

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

Appeal Nos. : 222/ATVAT/17  
Date of Judgment: 23/05/2022

M/s. Indo Burma Petroleum Corporation Ltd.,  
World Trade Centre,  
Babar Road,  
New Delhi – 110 001.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

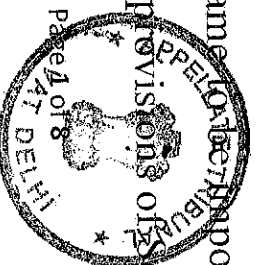
.....Respondent

Counsel representing the Appellant : Sh. A.K. Bhardwaj  
Counsel representing the Revenue : Sh. P. Tara

**JUDGMENT**

1. By way of present appeal, dealer – assessee ( which merged with M/s. Indian Oil Corporation Ltd.), has challenged order dated 23/08/17 passed by Learned Additional Commissioner / Objection Hearing Authority (hereinafter referred to as OHA).

2. Vide impugned order, Learned OHA upheld the assessment of penalty framed by the Assessing Authority on 25/11/2016. Penalty came into existence due to the reason that the dealer violated provisions of Section 86(12) of Delhi



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Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act). The matter pertains to tax period December'2006. Assessment was made afresh consequent upon certain observations made by the Appellate Tribunal.

3. Feeling aggrieved by the impugned order framed by the Assessing Authority, the dealer company filed objections before Learned OHA u/s. 74(6) of DVAT Act. Learned OHA rejected the objections.

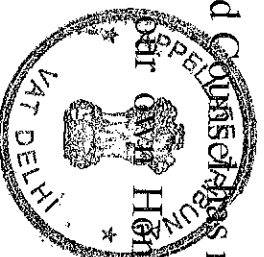
4. Hence this appeal.

5. Arguments heard. File perused.

6. Learned Counsel for the dealer- appellant has submitted that while making assessment on 25/11/16, Assessing Authority has neither given any reasons for imposition of penalty nor taken into consideration the plea of bona-fides.

The contention raised by the Learned Counsel for the appellant is that even Learned OHA neither considered the plea of bona-fides of the dealer nor gave any reason for upholding the penalty. So, it has been urged that the impugned assessment of penalty and the impugned order deserved to be set-aside.

In support of his contention, Learned Counsel has referred to order dated 26/07/2016 passed by Hon'ble High



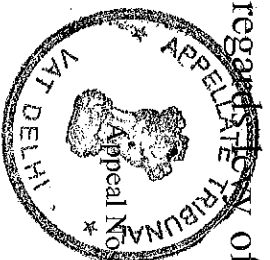
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Court in VAT Appeal No. 14/2016, whereby the judgement dated 27/06/2016 passed by this Appellate Tribunal as regards upholding of penalty levied by VATO u/s. 86(10) of DVAT Act was earlier set-aside.

7. On the other hand, learned counsel for the Revenue has submitted that the assessment has been correctly and legally framed and accordingly rightly upheld by learned OHA and as such the appeal deserves to be dismissed.

8. A perusal of record would reveal that earlier Assessing Authority levied penalty upon the dealer- appellant vide order dated 22/10/2007, due to the reason that the dealer had violated provisions of section 86(10) of DVAT Act. Said assessment was challenged by the dealer by way of objections before Learned OHA and Learned OHA had upheld the said penalty vide order dated 20/06/2013. When the matter came up before this Appellate Tribunal earlier by way of Appeal No. 416-417/13, the levy of penalty and the rejection of objections as regards the penalty were upheld. Aggrieved by order passed by this Appellate Tribunal on 27/06/2016, the dealer – appellant filed VAT Appeal No. 14/2016 before the Hon'ble High Court.

While disposing of VAT Appeal No. 14/2016, Hon'ble High Court set-aside the judgment passed by this Appellate Tribunal on 27/10/2016 only as regards the levy of penalty u/s.

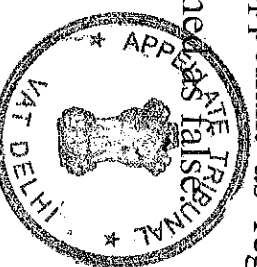


86(10) of DVAT Act. At the same time, Hon'ble High Court directed this Tribunal to consider the assessment afresh particularly in the light of previous order dated 01/12/2011 passed by Appellate Tribunal while dealing with similar issue pertaining to tax period November 2006.

9. On receipt of the directions from the Hon'ble High Court, this Appellate Tribunal, vide judgment dated 27/10/2016, set-aside the impugned order as regards levy of penalty. At the same time, Appellate Tribunal observed that it would be competent for the Assessing Authority to consider the question of assessment of penalty as per law and as deemed necessary.

In this regard, the Appellate Tribunal took into consideration its previous judgment dated 01/12/2011 passed in the appeals preferred by the same dealer company in respect of tax periods November 2006 and appeals pertaining to tax period December 2006 to June 2007 filed by other oil companies.

It may be mentioned here that vide judgment dated 01/12/2011, this Appellate Tribunal had considered as to whether the returns filed by the appellant as regards tax period November 2006 could be termed as false.



10. Learned Counsel for the Revenue has referred to order dated 05/01/2018 passed by Hon'ble High Court in VAT Appeal No. 01/2018 filed by the present dealer-appellant challenging the order passed by this Appellate Tribunal on 08/12/2017 calling upon the said dealer to deposit 15% of the penalty by way of pre-deposit for the purpose of entertainment of appeal. Learned Counsel for the Revenue submits that as per observation made in para 11 of the said order, this Appellate Tribunal has to examine question of conduct and bonafide claim of the Assessee, its relevance as well as the effect of the earlier orders passed.

11. We have gone through the material available on record. While making assessment, Assessing Authority is required to give reasons or grounds for framing assessment of penalty. But, here, we find that Assessing Authority has not given any reason for levy of penalty u/s. 86(12) of DVAT Act. Learned Assessing Authority simply observed in the notice of assessment that Senior Manager of the dealer had appeared before him and filed reply, but the same was not accepted and as such penalty was imposed u/s. 86(12). Further, learned Assessing Authority nowhere mentioned in his notice of assessment as to what was the written submission on behalf of the dealer and what were the reasons for rejection thereof which weighed him for levy of penalty.



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Even while going through the impugned order passed by Learned OHA, we find that he has not given any reason for upholding the penalty imposed by the Assessing Authority. Learned OHA simply observed that the objection was devoid of any merit and was accordingly being rejected.

A perusal of the impugned order would reveal that Learned Counsel representing the dealer before Learned OHA put forth specific contention that since the bona-fides of the dealer were not in doubt, the penalty should not have been imposed, particularly when the imposition of penalty is discretionary.

On perusal of the impugned order, we find that Learned OHA nowhere discussed the said contention raised by the Learned Counsel for the dealer as regards its bona-fides.

12. As noticed above, initially penalty was imposed by the Assessing Authority alleging violation of provision of Section 86(10) of DVAT Act. The said penalty was set-aside by this Appellate Tribunal subsequent upon the remand of the matter by the Hon'ble High Court.

This time the Assessing Authority opted to proceed against the dealer not u/s 86(10) of DVAT Act but, on the fresh ground of tax deficiency, i.e. u/s. 86(12) of DVAT Act. Bona-fide was no more a factor to be taken into



consideration so far as levy of penalty due to tax deficiency is concerned.

Chapter XIII pertains to Penalties and Offences. Once a dealer is subjected to penalty on the ground of his having violated one provision of Section 86 like sub-section (10) of the said section, i.e. furnishing of ~~false~~ return which is false, misleading or deceptive in a material particular, and the said penalty is set-aside, the Assessing Authority cannot proceed against the same dealer on the same facts alleging violation of some other provision of Section 86 like sub-section (12) of Section 86, i.e. on the ground of tax deficiency. In case the Assessing Authority opts to proceed ~~to proceed~~ against the dealer for another offence on the same facts on the basis of which earlier the dealer was issued notice of assessment for some other offence, it would be clearly a case of double jeopardy.

13. In view of the above discussion, we find that the assessment could not be framed by Assessing Authority u/s. 86(12) of DVAT Act.


14. As a result, the impugned order passed by Learned OHA and the impugned assessment made by Learned Assessing Authority deserve to be set-aside. While allowing this appeal, the impugned order and the impugned assessment are hereby set-aside.




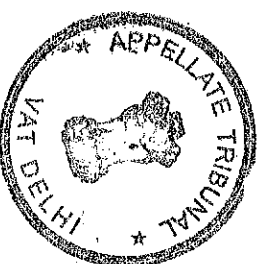
15. File be consigned to the record room. Copy of the judgment be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website

Announced in open Court.

Date : 23/05/2022

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)





Appeal No. 222/ATNAT/17/4468-75

Dated: 24/5/22

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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