949

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

Appeal No. : 387-396/ATVAT/14
Date of Judgment : April 20th, 2022.

M/s. Shabro Metals & Technologies Ltd.
217-222, Tribhuwan Complex,
Ishwar Nagar,
(Opp. New Friends Colony),
New Delhi -110065. .....Appellant

V.

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

Counsel representing the Appellant : Sh. A. K. Bhardwaj.
Counsel representing the Revenue : Sh. C. M. Sharma.

JUDGMENT

1. These ten appeals have been filed against the impugned orders dated 10.10.2014 passed by Ld. Special Commissioner-II/ Objection Hearing Authority (hereinafter referred to as Learned OHA). All these appeals are being taken up together as common questions of law and facts are involved.

2. Vide impugned order, Learned OHA upheld the disputed demandof tax, interest and penalty for the months of **May, June, August, September and October (2008-09).**

Narinder Kumar 20/4/2022

20/4/22

3. Prior thereto, the Assessing Authority framed assessments i.e.default assessment for tax and interest &penalty, for some tax periods u/s 32 & 33 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) and for the abovesaid tax periods u/s of 9 of Central Sales Tax Act, 1956 (hereinafter referred to as CST Act).

As regards tax period **May 2008-2009**, and E-1 sales to M/s Prakash Industries Ltd., Learned Assessing Authority observed in the manner as:

> "The company has shown E-I sale of Rs. 91,72,165/- vide **Bill No. 1 to 49** to M/s Prakash Industries Ltd. u/s 3 (b) of CST Act, 1956 and claimed exemption from paying tax as the co has made purchases from M/s Mineral Enterprises Ltd. and sold the goods in transit. However from the perusal of available documents, it reveals that all the sales have been made to M/s Prakash Industries Ltd. (M.P.) prior to the purchases from M/s Mineral Enterprises Ltd. (Banglore). The GRs is also issued for dispatched of consignment prior to issuance of invoices from M/s Mineral Enterprises Ltd (first and original seller) after the sale has been made by M/s Subros Metals & Technologies Ltd. to M/s Prakash Industries Ltd., Raipur (Chhatisgarh). Moreover the value of goods mentioned in the GRs are also different from as has been shown in sale bills. Hence the above transactions do not conform the provisions of section 3(b) read with section 6(2) of CST Act, 1956. Therefore, the above sales are treated as central sales against 'C' from and taxed @3%. Resultant total tax deficiency of Rs. 5,92,541/- attracts interest @ 15% p.a."

Similarly, the Assessing Authority framed assessments in respect of other five tax periods.

In respect of all such E-1 sale transactions during the tax periods, May, June, August, September and October, 2008-09, the dealer was directed to pay tax of an amount of Rs. 8,59,184/-.

4. The assessments were challenged by the appellant/objector before the Ld. OHA, by filing objections. Learned OHA disposed of objections as regards E-1 sales stated to have been made by the objector during transit to M/s Prakash Industries and certain E-1 sales to M/s Vandana Global, both of Chhattisgarh, u/s 3(b) of the CST Act, due to the reasons, which are extracted hereunder:

> "That before making purchases thereof from the supplying dealer M/s. Mineral Enterprises of Banglore are also found to be beyond any such probabilities i.e. making of sales before purchases thereof and thus, totally against the provisions of law themselves for the simple reasons that it is the purchase which always precedes the sale and not vice versa;
>
> That moreover, in case, as now argued by the counsel for the objector before the undersigned now, in case, the goods sold against E-1 forms were dispatched both by the selling dealer and the objector through delivery challans, why and for what reasons, the delivery challans were not produced before the assessing authority i.e. VAT(Audit Branch) and further that the objector had not come up with plausible and convincing reasons in this behalf;
>
> That GRs too produced by the objector before the VATO for these transactions were stated to be containing the value of goods different from those shown in the sales invoices."

Accordingly the Ld. OHA rejected the objections in this regard.

5. By way of present appeals, appellant has challenged the impugned order passed by Ld. OHA, raising grounds like this:-

1. "That, the transaction u/s 6(2) of the CST Act (transit sale) is based upon a procedure-which is the 'sale of documents during the transit'. In the present case, the purchase invoice raised by M/s Mineral Enterprises Ltd., Banglore is raised after the date of 'sale invoice' but the fact of the matter is that goods have been put in transit by a delivery challan and the sale in the course of transit is evidenced by the production of E-I form from the purchase and there is no proper legal reason for the VAT to disagree with the same.

2. That, the OHA in the impugned order has laid a lot of stress on the fact that purchase always precedes the sale but he has not appreciated that in transit transaction the sequence can alter but ultimately there is a purchase and sale moreover in a transit sale what is important that the goods have been transferred while in transit sale and not that the purchase invoice for the sale is post dated.

3. The evidence by way of delivery challans has been scuttled for a very flimsy reason as the fact of the matter is that the audit VATO did not find the challan as an acceptable document.

4. That, the production of 'C' form validates the Inter sate sale and the production of E-I form validates the origin of the movement by the seller of the appellant and therefore both the limbs of the transaction are legally satisfied and therefore there is no reason for the disallowance of the said transaction.

5. That, the levy of interest on the impugned demand is also uncalled for and liable to be quashed for the reasons stated above."

Feeling aggrieved by the rejection of the objections by the Learned OHA, the objector has come up in appeals.

6. Arguments heard. File perused.

7. The disputed demand towards tax, interest and penalty has been tabulated as under :-

S. No.	A.Y.(2008-09)	Tax & Interest	Penalty
UNDER THE CST ACT			
1	May	398989	275164.95
2.	June	162323	112907.20
3.	August	803947	568958.76
4.	September	243609	173921.30
5.	October	69198	49842.02

8. As noticed above, case of the dealer-appellant is that E-1 sales are inter-state sales, covered by section 3 (b) of CST Act, 1956.

9. The appellant claimed exemption from paying tax having made purchases from M/s Mineral Enterprises Ltd. and sold the goods in transit.

10. The Assessing Authority was of the view that said transactions did not conform the provisions of section 3(b) read with section 6(2) of CST Act, 1956.

11. The Assessing Authority rejected the claim. In other words, the Assessing Authority did not consider the sales as inter-state sales, and rather treated them as central sales against 'C' form and taxed @3%, with interest.

The reasons given by the Assessing Authority in one of the assessments are that:

"(a) the sales made by the dealer-appellant to M/s Prakash Industries Ltd. (M.P.) were made even prior to the purchases from M/s Mineral Enterprises Ltd.(Banglore);

(b) that the GRs issued for dispatch of consignment were also issued prior to issuance of invoices from M/s Mineral Enterprises Ltd (first and original seller) after the sale has been made by M/s Subros Metals & Technologies Ltd. to M/s Prakash Industries Ltd., Raipur (Chhatisgarh);

(c) that the value of goods mentioned in the GRs are also different from as has been shown in sale bills."

12. Section 7 of DVAT Act exempts certain sales from tax. It provides as under:

"Nothing contained in this Act or the rules made there under shall be deemed to impose or authorize the imposition of tax on any sale of goods when such sale takes place -

(a) in the course of inter-State trade or commerce; or

(b) outside Delhi; or

(c) in the course of import of the goods into or export of the goods out of, the territory of India.

Explanation. - *Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale takes place in the manner indicated in clause (a), clause (b) or clause (c) of this section*".

The question as to whether, a sale is an inter-State sale or not, a mixed question of fact and law, is to be adjudicated having regard to the facts and circumstances of each case and applying the provisions of Section 3 of CST Act.

Section 3 of CST Act reads as under:

> "A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—
>
> (a) occasions the movement of goods from one State to another; or
>
> (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.
>
> *Explanation 1.*—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.
>
> *Explanation 2.*—Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

13. In **Balabhadas vs. State of Orissa**, (1976) 37 STC 207 (SC), Hon'ble Apex Court pointed out following conditions to treat a sale as an inter-State sale:

> "(a) There is an agreement to sell which contains a stipulation, express or implied regarding the movement of the goods from one State to another;
>
> (b) In pursuance of the said contract, the goods in fact moved from one State to another; and
>
> (c) Ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods moved."

In **I.D.L. Chemical Limited v. State of Orissa** (2007) 10 VST 644, Hon'ble Apex Court observed that if the contract triggered

the inter-state movement of goods, it amounted to inter-state sale.

15. Learned counsel for the appellant has contended that the department and learned OHA erred in disallowing exemptions to the dealer as available u/s 3 (b) of CST Act, and by treating the sales as central sales.

The submissions made by learned counsel for the appellant are:

> "(i) that the dealer – appellant had placed purchased order dated 28/3/2008 with Mineral Enterprises Ltd., for purchase of 1000 tons of Mn Ore on the terms and conditions specified therein;
>
> (ii) that as per invoice dated 16/4/2008, GR dated 15/4/2008 and delivery challan dated 15/4/2008, the dealer – appellant supplied 16.010 MT of Mn Ore to Prakash Industries Ltd., but even then the department did not allow exemptions to the dealer appellant u/s 3 (b) of CST Act, simply on the ground that the invoice issued by Mineral Enterprises Ltd. in favour of the dealer – appellant is of a subsequent date i.e. 31/5/2008."

Learned counsel has contended that invoice is meant for realization of price and the department should not have given it so much importance as regards transfer of property in the goods, so as to reject the claim of the dealer of sale of goods in transit.

Learned counsel for the appellant has also submitted that the supplying dealer issued invoice dated 31/5/2008 because the mines of the supplying dealer are situated in distant areas of the State and same could not be issued by the said dealer to the

appellant prior thereto. Another reason for late issuance of invoice is that the supplying dealer used to issue invoices in the end of the month of supply.

17. On the other hand, learned counsel for the Revenue has contended that to claim exemption under section 3(b) of CST Act,in addition to Goods Receipt, production of invoice is also important, but here the invoice issued by the supplying dealer to the appellant is of 31/5/2008 i.e. of a subsequent date, whereas the Goods Receipt regarding supply of material by the appellant to Prakash Industries Ltd. is of previous date i.e.15/4/2008. The argument is that since the dealer failed to prove that it was a case of sale of goods in transit, department has rightly considered the sales as Central sales.

Learned counsel for the Revenue has also submitted that herein the invoice was issued by the supplying dealer to the appellant on 31/5/2018 i.e. after a delay of 48 days and as such there is no merit in this contention raised by learned counsel by the dealer that the supplying dealer used to issue invoice at the end of the month of supply.

Another submission put forth by learned counsel of the Revenue is that purchase order produced by the dealer – appellant is the one placed by the dealer – appellant with Mineral Enterprises ltd., but no such agreement by the supplying dealer with the appellant has been placed on record,

which also adversely affects the case of the dealer- appellant on the point of sale of goods in transit.

In support of his contention, learned counsel has relied on decision in **Tata Iron And Steel Co., v. S. R. Sarkar And Others** 1961 AIR 65,

Almost same are the arguments as regards the other purchasing dealer i.e. Vandana Global.

18. Sale is defined in s. 2(g) of CST Act as meaning any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of goods on the hire purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods.

As noticed above, as per Section 3, a sale or purchase of goods is deemed to take place in the course of inter-State trade or commerce if the sale or purchase (a) occasions the movement of goods from one State to another, or (b) is effected by transfer of documents of title to the goods during their movement from one State to another.

A transaction of sale is subject to tax under the Central Sales Tax Act on the completion of the sale, and a mere contract of sale is not a sale within the definition of sale in Section 2(g).

In respect of an inter-State sale, the tax is leviable only once and that indicates that the two clauses of Section 3 are mutually exclusive. A sale taxable as falling within cl. (a) of Section 3, will be excluded from the purview of cl. (b) of Section 3. Otherwise, certain sales may, be liable to tax under both the clauses and two States may, in respect of a single sale, claim to levy the tax contrary to the plain intendment of Sections6 and 9 of the Act.

The sale contemplated by clause (b) is one which is effected by transfer of documents of title to the goods during their movement from One State to another. Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b); nor will the sale in which the property in the goods passes after the movement from one State to another has ceased be covered by the clause. Accordingly a 'sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two termini set out in Explanation (1) and no other sale will be regarded as an inter-State sale under section 3(b).

19. In TATA's case (supra), the question before the Hon'ble Apex Court pertained tothe competing claims of the States of West Bengal and Bihar to levy sales tax from the company in respect of transactions of completed sales.

Therein, Hon'ble Apex Court was of the view that - within clause (b) of Section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto : clause (a) of section 3 covers sales, other than those included in clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

In Tata Iron's case (Supra) Hon'ble Apex Court concluded as under :-

> "The Commercial Tax Officer has taxed all the sales effected by the company under s. 3, cl. (b), on the view that sales in which the documents of title were handed over in Calcutta were taxable in the State of West Bengal. The assessment is made on two assumptions, (1) that all the sales effected in favour of West Bengal parties satisfied the conditions prescribed by s. 3(b), and (2) that the place where the documents are delivered, by the company through its Head Sales Office to the purchaser is the place where the sale is effected. Neither of these assumptions is correct. The Commercial Tax Officer had, in our judgment, to ascertain before he could order payment of tax under the Central Sales Tax Act, whether on the materials he was satisfied, (a) that the goods at the time of transfer of documents of title were in movement from the State of Bihar to the State of West Bengal, (b) that the place where the sale was effected was under s. 4, cl. (2), within the State of West Bengal. The Commercial Tax Officer has, in our view, failed to apply the correct tests and has made assumptions which are not warranted and on a true interpretation of the provisions of the Central Sales Tax Act, the order of assessment discloses an error apparent on its face and a writ of certiorari must issue quashing the assessment. It will be for the Commercial Tax Officer of West Bengal to re-assess the com- pany in respect of transactions

of sale which are properly taxable within the State of West Bengal by the application of the test which we have already set out.

On this view, the rule is made absolute and it is directed that a writ of certiorari will issue quashing the order of assessment made by the Commercial Tax Officer, Lyons Range, Calcutta, West Bengal. The company will be entitled to its costs of this petition."

20. In **K.B. Saha's** case (supra) Hon'ble Apex Court held that in order that a sale might be considered to be one in the course of inter-state trade, what is important is that the movement of goods and the sale must be inseparably connected; that it is not necessary that there has to be an existent contract of sale incorporating an express or implied provision regarding inter-state movement of goods.

In that case, Hon'ble Apex court considered various clauses of the agreement between the corporation and the company.

In the tender document there was a clear indication that the principal place of business and additional place of business of the company were all outside the State of Orissa.

The way bill of transport also indicated that the consignment of goods was dispatched from outside the State of West Bengal. The cumulative effect of these facts on record was that the sale to the company was in the course of inter-state trade.

21. As noticed above, to establish an inter state sale, following ingredients are required to be proved:

"(a) There is an agreement to sell which contains a stipulation, express or implied regarding the movement of the goods from one State to another;

(b) In pursuance of the said contract, the goods in fact moved from one State to another; and

(C) Ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods moved."

It is settled law that it is not necessary that there should be an existence of contract of sale incorporating the express or implied provision regarding inter-State movement of goods.

22. Here, undisputedly, the dealer – appellant placed purchase order dated 28/3/2008 with Mineral Enterprises Ltd. for 1000 tons of Mn ore available at Hulikatte Mines of the supplying dealer on the following terms & conditions :–

Stack No.	**Qnty (tons)**	**Mn%**	**Fe%**
21	280	28.05	16.75
22	350	28.25	15.67
23	370	28.54	13.96
	1000	AVG.Mn%	28.30

Price	Rs. 8600 PMT
Price basis	Ex-your mines inclusive of Royalty.
Premium/ penalty	Prorata
Taxes	Extra 2% against Form-C we shall require form E1 from you.
Delivery	April 2008
Transportation	Transportation will be arranged by us

Sampling & Analysis	Ex-mines by neutral assayer
Weightment	The weightment at your weight bridge shall be the basis for the invoice.
Payment	Advance payment will be in three parts for each lot as per above mentioned quantity by DD/RTGS payable at Bangalore.
Jurisdiction	For any dispute, jurisdiction will be courts at Bangalore.

23. From the said purchase order, it becomes obvious that delivery of the goods from Mineral Enterprises Ltd. was to take place in April, 2008 and weighment at weight bridge of the selling dealer was to be the basis for the invoice. As per invoice dated 16/4/2008 issued by the dealer – appellant in favour of Prakash Industries Ltd., GR dated 15/4/2008 and delivery challan dated 15/4/2008, produced on behalf of the dealer – appellant before us, the dealer-appellant supplied 16.010 MT of Mn Ore to Prakash Industries Ltd..

The Goods Receipt issued by a transporter is the main document for proving movement of goods from one state to another.

In the GR dated 15/4/2008, name and address of the consigner stands recorded as Mineral Enterprises Ltd., Hullikate Manganese Mines, Hullikate. As per this GR, Sical Logistics Ltd. is the name of the transporter.As per this GR, name of the

dealer – appellant stands recorded as the consignee but the site of the delivery stands recorded as M/s PIL Champa (CG).

In the delivery challan dated 15/4/2008, issued by the dealer – appellant to Prakash Industries Ltd. there is a specific mention of order dated 28/3/2008. In this very challan, number of the vehicle recorded as KA 05B 8244 tallies with the vehicle number available in the GR.

As regards the price of 16.010 of Mn ore, as per the said GR, its stands recorded as Rs. 1,37,600/-.

In the invoice dated 16/4/2008 by the dealer – appellant to Prakash Industries Ltd., GR No. 10102 dated 15/4/2008 stands recorded.

The value of the goods sold stands recorded in this invoice as SRs. 1,85,470.88, including Rs. 1,754.88 by way of pro rata premium.

24. No doubt the invoice issued by Mineral Enterprises Ltd. in favour of the dealer – appellant stands recorded as 31/5/2008, whereas the delivery challan and the GR issued by the dealer – appellant and the transport company respectively, bear the date as 15/4/2008, the retail invoice issued by the dealer – appellant in favour of Prakash Industries Ltd. is of 16/4/2008. In other words, these three documents are purported to have been issued prior to the issuance of invoice by supplying dealer to the

dealer – appellant. But undisputedly the purchase order is of 28/3/2008. In this situation, simply because the said invoice issued by the supplying dealer to the dealer – appellant is of subsequent date and the goods are said to have been put in the course of movement on 16/4/2008, as per GR, the Assessing Authority could not arrive at the conclusion that the said transaction did not conform the provision of section 3(b) read with section 6(2) of CST Act, so as to record a finding that the said sale was a Central sale against C form, exigible to tax @ 3%. There is nothing in the notice of default assessment to suggest that all the relevant record of the dealer – appellant, that of Prakash Industries Limited or that of Vandana Global and of the selling dealer, was requisitioned by the learned Assessing Authority, before arriving at the aforesaid conclusion.In this regard, we ~~find~~ record that a thorough enquiry is prerequisite, and such a decision cannot be based on mere assumptions, without looking into the entire relevant record.

25. Similarly, thorough enquiry was required to be made regarding movement of goods, even though the invoices in respect of other tax periods June, Aug., September& October, 2008-2009, were of date (s) subsequent to the movement of goods, which are claimed to have been supplied to M/s. Prakash Industries Ltd., Vandana Global Ltd., but no such detailed enquiry appears to have been conducted.

26. In view of the above discussion, we deem it a fit case to remand the matter to learned Assessing Authority for decision afresh as regards the above said transactions pertaining to the aforesaid tax period and concerning dealer– appellant, M/s. Prakash Industries Ltd., Vandana Global Ltd. and Mineral Enterprises Ltd., after providing reasonable opportunity to the dealer and after perusing all the relevant record, in accordance with law.

27. As a result, all the impugned orders passed by learned OHA as regards upholding of tax and interest in respect of all the above referred transactions pertaining to the sale/ movement of Mn ore, during the aforesaid tax periods, are set-aside.

Penalty

28. A perusal of impugned orders would reveal that learned OHA has not given any reason to uphold the demand towards the penalty levied. In absence of any reason, while sitting in appeal, this Appellate Tribunal finds it difficult to decide if it is a case where assessment by way of penalty was or was not called for.

29. As noticed above, we have observed that the matter needs to be remanded to learned Assessing Authority for decision afresh after providing reasonable opportunity to the dealer of being heard. Therefore, in case learned Assessing Authority comes to the conclusion that it is a case of any tax liability of the dealer,

learned Assessing Authority shall also decide afresh as regards levy of penalty, if any in view of settled law, and after providing reasonable opportunity to the dealer – assessee of being heard.

30. No other argument was advanced before us on behalf of the parties.

31. Consequently, all these appeals are disposed of, the impugned orders passed by learned OHA as regards penalty are set-aside and the matter is remanded to learned Assessing Authority for decision afresh after providing reasonable opportunity to the dealer – appellant, in accordance with law.

32. Dealer - Appellant is hereby directed to appear before learned Assessing Authority on 29/4/2022.

33. 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 : April 20th, 2022.

20/4/22

(Rakesh Bali)
Member (A)

APPELLATE TRIBUNAL VAT DELHI

20/4/2022

(Narinder Kumar)
Member (J)

Appeal No. 387-396/AVAT/14/4076-83 Dated: 20/4/22

Copy to:-

(1) VATO (Ward-)
(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)

20/4/22

REGISTRAR

APPELLATE TRIBUNAL VAT DELHI