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

Appeal No. 395-396/22
Date of Judgment: 17/6/2022

M/s Choudhry Plastics Works,
138/14, Onkar Nagar,
Tri Nagar, Delhi-110035. .....Appellant

V.

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

Counsel representing the Appellant : Sh. Rahul Gupta.
Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

1. Both the above captioned appeals came to be presented on 27/4/2022, challenging impugned order dated 23/2/2022 passed by learned Special Commissioner – Objection Hearing Authority (OHA).

2. Learned Assessing Authority levied penalty for 2nd quarter of 2013, u/s 9(2) of CST Act read with section 86(9) of DVAT Act, due to late filing of returns i.e. after 94 days. The other penalty was imposed u/s 33 read with section 86(9) of DVAT Act due to the same reason. The third penalty was for tax period-Annual 2011 under DVAT Act.

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3. The impugned orders pertain to tax periods 2nd quarter of 2013-2014, 2nd quarter of 2013-2014 and Annual- 2011. Vide impugned order three objections u/s 74(6) were disposed of.

One objection was filed challenging penalty of Rs. 47,000/- under Delhi Value Added Tax Act 2004 (here-in-after referred to as the Act). The second objection was filed to challenge the same amount of penalty imposed under CST Act. The third objection was to challenge penalty of Rs. 10,000/- under DVAT Act.

4. Learned OHA disposed of the objections thereby reducing penalty for the tax period 2nd quarter of 2013-2014 (under both the Acts) to Rs. 20,000/- each. Learned OHA however set aside the third penalty of Rs. 10,000/- pertaining to tax period Annual 2011.

5. Still feeling dissatisfied with the order passed by learned OHA, dealer has come up in appeal.

6. Arguments heard. File perused.

7. As noticed above, learned Assessing Authority imposed penalty u/s 9(2) of CST Act due to violation of the provisions of section 86(9) of DVAT Act, because of late filing of the return under each Act by 90 days.

8. Learned counsel for the dealer – assessee – appellant has contended that the notices of assessment of penalty issued under DVAT Act and CST Act are system generated, and even without signatures of the concerned officer-VATO. As further pointed

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out, the said notices of levy of penalty even do not depict the name of the concerned officer.

While referring to decision in **Kilasho Devi Burman and Ors. V. Commissioner of Income Tax, West Bengal, Calcutta**, AIR 1996 SC 3114; in **Bhumika Enterprises v. Commissioner Value Added Tax & Anr.**, W.P. (C) 7515/2015 decided by our own Hon'ble High Court on 28/8/2015; in **Swastik Polymers v. Commissioner of Trade & Taxes & Anr.,** W.P.(C) 4385/2017, decided by our own Hon'ble High Court on 19/5/2017; provisions of section 100A of DVAT Act inserted vide notification dated 16/11/2005 and judgment dated 14/7/2021 by this Appellate Tribunal in **M/s. Mahendra Industrial Corp. v. Commissioner of Trade & Taxes, Delhi**, Appeal No. 90/2019.

9. Learned counsel for the appellant has also referred to the provision of section 67 of DVAT Act and submitted that the system is not an authority to pass an order levying penalty and this case being of non application of mind, the impugned assessments deserve to be rejected.

10. As noticed above, learned Assessing Authority imposed penalty of Rs. 47,000/- for violation of each Act i.e. CST Act and DVAT Act, on the ground of late filing of return relating to tax period – 2nd quarter 2013, but learned OHA reduced the penalty of Rs. 20,000/- under each Act taking into consideration the serious illness of the objector.

11. In these appeals, main thrust of learned counsel for the appellant is that the impugned assessments framed by learned Assessing Authority, are illegal, as the same do not bear name and signatures of the issuing authority and also because the notices of assessments / assessments orders are system generated documents.

12. In M/s. **Bhumika Enterprises Vs. Commissioner, Value Added Tax**, (2015) 85 VST 367 (Del), our own Hon'ble High Court quashed all the notices/orders which were system generated notices u/s 59(2) of the Act, but, at the same time observed that it was open to the department to issue fresh notices/orders by taking steps in accordance with law, and further that the same should not be through system generated orders without human interface.

The contention raised by learned counsel for the Revenue is that the decision in Bhumica Enterprises's case (supra) is of 2015 whereas in the impugned notice of assessment of penalty is of 2/9/2014, and as such not applicable to the fact of this case. According to learned counsel for the Revenue, in view of provisions of section 80 said assessment cannot be said to be invalid.

Section 80 reads as under :-

"(1) No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in

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pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

(3) No assessment made under this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act."

13. It is true that as per section 80, no assessment shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect of omission in such assessment, if such assessment is in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law. However, here the objection is to the authenticity of the assessment order, same being without any signatures and also without disclosing name of the concerned officer. In my view, provisions of section 80(1) do not come into application where such an objection is raised.

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Had the dealer acted upon the said order, it would have been a different matter. Rather the dealer has challenged the assessment. Therefore, even sub section (2) of section 80 does not apply to the present case.

14. In M/s. Swastik Polymers' case (supra), our own Hon'ble High Court issued following directions to the Commissioner, DVAT:

> "6. Meanwhile, a direction is issued to the Commissioner, DVAT to issue, if not already issued, clear instructions to the VATOs and AVATOs that, as and when they sign any order and upload a digitally signed copy thereof on the system, there must be a noting on the file as to the date and time when it was so uploaded. Further, the software must facilitate online verification of the date and time of the order being digitally signed. If not already issued, a circular to the above effect should be issued and a copy thereof be placed before the Court by the next date of hearing.
>
> 7. Further the Commissioner must put in place a system by which simultaneous with the uploading of an order, an intimation will be sent to the registered dealer concerned by SMS and/or e-mail. The log of the conformation of dispatch of the SMS or e-mail should also be preserved by the Department."

15. Section 100A of DVAT Act reads as under:

"100A. Automation.

(1) The Government may, by notification in the official Gazette, provide that the provisions contained in the Information

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Technology Act, 2000 (21 of 2000), as amended from time to time, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attributation, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates as are specified in the said notification, shall, insofar as they may, as far as feasible, apply to the procedures under this Act.

(2) Where a notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then, the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by the Commissioner."

16. When the decisions in M/s. Bhumika Enterprises's case (supra) and M/s. Swastik Polymers' case (supra) are applied to the present case, it can safely be said that the notices of default assessments being not digitally signed and having been uploaded on the portal of the Department, have not been issued in accordance with law.

17. Undisputedly after the decision in M/s. Bhumika Enterprises's case (supra), Special Commissioner (Policy), issued circular No. 24 of 2015-16, advising all the VATOs that concerned VATO should issue fresh notices in accordance with law; that they would take steps pursuant thereto which would also be in

accordance with law, and that notices or orders should not be system generated notices or orders without human interface, in view of the decision in Bhumika Enterprises's case.

18. In the given situation, it was opened to the department to issue fresh order by taking steps in accordance with law and as per decision in M/s. Bhumika Enterprises's case (supra). However, the department did not issue fresh order. Even learned OHA did not remand the matter to learned Assessing Authority for passing of fresh order of assessment in compliance with the said decision and the directions issued as per the circular referred to above.

19. As regards decision in Kilasho Devi Burman and Ors.'s case (supra) cited by learned counsel for the appellant, same does not come to the aid of the appellant as the same is distinguishable facts.

Present case is the one where impugned notices of default assessments / assessment orders have not been digitally signed. But in the case cited above, on the record produced by the Revenue before the Tribunal, there was no signed assessment order or assessment form. In other words, that was a case where the record did not contain at all any signed assessment order.

20. In view of the above discussion, when the assessment orders under challenge are system generated and neither bear signatures nor name of the concerned Assessing Authority, the assessment framed by learned Assessing Authority and the impugned order

passed by learned OHA upholding the said assessment deserve to be set aside.

21. As a result, both these appeals are allowed and the assessment framed by learned Assessing Authority and the impugned order passed by learned OHA upholding the said assessment deserve are hereby set aside.

22. 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 web-site.

Announced in open Court.

Date :17/6/2022.

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(Narinder Kumar)
Member (J)