

Appeal No. 159/ATVAT/19

Date of decision: 10/5/2022

M/s. Som Distilleries & Breweries Ltd.,  
1-A, Arjun Nagar, Safdarjung Enclave,  
Delhi – 110 029.

..... Appellant

V.

Commissioner of Trade & taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. H.C. Bhatia.  
Counsel representing the Revenue : Sh. M.L. Garg.

### JUDGMENT

1. The dealer, registered with department of Trade & Taxes vide TIN No. 07540190295, has filed present appeal challenging order dated 07/01/2019 passed by Ld. OHA whereby the objections filed by the dealer u/s. 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred as DVAT Act) have been dismissed.
2. The dealer had filed objections feeling aggrieved by the Assessment of Penalty framed vide order dated 14/03/2019 u/s.



*Narinder Kumar*  
10/5/2022

*Rakesh Bali*

33 of DVAT Act, for the tax period 1<sup>st</sup> Qtr.2017-18.

3. The assessment of penalty was framed by Ld. VATO (Ward – 208), due to the reason that the dealer failed to pay net tax within the prescribed period. The Assessing Authority made the following observations :-

“As per sub-section (4) of section 3 of DVAT Act, 2004 the net tax of a dealer shall be paid within twenty one days of the conclusion of each calendar month. Out of the due tax for the months of Apr. 2017, the dealer deposited Rs. 35,00,000/- on 4/7/2017, which is late by 44 days and Rs. 9,00,000/- on 7/7/2017, which is late by 47 days and Rs. 40,00,000/- on 13/7/2017, which is late by 53 days and Rs. 20,00,000/- on 14/7/2017, which is late by 54 days and Rs. 6,00,000/- on 15/7/2017, which is late by 55 days and Rs. 66,99,001/- on 24/7/2017, which is late by 64 days. Out of due tax for the month of May, 2017, the dealer deposited Rs. 50,00,000/- on 29/7/2017, which is late by 38 days and Rs. 35,00,000/- on 8/8/2017, which is late by 48 days and Rs. 50,00,000/- on 17/8/2017, which is late by 57 days and Rs. 1,22,69,804/- on 12/9/2017, which is late by 83 days. Out of due tax for the month of Jun-2017, the dealer deposited Rs. 1,09,36,687/- on 3/10/2017, which is late by 74 days and Rs. 1,00,01,530/- on 23/10/2017, which is late by 94 days. As per explanation below section 86(1), due tax paid after the period specified in section 3(4) is also a tax deficiency. Therefore penalty u/s 86(12) of DVAT Act 2004 is imposed for tax deficiency for late depositing of due tax. Calculation of penalty @ 1% of the tax deficiency per week for the month of April 2017, comes to Rs. 13,97,194/- and for the month of May, 2017, Rs. 23,73,420/- and for the month of Jun, 2017, Rs.



10/5/22

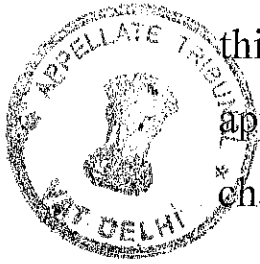
10/5/22

24,99,227/- . Total penalty amount is Rs. 62,69,841/-.”

4. When the matter came up before Ld. OHA, it was submitted on behalf of the dealer that the amount of penalty was liable to be reduced by 80% in view of the provisions of Section 87(2) of DVAT Act.

This submission was rejected by Ld. OHA while observing that the said provision was not applicable to the facts of the present case, it being not a case of audit contemplated against the objector-dealer, and further that clause (b) of sub-section 2 of Section 87 is applicable where the person voluntarily discloses the existence of tax deficiency in writing to the Commissioner and that too before the Commissioner informs the said person that an audit of its tax obligation is to be carried out.

It may be mentioned here that no such argument has been advanced by learned counsel for the dealer – appellant before this Appellate Tribunal. Rather learned counsel for the appellant has stated at bar that the impugned order is not being challenged on this ground.



5. As regards imposition of penalty, Ld.OHA observed that liability/ obligation of the dealer to pay / deposit due tax within 21 days of the conclusion of the calendar month is an absolute statutory obligation and violation thereof leads to tax deficiency u/s 86 (1).

Another submission put-forth on behalf of the dealer before

10/5

10/5

Ld.OHA was that sales of the objector were mainly to the Govt. corporations namely, DSIDC, DSCSC, DTTDC & DCCWS and few cases to the private vendors. A chart was also produced during hearing on objections to highlight that there was substantial delay by government corporations in making payment of tax and principal amount, as a result whereof the dealer-appellant could not deposit tax in time and in was prevented to deposit the same within the prescribed time by reasonable cause.

While dealing with this contention Ld. OHA observed that in case such a plea is accepted, then in every matter dealer would take same plea to escape statutory obligations to deposit tax. He went on to observe that payment of tax within the prescribed time is a mandatory and statutory obligation of every dealer.

Ld. OHA also referred to decision in **M/s. Jatinder Mittal Engineers and Contractors v. Commissioner of Trade & Taxes, Delhi** decided on 12/05/2011 by our own Hon'ble High Court, wherein it was observed that while ascertaining whether there is a tax deficiency or not, the question of bonafide on the part of the assessee is completely alien and irrelevant; and further that, once the tax deficiency is found, sub-section 12 thereof comes into play, as per which, the penalty is leviable on the said amount of tax deficiency.

6. Arguments heard. File perused.

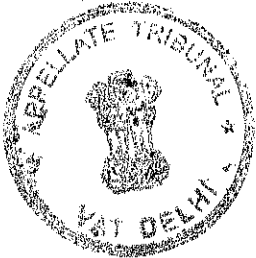


10/5

10/5

7. Learned counsel for the appellant has submitted that this is a case where out of the total amount of tax of Rs. 6,44,07,022/-, the appellant deposited Rs. 3,11,99,001/- from 4/7/2017 to 17/8/2017 during the months of July and August, 2017; <sup>that</sup> the appellant had received only an amount of Rs. 1,10,60,571/- from the government corporations even though the tax due from said government corporations was to the tune of Rs. 4,20,80,678/-.

The contention is when the Government Corporations like DSIDC, DSCSC, DTTDC and DCCWS did not pay the tax due, the dealer – appellant could not deposit the balance amount of the tax in time. Learned counsel has reference <sup>also</sup> to decision in **M/s. Delhi Tourism & Transportation Development Corporation Ltd. v. Commissioner of Sales Tax, Delhi**, Rev. No. 17/STT/2000 decided on 20/11/2001, by this Appellate Tribunal, vide which penalty was reduced.



Learned counsel for the appellant has also submitted that on 22/5/2019, the dealer – appellant deposited a sum of Rs. 18,03,653/- by way of interest, for the period from 1/4/2017 to 30/6/2017 and that this fact of deposit of interest may also be taken into consideration while considering the bona-fide of the dealer.

8. Learned counsel has also referred to <sup>an</sup> decision by learned Special

10/5

10/5

Commissioner on 8/12/2021, in a subsequent matter between the dealer and the Revenue where challenge was made to the penalty u/s 86(12) of DVAT Act for the tax period Annual, 2016. As pointed out by learned counsel for the appellant, learned Special Commissioner has partly allowed the objections while reducing the amount of penalty from Rs. 1,56,24,836/- to Rs. 10.00 lac only, keeping in view the above said contentions raised on behalf of the dealer during objections and particularly the fact that objector had received payment from its Govt. vendors belatedly.

Accordingly, learned counsel for the appellant has urged that amount of penalty may be reduced *in this matter also.*

9. Learned counsel for the Revenue has gone through the decision dated 8/12/2021 by learned Special Commissioner in another similar matter of the dealer – appellant pertaining to levy of penalty relating to tax period Annual 2016. Learned counsel for the Revenue has no objection to the reduction of the amount of penalty when the objector received payments from the Govt. vendors, named above belatedly and the factum of deposit of interest and the above said decision in other matter.

10. The penalty was imposed u/s 86(12) of DVAT Act for the tax period 1<sup>st</sup> quarter 2017. It may be mentioned here that in terms of order passed u/s 76(4) of DVAT Act, passed by this Appellate Tribunal dealer – appellant has deposited 20% of the



1075

1075

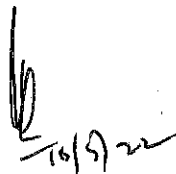
disputed amount of penalty. As noticed above, dealer has also deposited interest to the tune of Rs. 18,03,653/- for the period from 1/4/2017 to 30/6/2017.

Keeping in view all these factors and the fact that admittedly the government vendors made payments of Rs. 1,10,60,571/- towards tax to the dealer, out of the total amount of tax of Rs. 4,20,80,678/- due from them to the dealer, we deem it a fit case to reduce the amount of penalty to Rs. 6,30,000/-.

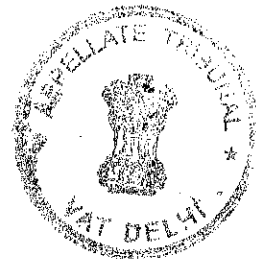
11. As a result, the appeal is partly allowed with modification in the amount of penalty, reducing the same to Rs. 6,30,000/-.
12. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 10/5/2022



(Rakesh Bali)  
Member (A)



(Narinder Kumar)  
Member (J)

Appeal No. 159/ATVAT/19/4356-63

Dated: 11/05/2022

Copy to:-

- |   |                |
|---|----------------|
| (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