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

Appeal Nos : 1017-1020/ATVAT/2011
& 193-212/ATVAT/13
Date of Decision : 02/06/2022

M/s Dish TV India (P) Ltd.,
B-10, Lawrence Road,
Industrial Area,
New Delhi-1100 35. .....Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. Vivek Sarin.
Counsel representing the Revenue : Sh.P. Tara.

JUDGMENT

Appeals No. 1017-1020/ATVAT/11

1. These appeals pertain to tax period October, 2007 and Feb., 2008.

2. Dealer is involved in the business of supply, installation, repair, replacement and maintenance of Set Top Boxes and has obtained registration under the Delhi Value Added Tax Act,

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2004 having Tin No. 07100296558.

3. Vide order dated 26/8/2011, learned Special Commissioner-I - Objection Hearing Authority (OHA), disposed of objections filed by the dealer – appellant – assessee while observing that it was a case of suppression of sales and furnishing of false, misleading or deceptive return, in material particular, and as a result the default assessment of tax and interest framed and imposition of penaltyby VATO (Audit), upon the dealer-appellant company have been upheld.

4. As per default assessment of tax and interest, u/s 32 of Delhi Value Added Tax Act-2004 (here-in-after referred to as the DVAT Act), the Assessing Authority had directed the dealer to pay a sum of Rs. 18,01,381/-, i.e. Rs. 13,53,585/- towards tax and Rs. 4,47,796/- towards interest.

Vide separate notice u/s 33 of DVAT Act, the Assessing Authority imposed penalty of Rs. 13,53,585/- upon the dealer-appellant u/s 86 of DVAT Act.

5. Reasons for levy of tax and interest, as borne out from the assessment orders are as under :-

"The dealer is importing some of the equipments like set top box, LNB etc. and procuring some equipment locally like Dist etc. The

approximate purchase priceof the major items which are provided to the customers of the Co. as part of the antenna system use to receive the signals is as follows :-

a) STB Rs. 1,600/-

b) Cable Rs. 72/-

c) Dish Rs. 261/-

d) LNB Rs. 123/-

Total Rs. – 2,056/-

The copies of the sale bills have been procured from the dealer from which it is seems that approximate sale price of the combined system (STB+Cable+Dish+LNB) is as low as Rs. 924/-.

As per the own admission of the authorized signatory, the sale price during the year has been as low as Rs. 1200/- for the combined system.

The dealer is taking subscription on monthly basis from the subscribers of the DTYH service and thereby compensating its loss in this way.

This is also in contravention of section 40A of DVAT Act, 2004 which states that 'If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provisions of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may by the said order, provide for the increase or decrease in the amount of tax payable by any person or

dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to contract any tax advantage obtained by the dealer from or under the arrangement.'

Therefore, it is apparent that the dealer is selling at a price which is much below the cost of purchase and I am of the opinion that the dealer is suppressing sales and therefore local sale is enhanced by 2 times that of return version. Hence, demand of Rs. 13,53,585/- is assessed alongwith interest".

For the aforesaid reasons, Assessing Authority also imposed penalty under section 86(10) of DVAT Act and framed assessment under section 33.

6. While disposing of the objections filed by the dealer, learned OHA observed in the manner as :-

"On the basis of the sales & purchases, the objector filed return regularly showing details of his sales and purchases as detailed by the DR. Goods worth Rs. 24,76,34,939/- has been procured from Delhi and Input Tax credit to the tune of Rs. 99,90,612/- has been taken and VAT has been deposited. The objector has made Inter State Sales of Rs. 62,06,700/- and stock has been transferred worth Rs. 2,05,96,54,686/- against C & F Form. Thus the objector has availed all the facilities and concessional rate of tax provided under the DVAT Act 2004 and CST Act 1956.

The audited balance sheet too supports that the objector is selling goods related to DTH services and after sale installs these goods at their premises and earns profit from the services provided to them. Moreover the VAT Tax deposited by the objector is not from his own pocket but it is from the income of the Customers / Public which is paid to the objector on the basis of the invoices issued to them by the objector when they receive the goods. The objector has full knowledge that the goods he is selling attracts VAT and he is not giving to the customers on right to use basis as filled in his returns.He has nowhere claimed in his returns that he has given the goods to the customer on right to use basis.

The judgment of the Hon'ble Supreme Court of India in the matter of Bharat Sanchar Nigam Ltd & others Vs UOI & others (2006) 145 STC (SC) does not apply in this case as the facts and circumstances are different from this case. No where it states that the such type of firms may on the one hand take all benefits like Statutory forms, ITC etc. from the Government and on the other, at the stage of appeal take a plea that their goods do not attract Sales Tax as the goods are installed for right to use only for the Customers. The license issued u/s 4 of the Indian Telegraph Act 1985 & Indian Wireless Telegraph Act 1933 does not prohibit the licensee from entering into purchase and sales of goods in the ordinary course of business. Obtaining registration under DVAT Act & CST Act holding TIN 07100296558 is in itself a proof of the intention to enter into trading business. Providing Antenna, accessories set top boxes, LNB cables, VC Cards and Dish Antennae are all goods

under DVAT Act 2004. Besides goods have been procured, all facilities of tax rebate has been taken by the objector, but due VAT has not been paid. The dominant intention of the objector is to sell the goods and take all the benefits from the Govt.

I further *found* that the sales have been suppressed at least three times. The objector has admitted that the landed cost / cost price of one equipment is Rs. 2,056/- and he is selling for Rs. 984/- which means he is selling at a much below cost price and thus cannot be treated as a fair market value as defined in sec 2(i) of DVAT Act.
The goods sold by the objector squarely come within the meaning defined in sec 2(m) of DVAT Act. He admitted before that he is selling the goods at such a low rate just to broaden the customer base in view of competition in the market by other similar companies. Handling competition in the market cannot be at the cost of revenue due to the Govt.In fact from the argument put forward by the objector I found that the objector is earning profit from the services provided by him to customers and recovering the loss from the sale of the Set top Boxes at a much lower price. This arrangement cannot be accepted as fair market value of goods.

The landed cost of the equipment is Rs. 2,056/- with Gross profit, Administrative & installing expenses etc. The market sale price is bound to be much higher. His intention appears to be to reduce the OutPut Tax and take the benefit of InPut Tax, and by this arrangement he is not only recovering the loss by providing the services of broadcasting but recovering the loss from the VAT

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Deptt.

During the instant year the objector has claimed and took benefit of ITC for the sum of Rs. 99,90,612/-(Rupees Ninety nine lacs ninety thousand six hundred and twelve only) against the purchases of Rs. 24,76,34,939/-(Rupees Twenty four crores seventy six lacs thirty four thousand nine hundred and thirty nine only). It is clear that the fair market price of these goods is much more than the price at which he is selling. Thus the AA has rightly enhanced the local / Delhi Sales at least by two times".

Appeal No. 193-212/2013

7. These appeals pertain to the tax period April 2007, May 2007, June'07, July'07, August'07, September'07, November'07, December'07, January'08 and March'08.

Almost due to the abovesaid reasons, Learned Assessing Authority on 23/02/2010 / 19/03/10, framed assessment of tax and interest u/s. 32 of DVAT Act and called upon the dealer – appellant to deposit a sum of Rs. 8,71,346/- so far as tax period April'2007 is concerned.

For the same reasons and for same tax period, Learned Assessing Authority imposed penalty upon the Dealer-

Appellant u/s. 86(10) of DVAT Act read with Section 33 of DVAT Act.

It may be mentioned here that almost for the same reasons, Learned Assessing Authority framed assessments for the other tax period- May 2007, June'07, July'07, August'07, September'07, November'07, December'07, January'08 and March'08.

Penalty u/s 33 of DVAT Act on account of violation of provision of Section 86 (10) of DVAT Act also came to be imposed by Learned Assessing Authority upon the dealer-appellant as regards the same tax period.

Feeling aggrieved by above assessments of tax, interest and levy of penalty, dealer-appellant filed objections u/s 74 of DVAT Act. Vide order date 25-02-2013, Learned Additional Commissioner IV-IX learned OHA disposed of the objections upholding the assessments framed by Assessing Authority as regards tax, interest and penalty.

Hence, this set of appeal presented on 17-05-2013.

8. Both the above captioned set of appeals are being taken up together as common questions are involved, as rightly submitted by learned counsel for the parties.

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9. Arguments heard. File perused.

10. Ld. Counsel for the dealer-appellant has contended that while framing assessment, the Assessing Authority was required to see as to what was the fair market value of the goods and as to at which price the dealer-appellant was selling the same, but the Assessing Authority did not conduct any enquiry in this regard.

"Fair Market Value" has been defined under Section 2(l) of DVAT Act, whichreads as under:-

> Section 2 (l) : " Fair market value means the value at which goods of like kind and quality are sold or would be sold in the same quantities between unrelated parties in the open market in Delhi."

To be specific, the contention raised by Ld. Counsel for the dealer is that the Assessing Authority did not join any one from the market to find out the value at which goods of the like kind and quality were being sold on behalf of the unrelated parties in the open market in Delhi.

While referring to the observation made by the Assessing Authority regarding sale of the product by the dealer as low as Rs.924/-, it is submitted on behalf of the dealer that this observation made by the Assessing Authority is against record

as there are invoices which would reveal the price as Rs. 1825/- , Rs. 2000/- and Rs,2538/-, at which the product was sold. In this regard, reference was made particularly to the invoices available at Page 137 (October 2007), invoices from Page 150 onwards (pertaining to October 2007); Page 165, the invoices (pertaining to February 2008) and then to page 166, the invoices which depicts the sale price as Rs. 924/-.

Ld. Counsel for the dealer-appellant submitted that dealer is at liberty even to give its product free or at lowest price.

At the same time, in the beginning, the contention raised by Ld. Counsel for the dealer was that the dealer did not indulge in sale of the product and rather, this is a case where right to use the said product was given by the dealer to the other party, the dealer being a service provider.

11. Learned counsel for the Revenue has submitted that from the material available on record, it can safely be said that in all these matters, there being transfer of right to use the set of Set-Top-Box (STB), the transactions were of sale and exigible to tax under the charging Section 3 of DVAT Act. In this regard, Learned counsel has also referred to the provisions of Section 2(zc)(vi) and Section 2(zd)(iii) of DVAT Act.

12. As noticed above, initially when learned counsel for the appellant opened arguments he contended that the dealer did not indulge in sale of the product and rather, this is a case where right to use the said product was given by the dealer to the other party, the dealer being a service provider.

However, subsequently while replying to the contentions raised on behalf of the Revenue, learned counsel for the dealer-appellant candidly admitted that this is a case of deemed sale because of transfer of right to use the said products. Even in the written arguments submitted today, it has specifically been mentioned that in the present cases admittedly transactions are transfer of right to use. So, this is a case of admission that the transactions to which the matters pertain are of deemed sale of goods by the dealer-appellant on account of transfer of right to use the said products.

Section 40 A of DVAT Act

13. The Assessing Authority and Ld. OHA have observed that the products were sold by the dealer at the lowest price to cause loss to the revenue, while violating the provisions of tax statute. In this regard, reference has been made to provisions of Section 40 A of DVAT Act .

Section 40 A reads as under:-

"If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then, the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not, such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate **so as to counteract any tax advantage** obtained by that dealer from or under the arrangement.

(2) For the purposes of this section –

(a) "arrangement" includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(b) "tax advantage" includes, -

(i) any reduction in the liability of any dealer to pay tax,

(ii) any increase in the entitlement of any dealer to claim input tax credit or refund,

(iii) any reduction in the sale price or purchase price

receivable or payable by any dealer."

While referring to the decision in **S.R. Bommai and others v. Union of India of others**, (1994) 3 Supreme Court Cases 1 - to explain the word 'satisfied' , and to point out that it includes furnishing of sufficient proof or information,

On this point reference has also been made to decision in **Swati Menthol and Allied Chemicals Pvt. Limited v. Assistant Commissioner (Assessment) II, Trade & Tax, Rampur,** (2010) 27 VST 31 (AII) to point out that satisfaction of the Revenue officer is not purely subjective but has to be based upon ~~relative~~ relevant material ~~matter~~ and that proceedings are not to be initiated with a view to launch a fishing and roving enquiry on the off chances of finding some escapement of tax.

While referring to the word 'satisfied' referred to above in Section 40 A, Ld. Counsel for the dealer – appellant contended that to attract said provisions, firstly the Commissioner was to satisfy that there was some contract between dealers to defeat the application or purposes of the Act or any provisions of this Act; secondly the Commissioner was to declare by order any such arrangement to be null and void.

Ld. Counsel for appellant has pointed out that no such satisfaction was recorded by the Assessing Authority or by the

Ld. OHA; that no other party was identified by the revenue authorities; that even no such contract was identified by them. According to Ld. Counsel, evidence was required to be collected by the revenue, but no effort was made to collect the same. Revenue authorities also did not make any effort to find out as to what was the contemporary fair market value during the said period.

Learned counsel for the appellant has contended that the department did not collect any sufficient proof or information so as to record its satisfaction, and as such provisions of 40 A of DVAT Act are not attracted at all.

In support of the submissions learned counsel has referred to decision in **Jayalakshmi Traders v. Government of Tamil Nadu and Others,** (1997) 105 STC 337 (Mad).

On behalf of the dealer-appellant, reference has also made to decision in **Commissioner, Sales Tax, UP, Lucknow v. Saurashtra Chemicals,** (1996) 100 STC 0448, wherein the Tribunal issued directions for acceptance of the accounts books, while observing that no suppression had been found in the quantity of receipts shown in the books; that no specific instance was pointed out in respect of which claim of granting of discount was found to be false or wrong; that the accounts

books of the dealer could not be rejected merely on the ground that the excess discount had been allowed by the dealer, when the accounts books were duly audited, there was no adverse survey and the figures shown in the accounts books were accepted.

14. On the other hand, while referring to the provisions of Section 40A of DVAT Act, learned counsel for the Revenue has submitted that in view of the material available on record, including the documents produced by the dealer-appellant itself, it can safely be said that this is a case of arrangement between the parties as a result of collusion to evade tax, and learned Assessing Authority and learned OHA have rightly concluded so.

15. Learned counsel for the Revenue has also referred to copies of the invoices placed on record by the dealer-appellant and pointed out that whereas in one invoice (available at Page No. 171 of Appeal No. 1017-1020/11), the price of the item finds mention as Rs. 924/-, in the other two copies of invoices (available at Page No. 174 and 180 of the same appeal file), the price of the same item finds mentioned as Rs. 2,538/-.

From this difference in the price of the same item, learned counsel for the Revenue has submitted that this is a clear case

of suppression of sale by the dealer and that the Assessing Authority correctly framed assessments, and learned OHA rightly upheld the same, for the reasons recorded in the impugned order.

Learned counsel for the Revenue has referred to decision by the Hon'ble High Court of Tripura in case W.P.(C) No. 563 of 2010, **Bharti Telemidia Ltd. vs. The State of Tripura &Ors.** on 19/02/2015 and submitted that the Department has correctly determined value of the subject goods.

16. It is true that copies of the invoices placed on record by the dealer-appellant and as pointed out by learned counsel for the Revenue in one invoice (available at Page No. 171 of Appeal No. 1017-1020/11), the price of the item finds mention as Rs. 924/-, in the other two copies of invoices (available at Page No. 174 and 180 of the same appeal file), the price of the same item finds mentioned as Rs. 2,538/-, but only from this difference in the prices at which the said set of products was sold to different dealers, it cannot be said that it is a case of suppression of sale.

Had the dealer concealed transactions of sale or maintained wrong books of accounts regarding said transactions, it would have been a different matter, but it is not the case of the

Revenue that the dealer concealed any transaction of sale or it did not properly/or correctly maintain books of accounts depicting true entries of transactions.

Learned Assessing Authority opined it to be a case of suppression of sale due to the reason that the dealer was selling the product at the price much below the cost of purchase. However, this ground also cannot lead to the conclusion that it is a case of suppression of sale.

17. As regards collusion or arrangement between the dealer and anyone else, record does not reveal that any enquiry was conducted by the learned Assessing Authority or by learned OHA on this point.

18. On behalf of the appellant, reference has rightly been made to decision in **Shrisht Dhawan (SMT) v. M/s. Shaw Brothers** (1992) 1 Supreme Court Cases 534, to point out that in the present set of appeals, Revenue Authorities did not apply their mind and further that the assessments were made and upheld without regard to the above mentioned facts even without conducting enquiry, and as such the same deserve to be set-aside.

19. In view of decision in **Walia Enterprises, Amritsar v. Collector of Customs and Central Excise, Chandigarh**, 1987 (32) ELT 774 (Tribunal), cited by learned counsel for the appellant it was for the Revenue Authorities to make necessary investigation and only thereafter to make assessments.

In the above said decision, Hon'ble Special Bench of CEGAT, New Delhi observed that as per well settled law, the burden of proving the charge of under valuation lies squarely on the department; that it is their duty to make necessary investigation with regard to the price at which goods of like kind and quality were being imported; that the onus of proving mis-declaration regarding the price mentioned in the bill of entry was also on the department, and that the said onus can be discharged by the department only on proving of proper facts which would discredit the price mentioned in the bill.

It does not make any difference if the said decision pertained to customs valuation/ under valuation.

IN the course of arguments, learned counsel for appellant submitted that only Commissioner could exercise powers under Section 40A of DVAT Act. On the other hand, learned counsel for Revenue has submitted copy of a circular whereby these powers were delegated by the Commissioner.

Even if Commissioner had delegated powers under Section 40A of DVAT Act, as per copy of the circular submitted on behalf of the Revenue, this is a case where department has recorded findings of arrangement and collusion, without conducting enquiry as required under the law.

20. In view of the above decisions and applying the same to the facts of the present case, we find that in the absence of any thorough investigation or enquiry into the matter by the Assessing Authority or by learned OHA, it cannot be said to be a case of collusion or arrangement between the dealer and anyone else, so as to attract the provisions of Section 40A of DVAT Act.

Furthermore, as per requirement of law, in case of any such arrangement, same is to be declared null and void. But, here, we do not find any such declaration by the department. No explanation has come forth from the side of Revenue in this regard.

21. While referring to the observations made by the Assessing Authority on the point of competition, Ld. Counsel for the dealer-appellant submitted that there were other dealers in the open market dealing with the same product, like TATA Sky, Bharti Airtel, Sun Direct, etc. and that in the given situation,

when there was competition in the market, the dealer was free to sell the product at the price what it desired, even if it was the lowest price, as otherwise, the survival of the dealer would have become difficult.

On behalf of the dealer – appellant, learned counsel for the appellant has submitted that tax authority cannot issue dictate to the dealer as to how to conduct business. In this regard, reference was made to the following observations made by the Hon'ble High Court of Allahabad, in Saurashtra Chemicals case (supra) :

> "It would be wrong to say that the Act clothe the taxing authority with any power or jurisdiction to dictate how a dealer or an assessee should conduct himself in his business affairs. It is essentially for the tax-payer to manage his business affairs or to conduct his business according to his wisdom or otherwise. In the instant case, if the assessee thought it proper in order to promote the sales or to push its product in the market to allow trade discount of varying amounts to its customers, depending upon the market situation and other relevant factors, the Revenue cannot legally object to it nor it can take any exception to the manner in which the assessee has conducted its business. The account books can be rejected only on the grounds which are well-established of which some reference has been made earlier. The claim of the assessee that it had sold the goods below the expected market

price, may be a warning to put the Revenue on alert which may call for a thorough and detailed scrutiny of the account books. However, if no adverse material is found despite the scrutiny, the account books cannot be rejected on suspicion and surmises alone. Where the genuineness and regularity of the accounts are not challenged, the accounts are relevant and are prima facie proof of the entries and the correctness thereof under section 34 of the Evidence Act. To put it differently, the rejection of account books cannot be made on a pretext. If the returns would be substantiated and the figures disclosed therein are verifiable from the account books in which no defect is noted, the assessing authority is not legally empowered to reject the account version and to proceed to make assessment on best judgment in disregard of the account books and the disclosed results."

Therefore, the contention raised by learned counsel for the dealer – appellant is that even if it has been observed by the revenue authorities that the dealer – appellant was competing with the other dealers in the market and reducing its sale price, it cannot be said to be a case of supersession of sale calling for levy of tax and interest.

Learned counsel for the appellant has also referred to the decision in **Hemraj Udyog v. Commissioner of Trade & Tax, U.P. Lucknow**, (1997) 105 STC 0418 and **Jayalakshmi Traders v. Government of Tamil Nadu and Others,** (1997)

105 STC 337 (Mad).

22. On the other hand, learned counsel for the Revenue has contended that this is a matter of unjust enrichment of the dealer as it indulged in suppression of sale, claimed crores by way of tax credit and caused loss to the exchequer on account of non-refund of the amount of tax credit so claimed. In this regard, learned counsel has referred to the provisions of Sections 9(1), (4), (6) and 10(2)of DVAT Act.

23. There is no doubt, that every dealer engaged in business is required to comply with the provisions of DVAT Act or other relevant statute so that there is no evasion of tax. Law empowers the Commissioner to take appropriate steps so as to counteract any tax advantage on account of any reduction in the sale price or purchase price receivable or payable by any dealer or on account of any increase in the entitlement of any dealer to claim input tax credit or refund or any reduction in the liability of any dealer to pay tax.

A perusal of the impugned assessments and the impugned orders would reveal that it came to the notice of the department that the dealer-appellant had availed of benefit of input tax credit; that the purchase price of set of products was about Rs. 2056/- but by way of various transactions the dealer

sold the same at a price much below the cost price. In the given situation, department was required to look into the validity of the claim of the dealer for input tax credit, keeping in mind the provisions of Sections 9 and 10 of DVAT Act, but we find that this significant aspect skipped the consideration of the department and the learned OHA.

As a result, the levy of tax and interest on the ground of suppression of sale and in view of provisions 40A of DVAT Act deserves to be set aside. We order accordingly.

As regards applicability of provisions of section 9 and 10(2) of DVAT Act, we cannot adjudicate as regards the point of concession of input tax credit already availed of by the dealer-appellant, the reason being that neither the Assessing Authority nor the Learned OHA took up this point for discussion and appropriate action under the law, for the reasons best known to them.

It was for the department to consider the impact of sale of the goods by the dealer in the manner indicated above, i.e. at a price lower than the cost price, especially when the dealer had claimed input tax credit. Department was required to look into as to whether the dealer had complied with or violated any of the provisions of section 9(2) of DVAT Act, by way of non

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refund of the amount, after having claimed the concession of input tax credit. But, no such step appears to have been taken.

However, in the given facts and circumstances and to save any loss to the exchequer by way of tax advantage on account of non-refund of input tax credit, due to sale of the set of product at a price lower than the actual purchase price, Assessing Authority shall be at liberty to initiate proceedings in this regard, in accordance with law and within the period prescribed calculating the same from the date of communication of present decision.

Penalty

24. As noticed above, the Assessing Authority levied penalty u/s 86(10), for the very reasons which weighed with the Assessing Authority for levy of tax and interest.

While assailing the imposition of penalty, learned counsel for the dealer – appellant referred to decision in **Bansal Dye Chem (P) Ltd. v. Commissioner Value Added Tax, Delhi &Anr.,** ST.APPL. 29/2015, decided by our own Hon'ble High Court on 24/9/2015.

On behalf of the dealer – appellant, reference has also been made to the decision in Challengers Computers Ltd. v.

Commissioner of Trade & Taxes, Delhi, 215 SC online Delhi 11319.

As regards decision in **Bansal Dye Chem (P) Ltd.'** case (supra), suffice it to say that decision in **Sales Tax Bar Association (Regd.) Vs. GNCTD,** WP (C) No. 4236/2012, by our own Hon'ble High Court, was not brought to the kind notice of the Hon'ble High Court by learned counsel for the parties appearing in the first mention case. In view of decision in Sales Tax Bar Association case (supra), decision in Bansal Dye does not come to the aid of the dealer – appellant.

But, when the levy of tax and interest has been set-aside, levy of penalty 86(10) of DVAT Act, deserves to be set aside. We order accordingly.

Result

25. As a result, all these appeals are disposed of and the impugned assessments and the impugned orders as regards levy of tax, interest and penalty, based on the ground of suppression of sale and keeping in view the provision of section 40A of DVAT Act are set-aside.

However, in the given facts and circumstances and to save any loss to the exchequer by way of tax advantage on account of

non-refund of input tax credit, due to sale of the set of product at a price lower than the actual purchase price, Assessing Authority shall be at liberty to proceed in accordance with law within the stipulated period from the date of communication of present decision, no doubt, after providing reasonable opportunity of being heard, to the dealer.

26. 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 : 2/6/2022

2/6/2022

(Rakesh Bali)
Member (A)

2/6/2022

(Narinder Kumar)
Member (J)

APPELLATE TRIBUNAL VAT DELHI

Appeal No. 1017-1020/ATVAT/11
193-212/ATVAT/13 | 4620-27

Dated: 03/06/22

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR 6/22

APPELLATE TRIBUNAL VAT DELHI