

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial)

Appeal Nos. : 753-759/ATVAT/11

Appeal Nos. : 760-766/ATVAT/11

Date of Judgment: 09/06/2022

M/s. Cardio Fitness Pvt. Ltd.

B-23, Industrial Area, Okhla Phase-II

New Delhi – 110 020.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

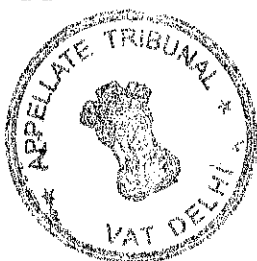
Counsel representing the Appellant : Sh. A.K.Babbar

Counsel representing the Revenue : Sh. S.B.Jain

JUDGMENT

1. The matter pertains to tax period April 2008, September 2008, October 2008, November 2008, December 2008, January 2009 & March 2009. The objections were filed in the year 2010 challenging default assessment of tax, interest and separate assessment of penalty framed on 13/21 of December, 2010.
2. As observed by the Assessing Authority in the impugned orders, the dealer failed to produce requisite record despite ample opportunities. In this regard, the relevant portion of the

Narinder Kumar
9/6/2022



assessment for the tax period April, 2008 is reproduced for ready reference. It reads as under :-

“Whereas I am satisfied that the dealer has furnished incomplete return or incorrect return or furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004 for the following reasons:

April 08: During the course of audit and test check of records such as DVAT-30/31, cash book ledger, sale/purchase vouchers, audited balance sheet for 2008-09 and other related documents, it was observed that the firm has been making central sale against C/F/I form. At the time of visit the dealer could not produce the complete records including the GR's of central sales and so he undertook to produce the documents mentioned in his statement on 17-11-10. Nobody appeared on that date. Sh. Biswas appeared on 18-11-10 and submitted some documents. He was again asked to produce some documents like Form-4/7 along with copy of GR's and details of capital assets sale and tax deposited on that, copy of all central sale against statutory forms along with GRs copy on 22-11-10. He again appeared on 22-11-10 and submitted Form-4/7 w/o mentioning the transportation details, therefore he was asked to produce the original file of central sale along with GRs, Form-4/7 and details of capital assets sale and tax deposited on that on 25-11-10. Sh. Biswas appeared on 25-11-10 and submitted Form-4/7, original central sale file, but again failed to give the details of tax deposited on capital assets sale as shown in their audited balance sheet of 2008-09. During the scrutiny of

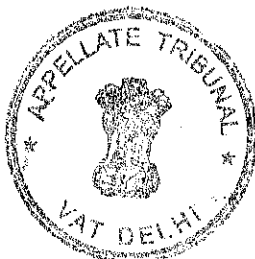


central sale invoices, Form-4/7 it was found that some central sale was not supported by GRs or to say the dealer has failed to prove the movements of goods outside Delhi in some of the central sale and showing these sales as central sale against C/f forms is nothing but an attempt of the dealer to deprive the State of its legitimate Tax. Hence central Sale shown against C form vide invoices no. 03 dt. 08-04-08 and 11 dt 18-04-08 for which the dealer failed to prove the movement of goods amounting to Rs. 1,67,828/- is rejected and treated as local sale and is taxed @12.5% being fitness equipments. However the benefit of CST paid is allowed.

The dealer has also failed to prove the movements of goods in r/o of stock transfer out vide invoices no. 13 dt 19-04-08. Hence stock transfer amounting to Rs. 9,03,840/- is rejected and treated as local sale and taxed @12.5% being fitness equipment parts.

The dealer is also claiming ITC on tax invoices where the Tin no. of the purchasing dealer is not mentioned and also on the retail invoices. Hence ITC claimed on the wrong invoices no. 012 dt 10-4-08 and 014 dt. 29-04-08 amounting to Rs. 3,487/- is disallowed. In view of the above fact, default assessment has been made and interest is also being charged @15% p.a.”

3. Almost for the same reasons, assessments pertaining to the other tax periods referred to above, were framed.



21/9/16

4. Separate assessments are stated to have been made imposing penalties due to the same reasons.
5. Feeling aggrieved by the above assessments, the objector filed objections before learned OHA in the year 2010. Learned OHA dismissed the objections. Hence, these appeals.
6. Arguments heard. File perused.
7. It finds mentioned in Para 8 of the impugned order passed by the Learned OHA that while filing objections and at the time of hearing on the objections, dealer – objector did not challenge the assessments as regards demands pertaining to the levy of tax on sale of capital assets, ITC on retail invoice, tax invoices where TIN number of purchasing dealer was not mentioned and also the other reasons recorded by the Learned Assessing Authority. What was challenged before Learned OHA was non-acceptance of the statutory forms submitted by the dealer.

Dealer – appellant has not filed copies of the DVAT 38. Learned Counsel for the dealer-appellant has gone through the copies of DVAT 38 available in his brief and found that the only ground of objection raised in DVAT 38 was rejection of the statutory forms.



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8. As regards the only ground of rejection of statutory forms, Learned Assessing Authority observed that the dealer had failed to prove movement of goods against said central sales.

At this stage, for ready reference the extract of the proceedings before Assessing Authority as regards opportunities provided to the dealer to produce relevant record, including GRs, is reproduced as finds mention in the Assessment Order pertaining to tax period April 2008:-

“During the course of audit and test check of records such as DVAT-30/31, cash book ledger, sale/purchase vouchers, audited balance sheet for 2008-09 and other related documents, it was observed that the firm has been making central sale against C/F/I form. At the time of visit the dealer could not produce the complete records including the GR's of central sales and so he undertook to produce the documents mentioned in his statement on 17-11-10. Nobody appeared on that date. Sh. Biswas appeared on 18-11-10 and submitted some documents. He was again asked to produce some documents like Form-4/7 along with copy of GR's and details of capital asset sale and tax deposited on that, copy of all central sale against statutory forms along with GRs copy on 22-11-10. He again appeared on 22-11-10 and submitted Form-4/7 w/o mentioning the transportation details, therefore he was asked to produce the original file of central sale along with



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GRs, Form-4/7 and details of capital asset sale and tax deposited on that on 25-11-10.”

9. As noticed above, at the time of audit, the dealer could not produce before the Audit Team complete records including GRs for Central Sales. Even before Learned Assessing Authority, the dealer failed to produce the record mentioned above.
10. In para No. 10 of the impugned order, Learned OHA observed that the objector – dealer had filed a worksheet showing details of GRs. On going through the worksheet, Learned OHA found that the dealer – objector had still not filed any proof regarding movement of goods in respect of sales as described in the table below:-

Month	Inv. No.	Inv. Date	
April 08	03	08-04-2008	Retail Invoice
Sept. 08	163	23-09-2008	Stock Transfer
Nov. 08	210	24-11-2008	Stock Transfer
Dec. 08	220	03-12-2008	Stock Transfer
	226	06-12-2008	Stock Transfer



	231	15-12-2008	Stock Transfer
Jan. 2009	255	06-01-2009	Stock Transfer
	262	13-01-2009	Stock Transfer
	275	28-01-2009	Stock Transfer
	282	31-01-2009	Stock Transfer
	284	31-01-2009	Stock Transfer
	287	31-01-2009	Retail Invoice
March 2009	330	20-03-2009	Stock Transfer
	346	31-03-2009	Stock Transfer

11. In the given situation, Learned OHA observed that there was no proof of movement of goods i.e. GRs having not been produced by the dealer, and ^{as much held} that the Assessing Authority had rightly rejected the claim. Learned OHA went on to record reasons as available in Para 13 of the impugned order, and ultimately observed that had the dealer actually transferred/ sold goods outside Delhi, it would have proved movement of each consignment by producing all the relevant documents, but the dealer had failed to do so and as such there was no ground for interference.

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12. It may be mentioned here that an application filed by the dealer – appellant for production of documents by way of additional evidence has been dismissed vide separate detailed order of even date.

13. With the rejection of the application, and no documents regarding proof of movement of consignment having been submitted, as observed by Learned Assessing Authority and by Learned OHA, the fact remains that the dealer has failed to establish its case as regards central sales, in respect of which it claimed benefit on the basis of statutory forms.

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For ~~the~~ reasons record^{ed} by the Assessing Authority and by *it is held that* Learned OHA, the statutory forms have been rightly rejected.

14. As regards stock transfer, Learned Assessing Authority clearly observed that the dealer had failed to prove movement of goods in respect of the invoices mentioned in the assessment orders. Learned OHA observed in Para 11 of the impugned order that the dealer submitted some documents in support of his claim as regards stock transfer but a perusal of the bills of courier companies M/s. AFL WIZ Express & M/s. Blaze flash Couriers, but there was no description of any item having been transferred. Learned OHA further observed that all the bills were unsigned. By way of application for additional evidence, which stands dismissed, no such document was sought to be



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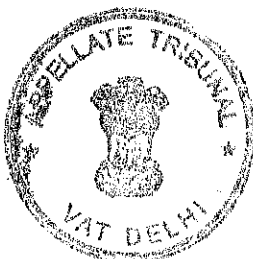
produced before this Appellate Tribunal. I find no reason to set-aside the findings recorded by learned OHA on this point as well.

15. Another argument advanced by the Learned Counsel for the appellant is that the assessment was framed by VATO (Audit), having no jurisdiction.

On the other hand, Learned Counsel for the Revenue has submitted that no such ground was raised by the dealer-appellant before Learned OHA and ^{further} that during the relevant tax period, VATO (Audit) was also delegated powers to frame assessment or reassessment as regards tax, interest and penalty.

16. As per Circular No. F.2(7)DVAT/L&J/2005-06/1028-1035 dated 31/10/2005, Learned Commissioner, VAT delegated powers to all the officers appointed under sub-section (2) of section 66 of Delhi Value Tax Act, 2004 not below the rank of Value Added Tax Officer, to audit the business affairs of dealer/ any person for (a) confirming the assessment under the review or (b) serve a notice of the assessment or reassessment of the amount of tax, interest and penalty.

In view of the specific delegations of the powers, there is no merit in this fresh ground raised on behalf of the dealer before this Appellate Tribunal for the first time.




22/9/6

17. As regards penalties, no argument has been advanced by Learned Counsel for the appellant.
18. In view of the above discussion, there being no merit in this appeal, with the rejection of the contentions, raised by Learned Counsel for the appellant all the appeals deserve to be dismissed. Same are hereby dismissed.
19. File be consigned to the record room. Copy of the order 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 : 09/06/2022


(Narinder Kumar)
Member (J)



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Appeal No. - 760-766/ATVAT/11

Dated: 10/06/22

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

