

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

Appeal Nos. : 311-316/ATVAT/21

Appeal Nos. : 304-310/ATVAT/21

Date of Judgment: 9/5/2022

M/s. J.K Agencies,  
B-52, First Floor, Naharpur,  
Sector-7, Rohini, Delhi-110085.

*Appellant*  
.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

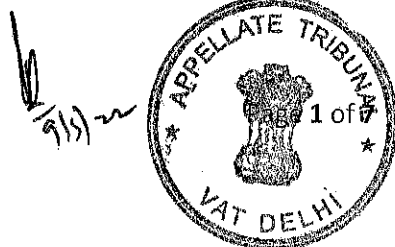
.....Respondent

Counsel representing the Appellant : Sh. Sanjeev Saxena  
Counsel representing the Revenue : Sh. S. B. Jain

**JUDGMENT**

1. This judgment is to dispose of above captioned appeal Nos. 304-310/ATVAT/21 & 311-316/ATVAT/21.
2. Dealer-appellant-objector is feeling aggrieved by the common order dated 12/10/2021 passed by learned Objection Hearing Authority – Additional Commissioner (hereinafter referred to as OHA) whereby notices of default assessment of tax, interest and penalty dated 09/01/2016 issued by the Assessing Authority – VATO (Audit), for the tax period 2011-12 have been upheld and Objections No. 156405 & 156406 dated 27/04/2016 filed by the

*Narinder Kumar*  
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dealer against the said assessment of tax, interest and penalty have been dismissed.

3. Assessment u/s 32 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) was framed by Ld. Assessing Authority on 09/01/2016 and the dealer-appellant was directed to pay a sum of Rs. 9,95,517/-, on the ground that it was a case of suppression of sale of :

|                  |                                     |
|------------------|-------------------------------------|
| Rs. 5,00,000/- ; | as regards tax period - May 2011;   |
| Rs. 16,00,139/-, | as regards tax period - June 2011;  |
| Rs. 6,38,323/-,  | as regards tax period - July 2011;  |
| Rs. 25,640/-,    | as regards tax period - Nov. 2011;  |
| Rs. 3,99,999/-,  | as regards tax period - Jan- 2011;  |
| Rs. 6,88,732/-,  | as regards tax period - March 2012. |

~~Ld. Assessing Authority also levied penalties on the dealer, u/s.86 of DVAT Act, on the ground that tax deficiency and also because of non production of stock register and sales invoices.~~

The disputed demand of tax, interest and penalty, as per tax period(s), reads as under:

| Tax Period  | Tax      | Interest | Total    | Penalty u/s 86(10) | Penalty u/s 86(14) |
|-------------|----------|----------|----------|--------------------|--------------------|
| Annual 2011 | --       | --       | --       | --                 | 50,000             |
| May 2011    | 62,500   | 42,509   | 1,05,009 | 62,500             |                    |
| June 2011   | 2,00,018 | 1,33,574 | 3,33,592 | 2,00,018           |                    |
| July 2011   | 2,04,792 | 1,34,153 | 3,38,945 | 2,04,792           |                    |
| Nov. 2011   | 3,205    | 1,939    | 5,144    | 10,000             |                    |



|            |          |          |          |          |        |
|------------|----------|----------|----------|----------|--------|
| Jan. 2012  | 50,000   | 28,973   | 78,973   | 50,000   |        |
| March 2012 | 86,091   | 47,763   | 1,33,854 | 86,091   |        |
| Total      | 6,06,606 | 3,88,911 | 9,95,517 | 6,13,401 | 50,000 |

4. Feeling aggrieved by the said assessments, the dealer filed objections u/s 74 of DVAT Act. The objections came to be rejected for the following reasons:-

“As per DR, Perusal of DP-1 and the returns in Form DVAT-16 furnished for F.Y 2011-12 shows that the dealer is trading in items viz. Namkeen Dalmoth Potato Chips, Papad and Others, whereas the taxpayer has submitted credit note mentioning Bengal Mixed Sweets - Returned which is inconsistent with items mentioned in DP1 and in DVAT-16.

As per DR, the dealer has not reported any sale return in DVAT-16 during F.Y 2011-12.

DR has further submitted that the Credit Notes do not bear the wear and tear of time lapse of around 10 years which points towards the fact that the credit note seems to have been created on a later date to mislead the OHA and get the tax relief.

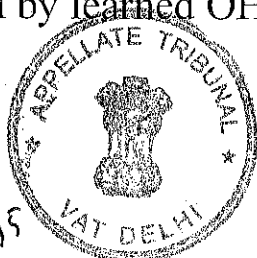
The dealer has submitted a copy of balance sheet in support of his contention. The balance sheet seems not in order and seems to be afterthought concocted as the copy seems a printout of softcopy whereas hardcopy of the balance sheet is provided by the auditor under his signature and stamp. The same has not been extracted from any file.



On the basis of above facts & legal position, I am of the considered view that it would not be appropriate to interfere in the findings of the AA by issuing the impugned notice of default assessment of tax & interest and penalty which came to be issued on 9/1/2016.”

5. Hence these appeals.
6. Arguments heard. File perused.
7. Learned counsel for the dealer – appellant has submitted that in the objections filed before learned OHA, the dealer had raised specific grounds that VATO had not appreciated value of goods returned and that had he considered this point, the figures of sale would have tallied; that credit notes issued by the dealer were shown to the Assessing Authority at the time of assessment but he did not consider the credit notes on the ground that same were not mentioned in the DVAT returns – form-16. The contention is that these objections have not been considered by learned OHA and as such the impugned orders deserve to be set aside.
8. On going through the impugned order passed by the learned OHA, we find that learned OHA has nowhere discussed the ground based on credit notes shown by the dealer to the Assessing Authority, at the time of assessment.

Learned counsel for the Revenue does not dispute that there is no discussion by learned OHA in the impugned order as regards this plea.



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9. Learned counsel for the Revenue also does not dispute that there is no discussion by learned OHA in the impugned order on the point of 'goods returned', i.e. the other ground raised by the dealer before learned OHA.
10. Admittedly, audited balance sheet was submitted by the dealer before Assessing Authority. However, in the impugned order, learned OHA has referred to copy of balance sheet which appeared to be not in order. Learned OHA appears to have not taken into consideration the audited balance sheet submitted before the Assessing Authority.
11. In view of the above observations, we find that the matter needs to be remanded to learned OHA for decision afresh, considering all the grounds raised by the dealer in the objections, after providing opportunity of being heard to the appellant.
12. Consequently, all the appeals challenging the impugned order as regards upholding of tax, interest and penalty (except appeal No. 310 pertaining to penalty u/s 86(14) of DVAT Act) are disposed of and while setting aside the impugned order in respect thereof, the matter is remanded to learned OHA for decision afresh, considering all the grounds raised by the dealer in the objections, after providing opportunity of being heard to the appellant.
13. As regards the penalty u/s 86(14) of DVAT Act, learned Assessing Authority imposed the same due to the reason that the dealer had failed to produce stock register and sales invoices.



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Penalty u/s 86(14) can be imposed where any person fails to comply with the requirement under sub-section(2) or sub-section (3) of section 59 of DVAT Act.

As is available from the notice of assessment issued by learned Assessing Authority, a notice in form DVAT 37 was issued to the dealer. It is not a case where notice under sub-section (2) or sub-section (3) of section 59 was issued. Learned counsel for the parties have rightly submitted that failure to comply with a direction issued to produce records and accounts, despite notice is punishable u/s 86(13) of DVAT Act and not u/s 86 (14) of the Act.

Since the Assessing Authority levied penalty u/s 86(14) of DVAT Act, in place of section 86(13) of DVAT Act, the assessment of said penalty cannot be sustained. Accordingly, appeal No. 310/21 challenging the order of penalty levied u/s 86(14) of DVAT Act is allowed and the impugned order passed by learned OHA upholding the said penalty imposed by the Assessing Authority is set aside.

It may be mentioned here that one of the contentions raised by learned counsel for the appellant is that learned OHA has put forth new grounds for rejection of the objections and to uphold the impugned assessments, which is not permissible in view of decisions in **State of Haryana v. Frick India Ltd.**, 1990 76 STC 148 PH and **Reckitt & Colman of India ltd. v. Collector of**





**Central Excise, 2000(72) ECC 252.** Since the impugned orders have been set-aside and the matter referred to learned OHA for decision afresh, this contention is not being decided.

14. As regards all other matters, dealer to appear before learned OHA on 20/5/2022.
15. Copy of the order be placed in the other set of appeals. File be consigned to the record room. Copy of order be also 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 : 09/05/2022

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 304-310 / AT VAT / 21 / 4340-47  
311-316

Dated: 10/5/22

Copy to:-

- |   |                |
|---|----------------|
| (1) VATO (Ward-63)  | (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<br>DVAT/GST, Delhi - through EDP branch. |                |



  
REGISTRAR