

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

Appeal No. 380/ATVAT/2008 &
Appeal Nos. 16 to 25/ATVAT/2009
Date of Judgment: 18/5/2022.

M/s Arkay Radios,
4162, Naya Bazar,
Delhi-110006.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. S. Sangal.
Counsel representing the Revenue : Sh. M. L. Garg.

JUDGMENT

Appeal No. 380/ATVAT/2008

1. On 29/8/2008 dealer – appellant filed appeal No. 380/2008 challenging order dated 26/6/2008 passed by learned Joint Commissioner (V) - Objection Hearing Authority (OHA). Vide impugned order, learned OHA rejected the objections filed by the dealer u/s 74(1) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act). The matter pertains to tax period 1/4/2005 to 31/3/2006.

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2. Vide order dated 18/2/2008, learned Assessing Authority rejected the claim of the applicant for refund, the reason being that dealer failed to file DVAT-53 & 54 within the prescribed period as provided under Rule 30A of DVAT Rules, to take advantage of provisions of section 105(4) of DVAT Act.
3. Vide order dated 18/2/2008, learned VATO – Special Zone had dismissed application dated 11/6/2007 filed by the dealer, seeking condonation of delay in filing forms DVAT-53 & 54 and for review of the order dated 8/5/2007. Learned VATO dismissed the application due to the reason that there is no provision in DVAT Act for such condonation of delay.
4. While disposing of the objections ^{observed} learned OHA that the objector had failed to comply with the requirement of Rule 30A of DVAT Rule 2005 and therefore, inordinate delay in filing of forms DVAT 53 & 54 could not be condoned.
5. Learned OHA also observed as under :-

“The notification inserting Rule 30A was issued on 30/11/2005. In the present case, since the objector is a quarterly return filer, the DVAT-53 & 54 were required to be filed by the objector alongwith the return for the third quarter of 2005-06 which was to be filed by 15/2/2006. The objector even failed to file DVAT-53



& 54 alongwith the return for 4th quarter of 2005-06 and thereafter with every quarterly return upto 31/3/2007.

The objector in the statement of fact has stated that in view of retrospective insertion of sub section (4) in section 105 the objector had revised his returns for 1st and 3rd quarter of 2005-06 but on the contrary the objector claims that he had no knowledge about the introduction of new rule 30A, in DVAT Rule 2005 according to which DVAT-53 & 54 were to be filed by a prescribed date. How is it possible that the objector was aware about the insertion of sub section (4) in section 105 and was not aware about the insertion of rule 30A in DVAT Rule 2005 which are interrelated. The statements of the objector are contradictory which erode the veracity of the claim/contention.

Here it is relevant to highlight that the proviso to sub rule (1) of Rule 30A lays down a categorical stipulation stating that "Provided that where a dealer fails to furnish a statement in form DVAT 53, complete in all respects, within the time so prescribed, his liability to pay tax shall not be discharged in accordance with the provisions of sub-section (4) of section 105 and he shall be liable to pay tax at the rates specified in section 4."

Further, sub-rule 2 of Rule 30A clearly lays down that the dealer who is eligible and liable to discharge his tax liability under the Act in accordance with the provisions of sub-section (4) of section 105 and has submitted the statement in form DVAT-53 in accordance with provisions of sub-rule (1), he shall furnish



information in form DVAT-54 alongwith his return in form DVAT-16 for each and every tax period ending upto 31/3/2007.

Provided that a return furnished for any tax period in the absence of duly filled in, signed and completed DVAT-54 shall be treated as invalid and incorrect.

In the present case the objector has failed to fulfil the conditions laid down in rule 30A for availing the benefit of sub section (4) of section 105, hence it is difficult to accede to the request of the objector. In the case filed by M/s. Kone Elevator India (P) Ltd., before this forum same question of law was involved. In the said case also the benefit u/s 105(4) was denied because the dealer had failed to file DVAT-53 & 54 within the prescribed time.”

6. Section 105(4) of DVAT Act was inserted vide notification dated 16/11/2005 came into force w.e.f. 1/4/2005; Rule 30A of DVAT Rules came into force w.e.f. 30/11/2005, vide notification of the same date.
7. It may be mentioned here that the dealer also filed application u/s 49A of DVAT Act, before the Commissioner on 6/10/2014, i.e. after the disposal of the aforesaid objections. The Commissioner dismissed the application and the dealer filed appeal No. 07/2019. The said appeal has been dismissed by this Appellate Tribunal vide separate judgment of even date.



8. Record reveals that assessment was made by the Assessing Authority on 23/4/2008, for the 1st, 2nd, 3rd & 4th quarter of 2005-06 and also in respect of 1st quarter of 2006-07. The Assessing Authority clearly observed that DVAT 53 & 54 were not filed by the dealer – assessee within the prescribed period, i.e. by 28/1/2006.

As submitted by learned counsel for the appellant, DVAT-53 & 54 were filed on 6/3/2007, i.e. beyond the prescribed period. As a result, claim of the dealer for refund was rejected, without taking into consideration DVAT-53 & 54 which were belatedly filed. Objections were filed by the dealer against the said assessment but learned OHA dismissed the objections.

In the course of arguments, it is admitted by learned counsel for the appellant that dealer was aware of the amendments made in DVAT Act and ^{that is} ~~i.e.~~ why he filed revised returns on 23/1/2006 in respect of 1st & 2nd quarter of 2005-06, and also presented returns in respect of 3rd & 4th quarter of 2005-06 on 28/1/2006 & 27/4/2006 respectively.

9. In the given facts and circumstances, when the dealer failed to file DVAT-53 & 54 within the prescribed time, it should have filed an application before the Commissioner under section 49A soon before or after filing of revised returns. The dealer –



appellant filed application under section 49A of DVAT Act, before the Commissioner seeking extension of time^{after} more than 8 years of the filing of the revised returns and more than five years of the rejection of the objections. In the course of arguments, learned counsel for the dealer has not been able to explain as to why the application u/s 49A was filed after more than 8 years of the filing of the revised returns and that too after the dismissal of the objections by learned OHA.

10. In view of the above discussion, we do not find any merit in appeal No. 380/2008. Same is hereby dismissed.

Appeal Nos. 16 to 25/ATVAT/2009

11. By way of these appeals, dealer has challenged order dated 9/2/2009 passed by learned Joint Commissioner-V- OHA. Vide impugned order, learned OHA rejected all the 10 objections filed by the dealer u/s 74(1) of DVAT Act. The objections were filed so as to challenge default assessment of tax and interest levied u/s 32 of DVAT Act and assessment of penalty framed u/s 33 of DVAT Act-2004.

Following table depicts the additional demand of tax and interest raised by learned Assessing Authority, in addition to that of penalty;

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| S. No | Obj. No. | Period of Objection | Obj. u/s | Disputed Amount | | | |
|-------|----------|-------------------------|----------|-----------------|--------|---------|--------|
| | | | | Tax | Intt. | Penalty | Total |
| 1. | 160 | 1/04/2005 to 30/06/2005 | 32 | 39533 | 16181 | - | 55714 |
| 2. | 161 | 1/04/2005 to 30/06/2005 | 33 | - | - | 39533 | 39533 |
| 3. | 162 | 1/07/2005 to 30/09/2005 | 32 | 341155 | 126601 | - | 467756 |
| 4. | 163 | 1/07/2005 to 30/09/2005 | 33 | - | - | 341155 | 341155 |
| 5. | 164 | 1/10/2005 to 31/12/2005 | 32 | 269616 | 89638 | - | 359254 |
| 6. | 165 | 1/10/2005 to 31/12/2005 | 33 | - | - | 269616 | 269616 |
| 7. | 166 | 1/01/2006 to 31/03/2006 | 32 | 88475 | 26033 | - | 114508 |
| 8. | 167 | 1/01/2006 to 31/03/2006 | 33 | - | - | 88475 | 88475 |
| 9. | 168 | 1/04/2006 to 30/06/2006 | 32 | 132571 | 44838 | - | 177409 |
| 10. | 169 | 1/04/2006 to 30/06/2006 | 33 | - | - | 132571 | 132571 |

12. Arguments heard. File perused.

13. Learned Counsel for the dealer-appellant has submitted that benefit of provision of section 105(4) of DVAT Act has been declined thereby rejecting the claim of the dealer and levying tax @12.5%, simply on the ground that the dealer did not file DVAT 53 and DVAT 54 within the period prescribed, i.e. by 28-01-2006 and instead presented the same before the Assessing Authority on 06-03-2007. The contention is that the notification as regards insertion of section 105(4) of DVAT Act was issued on 16-11-2005, effective from 01-04-2005, notification dated 30-11-2005 as regards insertion of Rule 30(A) in DVAT Rules came into effect from the said date, i.e. 30-11-2005, the Assessing Authority should have accepted



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DVAT 53 and DVAT 54 even though filed on 06-03-2007. Learned Counsel has thereafter urged that the impugned order passed by Learned OHA upholding the assessments framed by the Assessing Authority by way of additional tax and interest and the five assessments levying penalty u/s 33 of DVAT Act deserve to be set aside.

14. On the other hand, Learned Counsel for the Revenue has submitted that filing of DVAT 53 and DVAT 54 within the prescribed period, i.e. by 28-01-2006 was essential to claim refund, but the dealer having failed to comply with the provisions of law, learned Assessing Authority was justified in not taking into consideration of DVAT 53 and DVAT 54 presented subsequent^{ly} on 06-03-2007. Learned Counsel for the Revenue has further submitted that this is a case where the dealer was well aware of the amendments and insertion in law, in as much as it filed revised returns relating to 1st and 2nd quarter^s of 2005-06 on 23-01-2006 and also submitted original returns pertaining to 3rd and 4th quarter of 2005-06 on 28-01-2006 and 27-04-2006 respectively, but the dealer did not comply^{with} statutory requirement of furnishing of DVAT 53 and DVAT 54, and as such the appeals deserve to be dismissed.

15. Learned Assessing Authority framed assessment u/s. 32 of DVAT Act, taking into consideration that the dealer did not



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filed DVAT 53 & DVAT 54 within time. The assessments of tax and interest pertain to 1st, 2nd, 3rd and 4th quarter^s of 2005-06 and 1st quarter of 2006-07. Five penalties levied by Learned Assessing Authority also pertain to the aforesaid tax periods.

16. Admittedly, DVAT 53 & DVAT 54 were to be submitted by the dealer by 28-01-2006 and the dealer did not file the same with the requisite returns by the said date and presented the same on 06/03/2007. It was for the dealer to explain the delay in filing of the DVAT 53 & DVAT 54 beyond the prescribed period. Further, admittedly, no application was submitted by the dealer before the Assessing Authority at the time he submitted DVAT 53 & DVAT 54, i.e. on 06-03-2007.

From an order dated 18/02/2018 passed by Learned VATO, we find that an application addressed to VATO – 29 seeking condonation of delay in filing of DVAT 53 & DVAT 54 was presented on 11/06/2007.

Rule 49 A of DVAT Rules, 2005 empowers the Commissioner to extend period prescribed for doing a certain act. Rule 49(A) came to be inserted vide notification dated 30/11/2005. Undisputedly, no application or extension of time was therefore maintainable before Learned Assessing Authority. Admittedly, the application filed before Learned VATO came to be



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dismissed on 18/02/2008. It was only thereafter on 06/10/14, i.e. after 6 years of the passing of order dated 18/02/18 that the dealer filed an application under Rule 49A before the Commissioner . No explanation has been put-forth by the Learned Counsel for the appellant as to why application under Rule 49A was not filed before the Commissioner even before filing of the revised return, i.e. before 23/01/2008 or before furnishing of DVAT 53 & DVAT 54 before the Assessing Authority.

17. Learned Counsel for the dealer – appellant has submitted that in the returns, the dealer had statements depicting particulars of the works contract which had not yet finalised, so as to comply with the provisions of Section 105(4) of DVAT Act. In the course of arguments we enquired from Learned Counsel for the appellant as to which of the contract was completed on which date, and as to whether such information was made available to the Assessing Authority. Learned counsel candidly admits that no such information is available with him and further that no such information was made available to the Assessing Authority. When the statements said to have been submitted by way of substitute of DVAT 53 & DVAT 54 did not contain material information, as was required to be furnished in these two forms, Learned counsel has realized the significance of furnishing of DVAT 53 & DVAT 54 to the Assessing



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Authority, and not disputed that in absence of all the relevant particulars, the Assessing Authority could not rely on the mere statements furnished by the dealer regarding pending works contract.

18. In the given facts and circumstances, when the dealer fully aware of the amendments made in law, filed revised returns but opted not to file DVAT 53 & DVAT 54 within the prescribed period, and failed to seek extension of time from the Learned Commissioner under Rule 49A of DVAT Rules, within a reasonable time, we do not find any merit in the contention raised by the Learned Counsel for the appellant that the department erred in making assessments as regards tax or that Learned OHA was not justified in upholding the same.
19. However, it is significant to note that for the 1st and 2nd quarter of 2005-06 the dealer admittedly deposited tax @ 12.5%. With the deposit of tax at this rate by the dealer, learned Assessing Authority was not justified in levying interest as regards these 2 tax periods. Therefore, demand of interest in respect of 1st and 2nd quarter of 2005-06 deserved to be set aside, but learned OHA upheld the same without any justification. Accordingly, the impugned order ^{in as much as it pertained to} and demand of interest ⁱⁿ respect of 1st and 2nd quarter of 2005-06 is hereby set aside.



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20. As regards levy of penalties, Learned Assessing Authority levied the same u/s. 33 of DVAT Act read with 86(10) of DVAT Act on the ground of tax deficiency.

Firstly, in case of tax deficiency, the relevant provision for imposition of penalty is section 86 (12) of DVAT Act. Sub section (10) of section 86 pertains to violation where any person furnishes a false, misleading or deceptive in a material particular or where a person omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular.

21. Here, in the notice u/s.33 of DVAT Act, Learned Assessing Authority has not given any reasons for levying of said penalty for tax deficiency. Without specific reasons and violation, Learned Assessing Authority could not levy penalty under this provision of law. While dealing with the objections, Learned OHA did not give any reason or expressed any opinion that the orders of penalties were being upheld. Learned OHA rejected the objections; therefore, we found that this is a matter where levy of penalty passed by Learned Assessing Authority, without specification of the effects/allegations, has been upheld by Learned OHA without any reasons. Therefore, the impugned orders passed by the Learned OHA and the



impugned assessments of penalties as regards the levy of penalty deserves to be set-aside.

22. Result

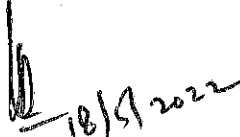
As a result, the appeal No. 380/2008 pertaining to levy of tax and interest is dismissed.

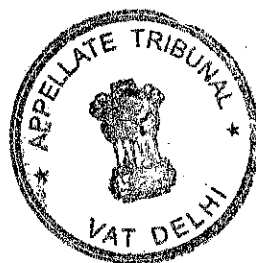
Appeal Nos. 16, 18, 20, 22 and 24/ATVAT/2009 pertaining to levy of tax are dismissed; appeals No. 16 & 18 in respect of interest are allowed, but other three appeals challenging interest are dismissed; ~~Whereas~~ ^m Appeal Nos. 17,19,21,23 and 25/ATVAT/2009 pertaining to levy of penalty are allowed.

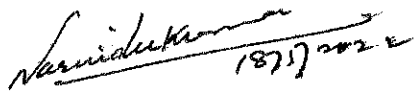
23. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 18/05/2022


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 380/ATVAT/2008 & 16 to 25/ATVAT/2009 / 4436-43

Dated: 20/05/2022

Copy to:-

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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

