

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 270/ATVAT/2012

Date of Judgment : 21/4/2022

M/s. Shiba Comp. Pvt. Ltd.

SE-62/63, Single Pur,

Shalimar Bagh,

Delhi – 110 052.

..... Appellant

V.

Commissioner of Trade & Taxes, Delhi

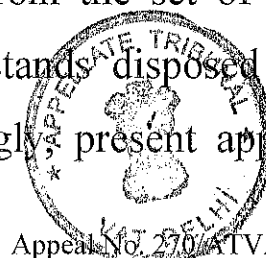
..... Respondent

C.A. representing the Appellant : Sh. A.K. Batra.

Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

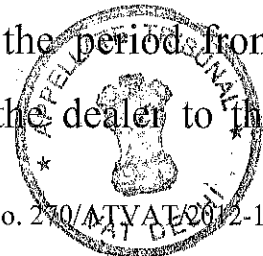
1. Initially two appeals were filed together challenging order dated order dated 26/03/2012 passed by Ld. Objection Hearing Authority, whereby the objections filed by the dealer – appellant were rejected and the assessments framed by the Assessing Authority were upheld.
2. In the course of arguments, on 3/3/2022, learned counsel for the parties submitted that appeal No. 270/12 being an independent appeal be segregated from the set of appeals. Other appeal NO. 269/12 already stands disposed of vide judgment dated 3/3/2022. Accordingly present appeal No.



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207/12 was segregated. That is how, vide this judgment only appeal NO. 270/12 is being disposed of.

3. Appellant company is registered with the VAT department having Tin No. 07250175274 in Ward-67. It is engaged in the business of trading of computers, computer parts, peripheral and electronic components. The present appeal pertains to tax period April, 2007-08.
4. Vide notice of default assessment of tax and interest u/s 9(2) of CST Act, learned Assessing Authority directed the dealer to pay Rs. 12522201/- due to the reason that it had failed to furnish statutory forms.
5. Feeling aggrieved by the assessment, the dealer filed objections. Learned Addl. Commissioner – Special Zone – learned OHA, vide order dated 26/3/2012 disposed of the objections.
6. Arguments heard. File perused.
7. Learned counsel for the dealer – appellant has referred to one form DVAT-51 filed in this appeal, and to the paper book containing copies of said DVAT-51 form, to point out that C-forms of the value of Rs. 6,77,650/-, for the period from 1/4/2007 to 30/6/2007 were submitted by the dealer to the



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Assessing Authority on 7th of June, but in the impugned assessment and the impugned order passed by learned OHA, there is no mention about filing of the said statutory forms.

The copy of DVAT-51 bears initials with date 7th of June. Year of the date is not legible.

8. As per grounds of appeal, case of the dealer – appellant is that the Ld. OHA has erred in levying tax on Inter-State sale of Rs.3,88,250/- for the disputed period as out of the Inter-State sale of Rs. 3,88,250/- C Forms amounting to Rs. 2,67,650/- establishing Inter-State sale have already been submitted with the department which have not been examined by the Ld. OHA; that the impugned order passed by Ld. OHA is bad in law, passed without application of mind, without considering the documents submitted by the appellant and thereby violating the principles of natural justice.
9. In the impugned order, learned OHA has observed that the dealer neither filed any fresh form nor filed any proof of C-forms said to have already submitted before the Assessing Authority and further that even no copy of the said C-forms were furnished in the objection proceedings.
10. Learned counsel for Revenue has rightly submitted that the



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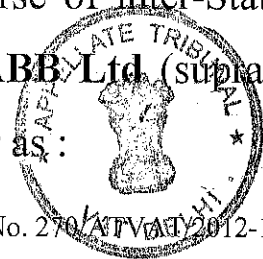
dealer could produce the original C-forms before learned OHA for his perusal, but no such step was taken. There is merit in this contention raised by the learned counsel for the Revenue. However, at the same time, keeping in view the specific stand taken by the dealer that he had submitted C-forms for the period from 1/4/2007 to 30/6/2007, before the Assessing Authority. Learned OHA could take steps to call for report from the concerned ward, to see if any C-form was submitted as alleged by the dealer, with any DVAT 51. There is nothing in the impugned order to suggest that any such report was called.

11. In view of the above discussion, the matter needs to be remanded to the learned OHA for decision afresh, as regards statutory forms said to have been submitted by the dealer as regards tax period 1/4/2007 to 30/6/2007, after providing reasonable opportunity to the dealer, and in accordance with law.
12. Learned OHA has denied the High Seas Sales made by the appellant on the ground that the agreement made between the appellant and the buyer does not fall within the purview of High Seas Sales, as the contract has been made before the purchase of goods and even before its dispatch from the origin station.



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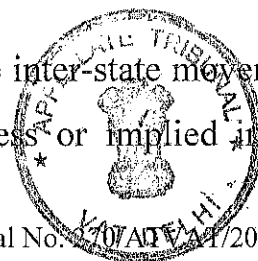
13. The Appellant has challenged the findings on the point of High Sea Sales ^{on the ground that} ~~as~~ nowhere under the law it has been provided that the ^{claim} of High Sea Sales can be denied simply because a purchase order is of a date prior to that of import. On this point, learned counsel for the dealer - appellant has placed reliance upon the following decisions:
- Commissioner, DVAT v. M/s. ABB Ltd (2016- TIOL – 41-SC-VAT).
 - M/s. ABB Ltd v. Commissioner, DVAT, 2012-VIL-83-Del.
 - K. G. Khosla & Co. (P) Ltd. v. Deputy Commissioner of Commercial Taxes, 1966 (I) TMI – 54 SC
 - M/s. Hotel Ashoka v. Assistant Commissioner of Commercial Taxes & Anr. 2012-TIOL -08-SC-VAT
 - BPL Telecom Limited v. State of Kerala, 2009 (23) VST 264 (Ker).
14. Learned Counsel for the Dealer-appellant has also contended that the Learned OHA has wrongly rejected the claim of the dealer-appellant on the basis of High Sea Sales of the value of Rs. 1,10,76,022/-, when the dealer-appellant produced all the relevant documents before the Learned OHA in support of the said claim.
15. On the point of Inter-State sale in the course of inter-State trade, in **Commissioner, DVAT v. M/s. ABB Ltd** (supra), Hon'ble Apex Court observed in the manner as:



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“So far as the issue in respect of sale in the course of inter-state trade is concerned, the Tribunal rejected the claim on the ground that there was no specific order for supply of such goods issued by DMRC nor there was specific instruction for inter-state movement of goods. The High Court found that in fact the terms of the contract envisaged inter-state movement of goods. Such movement of goods was within the knowledge of DMRC because there was total ban on setting up/ working of heavy industries in Delhi and the DMRC had approved 18 places within the country from where the equipments and goods had to be supplied. These included the premises and factories of the respondent also. On facts, therefore, it was rightly held by the High Court that the inter-state movement of goods was within the contemplation of the parties and it can be reasonably presumed that such movement was to fulfil the terms of the contract and therefore the transaction was covered by Section 3(a) of the CST Act. The law on this issue was also considered by the High Court in correct perspective after noticing the case of Tata Iron and Steel Co. Ltd. v. S.R. Sarkar that where the goods moved from one state to another as a result of a covenant in the contract of sale it would be clearly a sale in the course of inter-state trade. The conclusion of the High on this issue also finds ample support from the following case laws which were noticed by the High Court (1) Oil India Ltd. v. The Superintendent of Taxes⁴ (2) English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer⁵ (3) South India Viscose Ltd. v. State of Tamil Nadu.

In **Oil India Ltd.** this Court held that the inter-state movement must be the result of a covenant, express or implied in the



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contract of sale or an incident of the contract. In other words, the covenant regarding inter-state movement need not be specified in the contract, It would be enough if the movement was in pursuance of or incidental to the contract of sale. In English Electric Co. of India Ltd. the law was clarified thus: "if there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific/ascertained goods ought to be deemed to have taken place in the course of inter-State trade or commerce.....". In South India Viscose Ltd. it was held that if there is a "conceivable link" between contract of sale and the movement of goods from one state to another to meet the obligation under a contract of sale it would amount to an inter-state sale and such character will not be changed on account of interposition of an agent of the seller who may temporarily intercept the movement."

The three transactions, to which this matter pertains, are being taken up one by one.

First Transaction:-

16. First set of documents, which are photocopies, pertains to import of 50 Samsung 24" TFT LCD Monitor 244 T. The set of documents includes a purchase order dated 12/01/2007



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purported to have been placed by Redington Distribution Pvt. Ltd with the dealer – appellant.

As per this document, some items were to be delivered by the dealer-appellant to Redington Distribution Pvt. Ltd by 28/02/2007. Total basic value of the goods was Rs. 25,35,000/-. Surprisingly, this document does not depict as to what was the nature of the goods for which the purchase order was placed. Even the quantity of the goods does not find mentioned in it. In the course of arguments, Learned Counsel for the appellant has admitted that no annexure to this purchase order forms part of set of documents. So it cannot be said that this purchase order pertains to the first transaction.

17. Purchase order dated 15/01/2007 from the dealer-appellant with the foreign supplier pertains to fifty 24” TFT LCD Monitor. Tax invoice issued by Redington Distribution Pvt. Ltd dated 02/04/07 contains particulars of the goods in respect of the same set of goods. The aforesaid tax invoice is on record. Airway bill is dated 03/04/07.

However, no bill of entry regarding this transaction has been placed on record. Learned Counsel for the appellant has stated at Bar that the said document appears to have not been received from M/s. Redington Distribution Pvt. Ltd.



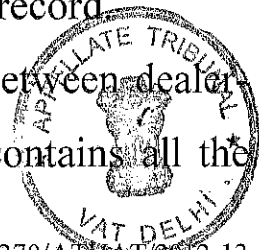
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In the absence of bill of entry, it cannot be said that this is a case of sale or purchase of the said goods by the dealer-appellant to M/s. Redington Distribution Pvt. Ltd. by transfer of documents of title before the goods crossed the custom frontier of India.

Therefore, the dealer-appellant is not entitled to the benefit of provision of Section 5(2) of CST Act, as regards this transaction.

2nd & 3rd Transactions:-

18. As per copies of two sets of documents submitted by the appellant in the form of paper book, one transaction pertains to import of sale of 249 Monitor 21" LCD Monitor Black. This transaction is stated to be between dealer-appellant and M/s. Invensys India Pvt. Ltd., Navi Mumbai. High Sea Sale invoice is dated 04/07/2007 issued by the dealer –appellant in favour of M/s. Invensys India Pvt. Ltd.. Bill of entry depicting IGM No. 4147/2007 dated 06/04/07 also forms part of set of documents. Copy of Cargo Arrival Notice / Invoice dated 04/04/07 has also been filed. Invoice issued by NEC Solutions Asia Pacific Ltd., also forms part of record. High Sea Sale agreement dated 04/04/2007 between dealer-appellant and M/s. Invensys India Pvt. Ltd contains all the



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terms and conditions in respect of sale / purchase of 249 LCD monitors.

19. In the course of arguments, having gone through this set of documents as regards the second transaction, Learned Counsel for the Revenue has candidly submitted that in view of this set of documents the impugned order passed by the Learned OHA cannot be sustained.

20. Having gone through this set of documents pertaining to the second transaction, when the appellant has established that the said transaction sale/ purchase was effected by transfer of documents of title of the goods before the same crossed the custom frontiers of India, I find merit in the contention raised on behalf of the dealer-appellant that the said transaction was of High Sea Sale attracting provision of Section 5(2) of CST Act.

3rd Transaction :-

21. The third transaction pertains to sale of eight NEC LCD monitors 21" Model No. 2170-NX-BK, 14/04/2007. All the relevant documents like invoices, bill of entry dated 04/04/07 and High Sea Sale agreement between the dealer – appellant and M/s. Honeywell Automation India Limited as regards 8 pieces of NEC LCD 21" monitor, have been placed on record.

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This set of document also contains purchase order dated 26/02/07 by M/s. Honeywell Automation India Limited with the dealer – appellant.

IGM No.4147/2007 dated 06/04/07 stands recorded regarding these 8 pieces.

Even in the communication from the dealer – appellant to the Airport Authority of India, Mumbai, the said authority was informed that the dealer-appellant had sold above said quantity of 21” NEC LCD Monitors to M/s. Honeywell Automation India Limited as per their purchase order dated 26/02/2007.

Airway bill in respect of this quantity is dated 04/04/07. High Sea Sale Agreement entered into between two parties is of 04/04/07.

~~But~~ [✓] Simply because of the purchase order dated 26/02/07 it cannot be said that these transactions of sale/purchase were not effected by way of transfer of documents of title to the goods.

In view of the above settled legal preposition in ABB’s case (supra) by Hon’ble Apex Court, the covenant regarding import is not required to be specified in the contract. Therefore, when in the purchase order, in the second and



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third transaction of sale / purchase, the buying dealers i.e. M/s. Invensys India (P) Ltd. and M/s. Honeywell Automation India Ltd., did not specify regarding import, it is enough when the movement of the goods has been proved to be in pursuance of or incidental to the contract of sale.

This is a case where there is a conceivable link between the movement of the goods and the buyer contract and the goods can safely be said to have moved in the course of import to the satisfaction of the purchase order / contract, when it is not the case of the Revenue that the said goods reached any person other than buyer, ^{such} ~~said~~ nexus being inexplicable, the sale / purchase of the said ⁱⁿ items covered by the second & third transactions are deemed to have taken place in the course of import.

22. In view of the above discussion, the impugned order passed by learned OHA rejecting the claim of the dealer – appellant that second & third transactions of sale are High Seas Sales, deserves to be set-aside. The same is hereby set-aside only in respect of the second & third set of transactions.

Result

23. In view of the above discussion, this appeal is partly allowed and the impugned order passed by learned OHA as regards, High Seas Sales transaction between dealer ^{appellant} and



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M/s. Invensys India (P) Ltd. and M/s. Honeywell Automation India Ltd., is set-aside.

However, as regard the first mentioned transaction between the dealer – appellant and M/s Reliance Industries Ltd., the appeal is hereby dismissed for the reasons recorded above.

Learned OHA to do the needful in accordance with law and in view of the findings recorded above, as regards statutory forms, in view of the above discussion and findings.

The dealer to appear before learned OHA on 4/5/2021.

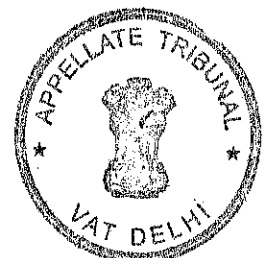
24. No other argument has been advanced by learned counsel for the parties.
25. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 21/4/2022

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(Narinder Kumar)
Member (Judicial)

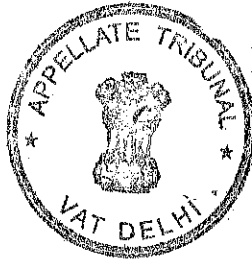


Appeal No. 270/DVAT/12/4124-31

Dated: 26/4/22

Copy to:-

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| (1) VATO (Ward-67) | (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