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

Appeal No. :01-02/ATVAT/14
Date of Judgment: 25/04/2022

M/s. Wire & Wireless India Pvt. Ltd.,
Essel House,
B-10, Lawrence Road Industrial Area,
New Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. S. Kapoor.
Counsel representing the Revenue : Sh. P. Tara.

Judgment

1. This common judgment is to dispose of above captioned two appeals as same involve common question of fact and law. Dealer-appellant has challenged order dated 30/01/2010 passed by Learned Additional Commissioner-II, whereby its two objections u/s. 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) have been dismissed.
2. The matter pertains to two tax periods i.e from 01/10/2006 to 31/12/2006 & from 01/01/2007 to 31/03/2007.
3. By filing of objections, the dealer sought permission to file revised return so as to claim Input Tax Credit for the above said tax periods. As per case of the dealer-appellant, initially it could not claim Input Tax Credit for the said tax periods inadvertently.

Narinder Kumar
25/4/2022

[Signature]
25/4/2022



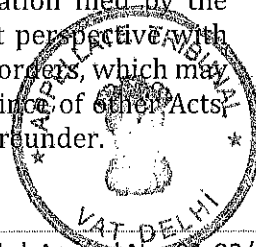
4. Learned Additional Commissioner- II rejected the prayer of the dealer for filing of revised return, while observing in the manner as:-

" Perusal of the returns filed by the Objector reveals that the Objector has been using two TINs i.e. 0724025775 and 07440237492. As per the DVAT System computer record, former number has been issued to the objector and its date of validity is 07/03/2007. This implies that the Objector cannot claim any benefit prior to 07/03/07. The purchases made by the Objector, on which he claims input tax credit are for the third quarter 2006-07 and for the month of January 2007. Both these periods are prior to the date of validity, hence the Objector cannot claim any benefit for the purchases made prior to the date of validity. As per one of the DVAT 38 filed by the Objector, the latter TIN is of M/s. Siti Cable Network Ltd., however as per DVAT system computer record this has been allotted to M/s. Zee Interactive Multimedia Ltd. which has since been cancelled with effect from 31.01.2008.

In view of the aforesaid facts, it is evident that the Objector has not approached the department with clean hands. Input tax credit cannot be claimed on purchases prior to the date of validity of registration, hence the objector cannot be allowed to claim input tax credit on the same."

5. Arguments heard. File perused.
6. In the course of arguments Learned Counsel for the dealer-appellant has pointed out that an application for review of the above said order was also filed before Learned Additional Commissioner-II, but the same was dismissed. Copy of the order dated 15/07/2010 dismissing the review application has been subsequently filed. In the said order, dismissing the review application, Learned Additional Commissioner -II observed in the manner as:-

"Perusal of orders of the Hon'ble High Court of Bombay indicates that the said orders were passed on the application filed by the objector under the Companies Act. In a different perspective with different object in mind. There is nothing in these orders, which may grant immunity to the Objector, from non-compliance of other Acts specifically the DVAT Act and the Rules framed thereunder.



As per the provisions of Section 9 of the DVAT Act, "a dealer who is registered or is required to be registered under this Act shall be entitled to tax credit- ----". As per provisions of Rule 14(2) of the DVAT Rules, "A dealer shall be deemed to be registered under the Act from the date of the receipt of his Application for Registration as specified in sub-rule (1) above or from the date the dealer has become liable to pay tax except where any other date has been specified in the certificate of registration."

In the instant case, the date of liability and validity of registration of the dealer is 07/03/2007, thus the dealer was neither registered nor liable to be registered before that date and hence not eligible for input tax credit. There are no directions in the orders dated 17/11/2006 of the Hon'ble High Court regarding allowing of input tax credit to the objector despite his not being eligible for the same as per the aforesaid provisions of the DVAT Act. The review petition being devoid of any substance is therefore dismissed.

This is however, without prejudice to the right of the objector to file an application before the concerned VATO for preponing his date of validity of the registration certificate / TIN No. in view of the above referred orders of the Hon'ble High Court. If the DVAT Act/Rules so permit, and thereafter make out his case for claiming the input tax credit for the relevant tax periods."

7. Case of the dealer-appellant is that for the purpose of carrying on its business in the State of Delhi, it got registered under DVAT Act and CST Act on 07/03/2007. It is engaged in the business of cable television distribution and other related business. Further, it is the case of the dealer-appellant that pursuant to the order passed by the Hon'ble High Court of Bombay dated 17th November 2006, in Writ Petitions No. 531, 532, 533 and 534 of 2006 titled as filed by Zee Telefilms Limited, a scheme of arrangement entered between Zee Entertainment Enterprises Limited (hereinafter referred to as 'ZEEL') and its wholly owned subsidiary, Siti Cable Network Limited (hereinafter referred to as 'SCNL'), was approved. It was effective from 31st March 2006.

8. As per case of appellant, by virtue of such arrangement, the whole business of cable operation of SCNL was hived off to

the Appellant. Consequently, all the assets and liabilities of SCNL were transferred in favour of the Appellant w.e.f., 31st March 2006. As a result, the unutilized balance of input tax credit available with SCNL also got transferred to the Appellant w.e.f., 31st March 2006.

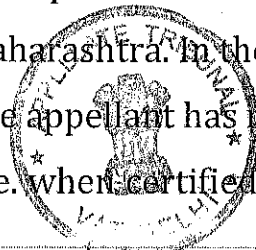
9. Further, it is the case of the dealer-appellant that in the return filed by Siti Cable Network Ltd. and the appellant for 3rd and 4th quarter of assessment year 2006-2007, it inadvertently missed out to put forth claim of input tax credit to the tune of Rs. 36,32,307/- and 18,37,250/-.
10. Learned counsel for the dealer-appellant has submitted that the dealer-appellant, after its registration under DVAT Act on 07/03/2007, started filing returns and subsequently realized that the above said input tax credit was not claimed inadvertently. Accordingly, the dealer filed revised returns for the said tax period, and also filed objection u/s 28(2), but the same have been rejected without cogent reasons. The contention is that in view of the order dated 17/11/2006 passed by the Hon'ble High Court of Bombay, prayer for filing of revised return deserved to be allowed.
11. On the other hand, learned counsel for the revenue has contended that for the reasons recorded by learned Additional Commissioner, the prayer of the appellant to revise return has been rightly and legally rejected, and as such the appeals deserve to be dismissed.
12. Section 28 of DVAT Act pertains to revision of returns in case of correction of deficiencies. Extract of section 28 as



inforce up to the year 2010-2011, and as much relevant for the purpose of the present matters, is reproduced as under:-

"(2). If, within four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated in section 74 of this Act."

13. A perusal of the order dated 17/11/2016 passed by the Hon'ble High Court of Bombay would reveal that the petitions were filed by Zee Telefilms Ltd. and other companies u/s 391 to 394 of the Companies Act seeking sanctions to the composite scheme of arrangement which was annexed to Petition No. 531 of 2006, as Ex. L.
14. Hon'ble High Court allowed the petitions observing that the entire procedure prescribed under the law was followed and no objection was raised to the sanction of the said scheme.
15. As per the scheme, it was scheme of arrangement between the parties named therein including Zee Telefilms Ltd., Siti Cable Network Ltd. and the dealer-appellant.
16. Learned counsel for the dealer-appellant has submitted that the dealer-appellant entered into scheme of arrangement only as regards cable business of Zee Telefilms Ltd. and Siti Cable Network Ltd. and that the said scheme was to be effective from the appointed date i.e. 31/03/2006, but operative from the effective date i.e. when certified copy of the order sanctioning the scheme was presented before the Registrar of Companies, Mumbai, Maharashtra. In the course of arguments, learned counsel for the appellant has not been able to apprise us of the said date i.e. when certified copy of



the order sanctioning the scheme was presented before the Registrar of Companies, Mumbai. In the impugned order, Learned Additional Commissioner did not take into consideration this aspect at all while dealing with the question involved.

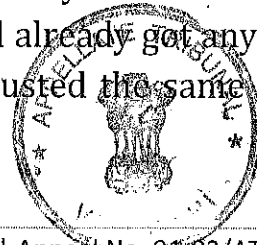
17. What weighed with the learned Additional Commissioner, as is obvious from the impugned order dated 31/03/2010 is that -

(a). as per DVAT 38 filed by the dealer and objector before him, TIN No. allotted to M/s Siti Cable Network Ltd., allotted to M/s Zee Interactive Multimedia Ltd., was cancelled w.e.f. 31/01/2008;

(b). that the dealer-objector had got registered w.e.f. 07/03/2007, and as such, in respect of the transactions of 3rd quarter of 2006-07 and for the month of January 2007, made prior to 7.3.2007, the dealer could not claim any benefit.

18. For the purpose of disposal of objections, Learned Additional Commissioner was not to decide the merits of the case i.e. as to whether the dealer -appellant was entitled to refund of input tax credit. Learned Additional Commissioner was required to decide, if the case of the dealer-objector was covered by the provisions of Section 28(2) of DVAT Act.

19. Even if the appellant got registered under DVAT Act as on 7.3.2007 and registration of M/s Siti Cable Network Ltd. or M/s Zee Interactive Multimedia Ltd. came to be cancelled on 31.1.2008, there is nothing in the impugned order to suggest that M/s Siti Cable Network Ltd. or M/s Zee Interactive Multimedia Ltd. had filed any return after the registration of the dealer-appellant or they had already got any input tax credit adjusted or the department had adjusted the same in the subsequent tax periods.




20. Here the objections filed by the dealer-objector have not been rejected on the ground that the same did not fulfil any requirement of Section 28(2) of DVAT Act. Rule 29 of DVAT Rules, 2005 required that the dealer is to furnish revised return by furnishing DVAT 16 along with an explanatory note specifying the mistake or error due to which it has become necessary to furnish a revised return. There is nothing in the impugned order to suggest that the dealer-appellant did not comply with the provisions of Rule 29 of DVAT Rules. From the use of word 'may' in section 28(2), it appears as if the intention of the Legislature was not that filing of objections under section 74 of DVAT Act is a must.
21. It is also not in the impugned order that the prayer of the appellant was not based on the averment of deposit of excess tax.
22. Claim of the appellant is that the return was sought to be revised on discovery of mistake or error. It is not that prayer by the dealer-appellant was for revising return of any other dealer. The dealer simply wanted to revise its own returns.
23. In the order dated 05/07/2010 passed on the review petition, learned Additional Commissioner observed that in the orders passed by the Hon'ble High Court of Bombay, there was nothing to suggest that the dealer was not to comply with the provision of DVAT Act and the rules framed thereunder. It was further observed that no directions were issued by the Hon'ble High Court of Bombay allowing input tax credit to the objector, even if it was not eligible to claim the same.
24. In this regard, suffice it to say that when the scheme was for transfer of assets and liabilities as regards cable business of the previous company to the dealer-appellant and the scheme was to be operative from 31.3.2006 and the scheme was approved, Learned Additional Commissioner was to consider implication or legal outcome of the order instead of looking for specific directions regarding input tax credits.
25. Simply by filing revised return, the claim of the dealer for refund of input tax credit cannot be said to have been allowed in its favour.

Claim of the dealer-appellant for refund of input tax credit, if any, lying to the credit of the previous company shall have to be decided in accordance with law, only after dealer is allowed to revise returns on the ground permissible under the law. Suppose, the dealer is ultimately found by the department not entitled to refund of any such input tax credit, for any lawful reason, department shall be at liberty to pass appropriate assessments or orders, in accordance with law.

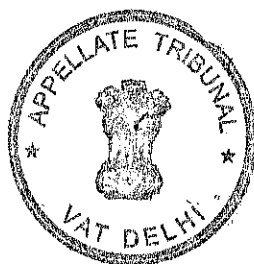
26. As a result, the impugned order passed by Learned Additional Commissioner rejecting the prayer of the dealer for filing of revised return deserves to be set aside.
27. Consequently, while allowing the appeals, the impugned order is hereby set aside. Department to do the needful in accordance with law, as if prayer for revising the return stood allowed.
28. 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.

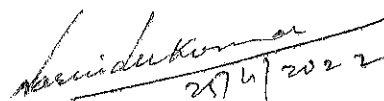
Announced in open Court.

Date: 25/04/2022


25/4/2022

(Rakesh Bali)
Member (Administrative)




25/4/2022

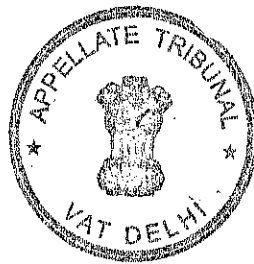
(Narinder Kumar)
Member (Judicial)

Appeal No. 1-2/ATWAT/14/4148-55

Dated: 26/4/22

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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