

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial)

Appeals No. : 247-248/15

Date of Judgment: 14/6/2022

M/s. Mideast Integrated Steels Ltd.,
H-1, Zamrudpur Community Centre,
Kailash Colony, New delhi-110048

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Ms. Reena Khair
Counsel representing the Revenue : Sh. P. Tara

JUDGMENT

1. On 13/7/2012, in respect of tax period 2008-09, 2009-10, 2010-11, 2011-12 & 2012-13, as regards the dealer-assessee-appellant, named above, Assessing Authority (Ward 88) framed assessment by way of notice of default assessment of tax, interest and penalty u/s 32 and 33 of DVAT Act by observing in the manner as:



“On scrutiny of the lease agreement it is observed that this agreement for leasing P 68 Observer-II Aeroplane (VT-TAA) is made at New Delhi on 3rd March 2008 between M/s. Mideast Integrated Steels Ltd “TESSOR” & M/s. Mesco Airlines Limited

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"LESSEE" H-1, Zamurudur Community Centre, Kailash Colony, New Delhi.

As per term & condition of lease agreement Page-2- Point No-8 sub-heading LEASE RENTAL CHARGES the "LESSEE" M/s. Mesco Airlines Limited shall pay FMC of Rs.6 lacks to the "LESSOR" by the first week of every week of every month.

And as per Point No. 07 Sub-heading PERIOD OF LEASE, DELIVERY AND RETURN OF AEROPLANE (7.1) The period of lease under this lease agreement shall be initially for a period of five year to be calculated from the day of its taking over at Delhi being the main base of P-68 Observer-II aeroplane (VT-TAA) (7.2) The proposed aeroplane shall be returned to the Lessor within the period of validity of this lease agreement or as mutually upon between both the parties.

SUBJECT OF PROPOSAL (1.1) The aeroplane will be flown for transporting passengers and their baggage within the prescribed limitations set forth by the manufacturers of the aeroplane with prior permission of the Civil Aviation Authority (1.2) This aeroplane will be operated under the provision of Air Operator Certificate issued by the Lessee by the DGCA and pursuant to and in compliance with the approved Operations manual.



The documents submitted by the Sh. Ashok Kumar, CA of the Company examined thoroughly and observed that the company has submitted a false/wrong information will fully regarding lease agreement between the above said two companies, which is the violation of provision of DVAT Act 2004. The dealer is trying to

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escape to submit the required information u/s 59(3) of DVAT Act 2004. Hence the penalty of Rs. 50,000/- has been imposed u/s 86(14) of DVAT Act 2004.

Accordingly on the information submitted by company and available on records & the above mentioned circumstances it is a clear cut case of outright sale transfer of right to use and the rent taken by company is treated as sale and taxed @20% along with interest. Penalty also imposed under section 86(10) read with section 33 of DVAT Act 2004.”

Total Liability of Tax, Interest & Penalty reads as under:

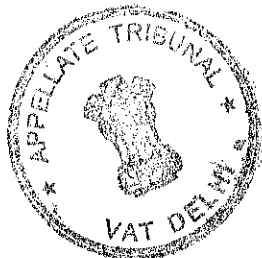
Sl. No	A.Y	Sale/Rent in Rs. 6,00,000/- PM	Taxed @ 20%	Interest @ 15%	Penalty u/s 86(10) and 86(14)	Total
01	2008-09	72,00,000/-	14,40,000/-	8,64,000/-	14,40,000/-	37,44,000/-
02	2009-10	72,00,000/-	14,40,000/-	6,48,000/-	14,40,000/-	35,28,000/-
03	2010-11	72,00,000/-	14,40,000/-	4,32,000/-	14,40,000/-	33,12,000/-
04	2011-12	72,00,000/-	14,40,000/-	2,16,000/-	14,40,000/-	30,96,000/-
05	2012-13	72,00,000/-	14,40,000/-	50,400/-	14,40,000/-	29,30,400/-
					50,000/-	50,000/-
					Grand Total	1,66,60,400



2. Feeling aggrieved by the said assessment, on 16th July, 2015 the dealer filed objections before learned Special Commissioner - II-OHA.
3. Objections filed by the dealer have been rejected, due to the following reasons:

“It is evident that there was a lease agreement dated 03.03.2008 between the objector and M/s Mesco Airlines Ltd. and which had been registered with the DGCA. It is also established that inspite of several opportunities granted by the AA, the counsel for the objector did not come out with the fact of existence of the aforesaid lease agreement before the VATO. In fact, according to the notice of default assessment, the counsel for the objector stated before the VATO that there is no lease agreement between the assessee and M/s Mesco Airlines Ltd. This is inspite of the fact that the notice from the VAT (Audit) Branch to the VATO has specifically mentioned the aircraft on lease to M/s Mesco Airlines. It was only when a letter was issued by the VATO to the DGCA that in response, DGCA forwarded a copy of the lease agreement dated 03.03.2008. It is evident that the objector tried to hide the fact of the lease agreement submitted to DGCA before the VATO.

A perusal of the lease agreement dt. 03.03.2008 clearly states that it is a lease deed between the objector and the M/s Mesco Airlines Ltd. Both the parties are registered in Delhi and it is stated that the main operating base of the aero plane throughout the lease period shall be at Delhi. The lease period shall be for a period of 05 years and the lessee shall pay FMC of Rs. 6 lakh to the lessor by the first week of every month. Though a list of flying details of the



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aeroplane from 01.03.2008 to 31.03.2013 has been furnished, it does not appear to have any relevance in this case.

Most important, a supplementary deed dated 19.02.2009 has also been submitted by objector during appeal proceedings which, strangely, changes exactly those points which enabled the AA to tax the objector. It says

- i. It is understood between the parties that legal position and control over the aeroplane had not been handed over to the lessee.
- ii. The lessee is not required to pay any lease rent in terms of clause No. 8 and 9 of the lease agreement dated 03.03.2008.
- iii. That though the certificate of registration of aeroplane issued by DGCA mentions "Usual Station" at Delhi, the lessee can operate the aeroplane from any aerodrome. Since the requirement of lessor is mostly in the State of Orissa, the lessee shall keep the aeroplane station at Bhubaneswar aerodrome.

However, no proof has been furnished as to whether this supplementary lease deed has been furnished or registered with DGCA and whether DGCA has conveyed its approval to the modified terms and conditions to the objector. The substance of the supplementary agreement appears to be, to negate precisely the points based on which tax has been levied by the VATO. In any case, if it was the objective of both the parties to change/modify the terms and conditions of the lease agreement dated 03.03.2008, the supplementary agreement should also have been registered with DGCA.



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Under the circumstances, the words of the lease agreement dated 3.03.2008 are quite unambiguous and it clearly points to a case of right to use the plane belonging to the objector by M/s Mesco Airlines Ltd. for a consideration (lease rent) of Rs. 6 lakhs per month. This lease agreement has been registered with the DGCA and hence the objector cannot back track from the terms and conditions of the agreement clearly spelt out in such a registered lease agreement. No proof of the supplementary agreement dated 19.02.2009 having been registered with the DGCA has been furnished and hence the same cannot be accepted as a document modifying the terms and conditions of an agreement registered with DGCA.

In view of the factual position stated above, all the cases cited in the grounds of appeal loose relevance and need not be considered. VATO has rightly come to the conclusion that the lease agreement dt. 03.03.2008 provides for right to use of the plane by M/s Mesco Airlines Ltd. Even though both firms may be part of the same group of the companies but still they are independent entities under Company Law. Besides, the DVAT Act provides for payment of tax by unregistered dealers also.

As regards levy of penalty is concerned, VATO has rightly and aptly summed up the reason for levying penalty of Rs. 50,000/- U/s 86(14) of the DVAT Act 2004. Besides the levy of penalty U/s 86(10) is also justified since it was, from the first day, an outright case of right to use and the objector should have got itself registered and deposited the taxes and also furnished its returns."



4. Feeling aggrieved by the rejections of the objections, the dealer has come up in appeal.

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5. Arguments heard. File perused.
6. As noticed above, this is a case where default assessment of tax and interest has been framed due to the reason that same is a case of deemed sale as per section 2(zc)(vi) of DVAT Act. As per the definition of 'sale' available in clause (vi) of section 2(zc), "sale" with its grammatical variations an cognate expression means any transfer of property in goods by one person to another for cash or for deferred payment or for other valuable consideration (not including a grant or subvention payment made by one government agency or department, whether of the central government or of any state government, to another) and includes - Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
7. From the assessment order dated 13/7/2012, it appears that CA of the dealer had produced records/documents and written statement on behalf of the dealer – appellant. Copy of said written statement does not form part of the appeal.
8. Learned counsel for the dealer – appellant has submitted that one of the objections raised by the dealer before learned OHA was that the parties had an understanding that M/s. Mesco Airlines was not to pay any lease rent to the objector; that since no amount was receivable from M/s. Mesco Airlines Ltd. by the

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objector, no tax was payable on the amounts specified in the agreement.

The contention is that learned OHA while dealing with the grounds of objections, neither discussed the said objection nor recorded any finding thereon, and as such the matter is required to be remanded.

9. Learned counsel for the dealer – appellant has also pointed out that learned Assessing Authority levied tax @ 20%, but no provision of law which prescribes this tax rate i.e. 20%, finds mentioned in the assessment order. Further, it has been contended that this ground was raised before learned OHA as one of the grounds of objection but the same has not been discussed in the impugned order, and even on this ground the matter needs to be remanded to Learned OHA.
10. Undisputedly, in the grounds of objections one of the grounds raised by the dealer – objector before learned OHA was that M/s. Mesco Airlines was not to pay any lease rent to the objector; and since no amount was receivable from M/s. Mesco Airlines Ltd. by the objector, no tax was payable on the amounts specified in the agreement.

Learned OHA was required to discuss this objection and record his findings.

Admittedly, in the impugned order neither there is any discussion nor any reason recorded by learned OHA as regards



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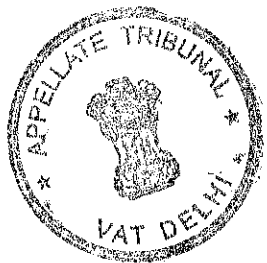
the said averment / objections. For effective and complete adjudication of the matter, learned OHA was required to decide the said objection and also record his reasons in respect thereof.

In this situation, the matter needs to be remanded to learned OHA for decision afresh, while adjudicating the said objection, after providing reasonable opportunity to the dealer of being heard.

As regard the other points raised on behalf of the appellant that the Assessing Authority nowhere specified as to under which provision of law, he levied tax @ 20%, learned counsel for the Revenue submits that actually the tax was to be levied @ 12.5% and not @ 20%, and as such error appears to have crept in the assessment order passed by learned Assessing Authority.

The fact remains that once objection was raised by the dealer in this regard, learned OHA was required to adjudicate the same and record his reasons.

Since learned OHA has not adjudicated said objection or recorded his reasons on this point, the matter needs to be remanded to learned OHA for decision afresh.



Result

11. In view of the above discussion, the impugned order dated 16/7/2012 passed by Special Commissioner-II – OHA is set-aside and the matter is remanded to learned OHA for decision

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afresh, in accordance with law, taking into consideration the observations made by this Appellate Tribunal and after providing to the dealer sufficient opportunity of being heard.

12. Dealer-Appellant to appear before learned OHA on 06/07/2022.
13. 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 : 14/6/2022.



Narinder Kumar
14/6/2022
(Narinder Kumar)
Member (Judicial)

Appeal No. 247-248/15/4824-31

Dated: 19/06/2022

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