even prior to the said date.

The other point, of which Hon'ble High Court, took notice^{was} that the notices were system generated and not human generated. Accordingly, the notices issued on 19/06/2015 were quashed.

Here, it is not case of the dealer - appellant that the refund order was passed by the department prior to the date for which the said notice u/s. 59 was issued.

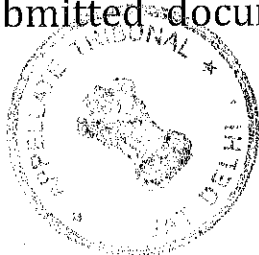
It is true that the said notice was uploaded on the portal on 30/03/19 for 17/04/2019. Learned Counsel for Revenue has rightly pointed out that before Learned OHA, while challenging the refund order, the dealer-objector admitted issuance of the notice^h u/s. 59 and did not challenged^h the validity of the said notice on the ground that it was unsigned or system generated notice. Learned OHA specifically mentioned in the impugned order that Learned



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AR of the dealer - objector in the written submissions admitted issuance of the said notice dated 30/03/2019 and the subsequent notice dated 13/10/20. Issuance of two previous notices dated 20/09/18 & 21/01/19 issued u/s. 59 to the dealer, ^{was} ~~were~~ also admitted in the written submissions. Significant to note that dealer has not placed on record copies of the previous two notices dated 20/09/18 & 21/01/19, for the reasons best known to the dealer. The last notice issued to the dealer u/s. 59(2) is dated 13/10/2020. It is digitally signed by Sh. Hari Om with date and time of its issuance.

The fact remains that before Learned OHA, the dealer and its authorised representative admitted issuance of notices u/s. 59(2) of the Act. As further observed by Learned OHA, initially the dealer did not appear in response to the notices u/s. 59(2) and it was only subsequently that the dealer appeared through its ~~A~~ ^u ~~uthorised~~ ^{thorised} Representative and submitted documents. That is how the assessments ^h ~~h~~



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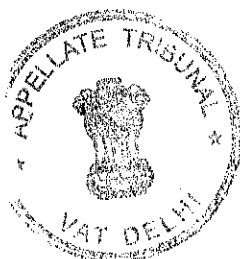
^{was}
were made on 03/07/21. In the given peculiar facts and
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circumstance of this case, noticed above, the decisions cited
by Learned Counsel for the dealer challenging the validity of
notice dated 30/03/19 u/s. 59(2) of the DVAT Act, do not
come to the aid of the dealer.

Even otherwise, as noticed above the last ^{admission} notice dated
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13/10/2020 was digitally signed and the dealer was
directed to appear on the date mentioned therein. It was
subsequently that the dealer through its Authorised
Representative appeared and filed its documents.

Therefore, there is no merit in the contention raised by
the Learned Counsel for the dealer that the impugned order
deserves to be set aside on account of invalidity of notice,
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u/s. 59(2) of the Act.

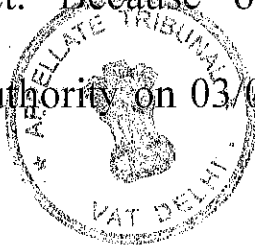
6. As regards the other contention raised by the dealer -
appellant that in view of provision of Section 42 of DVAT Act,
the dealer was entitled to interest on the amount allowed to

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be refunded, but the department erred in not granting interest on the amount of refund.

7. As already noticed above, while making assessment u/s. 32 of DVAT Act on 03/07/21, Learned AVATO found that there was short turnover amounting to Rs. 177382/-, and further that it was not a case of tax deficiency ^{as} ~~when~~ the tax credit [✓] carried forward from previous tax period and TDS deducted during the tax period revealed that the said sum was more than the tax due. Ultimately, only a demand of 34,988/- was raised by the Assessing Authority. It was vide order dated 12/07/21 that the refund was allowed *while adjusting said demand.* [✓]
8. Proviso to section 42 of DVAT Act postulates that the interest shall be calculated on the amount of refund due after deducting there from any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956).
9. As per sub-rule (8) of Rule 34 of DVAT Rules, no refund can be allowed to a person who has not paid any amount due under the Act. Because of the assessment made by the Assessing Authority on 03/07/21, a sum of Rs. 34,988/- was due from the

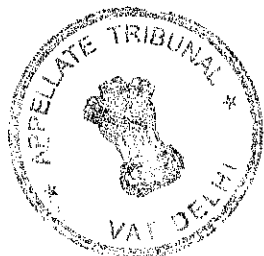


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9/ dealer towards tax and a sum of Rs. 10,000/- was due towards penalty. On various dates, dealer did not produce requisite record. Then, the dealer did not challenge the said assessment.

10. In view of the above provisions, and conduct of the dealer, department was justified in making adjustment of the amount claimed by the dealer in the return, towards said demand of tax and penalty, as due on 03/07/21.
11. The fact remains that the amount was due from the dealer, as on the date of passing of refund order vide which adjustment was also made, and the dealer did not challenge the said adjustment.
12. In view of the above discussion, the impugned order passed by Learned OHA deserves to be modified as the dealer is entitled to simple interest, u/s 42(1)(a) of DVAT Act, from 04/07/21 i.e. from the date next to the framing of the assessment.
13. As a result, the appeal is disposed of and by way of modification of the order dated 08/11/21 passed by learned OHA, the dealer is held entitled to simple interest, u/s 42(1)(a) of DVAT Act, from 04/07/21. Revenue to do the needful accordingly.

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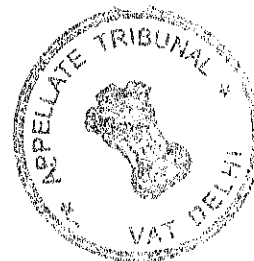
14. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 22/04/2022

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(Narinder Kumar)
Member (J)

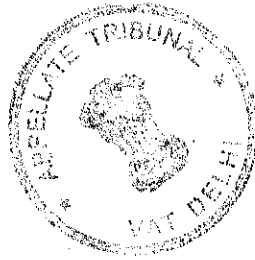


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Dated: 22/4/22

Copy to:-

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| (1) VATO (Ward-109) | (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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