

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

Appeal No. 26-31/ATVAT/19-20

Date of Judgment : 05/07/2022

M/s. Infinity Retail Ltd
Vikas Surya Shopping Mall, Sector -3,
Manglam Palace, Rohini,
New Delhi – 110 085.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Sandeep Gupta
Counsel representing the Revenue : Sh. P.Tara

JUDGMENT

1. Appellant has challenged impugned orders dated 02/01/2019 passed by the learned OHA, whereby the appellant has been directed to pay additional tax with interest while modifying the assessments earlier framed by the Assessing Authority on 15/6/2015.

Appellant has also challenged orders dated 02/01/09 by which

Narinder Kumar
5/7/22



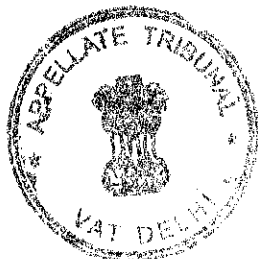
Appeal No. 26-31/ATVAT/19-20

penalty, imposed by the Assessing officer vide order dated 15/06/15, has been modified / reduced.

2. Applicant-dealer is a registered dealer. The Assessing Authority levied tax, interest and penalty taking into consideration mis-match between 2A and 2B.
3. After hearing the representative of the dealer, Ld. OHA allowed some of the objections filed by the dealer. But as regards following selling dealers, Ld. OHA disallowed the objections while observing in the manner as under:-

“2nd Qtr.2013

“The purchasing dealer has purchased from of M/s. PE Electronics Ltd., TIN No. 0782037976, M/s. Paramount Surgimed Ltd., Tin No. 07680269758, M/s. Ferrari Video, Tin No. 07020374202, M/s. Kail Ltd. Tin No. 07150185708, M/s. Nikita Distributors, Tin No. 07380429391, M/s. Glen Appliances Pvt. Ltd. , Tin No. 07630242480, M/s. Nissan Enterprises, Tin No. 07670470893, M/s. Quick Heal Pvt. Ltd., Tin No. 07150297452, M/s. Bright Point India Pvt. Ltd. TIN No.07660264531, M/s. IMS Mercantiles Pvt. Ltd. Tin No. 07890269206, M/s. Panasonic Energy India Company Ltd., Tin No. 078100277720, M/s. Usha



International Ltd., Tin No. 07040077759 of total Rs. 33,84,589/- and claimed ITC of Rs.3,41,037/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 3,41,037/- is disallowed. Hence the demand created of Rs.3,41,037/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”

3rd Qtr 2013

“The purchasing dealer has purchased from M/s. PE Electronics Ltd., Tin No.0782037976, M/s. Paramount Surgimed Ltd., Tin no. 07680269758, M/s. Carrier Media India Pvt. Ltd., Tin No. 07310412697, of total Rs. 62,56,406/- and claimed ITC of Rs.7,82,050/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 7,82,050/- is disallowed. Hence the demand created of Rs. 7,82,050/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”

4th Qtr. 2013

“The purchasing dealer has purchased from M/s. PE Electronics Ltd., Tin No.0782037976, M/s. Paramount Surgimed Ltd., Tin no. 07680269758, M/s. Carrier Media India Pvt. Ltd., Tin No. 07310412697, M/s. Digilife Distribution and Marketing Pvt. Ltd., Tin No. 07940347991, of total Rs. 66,91,439/- and claimed ITC of Rs.8,10,699/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 8,10,699/- is disallowed. Hence the

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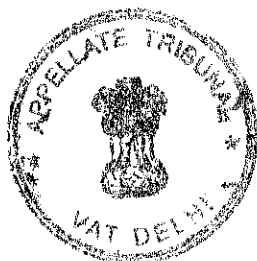
demand created of Rs. 8,10,699/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”

4. Ld. Counsel for the applicant has submitted that mis-match in 2A and 2B occurred either because the selling dealers had not shown the sales made to the applicant or the sales were shown by the selling dealer under wrong head, and that in view of the invoices issued by the selling dealers, and their production before the Assessing Authority, the Assessing Authority should have given reasonable opportunity to the applicant – dealer to call the selling dealers to explain the mis-match, but principles of nature justice were not followed by the Assessing Authority.

Learned Counsel has further contended that even the Ld. OHA did not take any step in this regard, and as such the impugned assessments and the impugned orders deserve to be set-aside.

5. Learned counsel has submitted that the purchasing dealer can take steps care only to verify that the selling dealer is a registered dealer, having a valid registration and ensure that the selling dealer issues a tax invoice in compliance with requirement of DVAT Act and the Rules made their under, and nothing beyond that.

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The contention is that purchasing dealer is unable to do anything in case a selling dealer does not show any transaction of sale in 2B or shows the same under wrong head, for one reason or the other.

In support of his contention learned counsel has referred to decision in **On Quest Merchandising India (P) Ltd. v. Govt. of NCT of Delhi & Ors.**, WP(C) 6093/2017 decided by our own Hon'ble High Court on 26/10/2017; and **M/s. Honeywell Automation India Ltd. v. Commissioner of Trade & Taxes, Delhi**, Appeal No. 8-11/2019 decided by this Appellate Tribunal on 13/8/2021.

6. Ld. Counsel for the Revenue has submitted that for the reasons given by Ld. OHA and the mis-match in 2A & 2B, as observed by the Assessing Authority and as upheld by learned OHA, the assessments already framed deserved to be revised.

7. In **On Quest Merchandising India Pvt.'s** case (supra), decided by our own Hon'ble High Court ^{it was} observed as under :

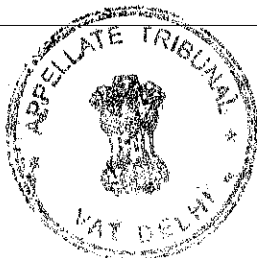
“29. To be eligible for ITC, the purchasing dealer who, apart from being registered under the DVAT Act, has to take care to verify that the selling dealer is also a registered dealer and has a valid



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registration under the DVAT Act. The second condition is that such registered selling dealer has to issue to the purchasing dealer a „tax invoice“ in terms of Section 50 of the DVAT Act. Such tax invoice would obviously set out the TIN number of the selling dealer. The purchasing dealer can check on the web portal of the Department if the selling dealer is a fictitious person or a person whose registration stands cancelled. As long as the purchasing dealer has taken all these steps, he cannot be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability. The purchasing dealer can, of course, ascertain if there is any mismatch of Annexures 2A and 2B but, assuming it is on account of the seller's default, there is little he can do about it.

30. Another difficulty that the purchasing dealer would face is that he would have no access to the return filed by the selling dealer particularly since under Section 98 (1) of the DVAT Act those particulars are meant to be confidential. Under Section 98 (3) (j) of the DVAT Act, it is possible for the Commissioner, where he considers it desirable in the public interest, to publish such information. That hinges on the Commissioner placing those details in public domain. If the Commissioner has not placed such information in the public domain, then it is next to impossible for the purchasing dealer to ascertain the failure of the selling dealer to make a correct disclosure of the sales made in his return.



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31. Again, it is not as if the Department is helpless if the selling dealer commits a default in either depositing or lawfully adjusting the VAT collected from the purchasing dealer. There are provisions in the DVAT Act, referred to hereinbefore, which empower the Department to proceed to recover the tax in arrears from the selling dealer. There is also Section 40A, in terms of which, a purchasing dealer acting in connivance with a selling dealer can be proceeded against."

8. In the impugned order, Ld. OHA has observed that certain purchases shown by the dealer were found to have not been shown as sale by the selling dealers named therein while submitting 2B and as such this was a case of unverified ITC. For the same reasons Ld. OHA imposed penalty u/s 86(10) of the Act.
9. When it is case of the applicant that trade invoices and certificates issued by the selling dealers named above were relied on during objections, Ld. OHA should have made observations in the impugned order, after discussion as regards acceptance or rejection of the said trade invoices and certificates for the purpose of decision on the point of mismatch.

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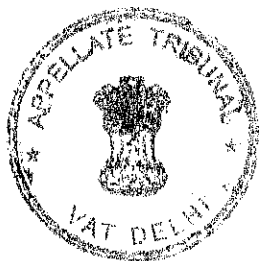


In the impugned order, there is no reason or discussion as to why the trade invoices relied on by the objector - appellant in support of the factum of purchase from the said selling dealers were rejected.

10. When I have enquired from learned counsel for the appellant if the selling dealers were summoned by the Assessing Authority or by learned OHA for adjudication of the dispute or for verification of trade invoices and certificates, ^{as} on the point of mis-match in 2A & 2B, learned counsel for the appellant submits that no step was taken in this regard.

- ^{strongly}
11. I feel that in case of mis-match Assessing Authority or learned OHA must join the selling dealer(s) in the proceedings so that they are able to enquire into and find out as to what had actually led to the mis-match i.e. as to whether it was a case of ^{of inadvertent mistake or a case} where no transaction of sale had actually taken place or it was a case of collusion between the parties or a case where the purchasing dealer had put forth false version or furnished false return or that the selling dealer(s) was/were concealing some relevant facts or withholding relevant evidence or if the selling dealer had committed a default in depositing or lawful adjusting tax collected from the purchasing dealer.

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All this can be done only if the selling dealer is joined or associated in the proceedings.

12. In the given facts and circumstances of the case when this Appellate Tribunal has expressed that this is a case where matter should be remanded to learned OHA for decision afresh after joining the selling dealer in the objection proceedings and also providing a reasonable opportunity of hearing to the dealer – appellant and selling dealer, for a thorough enquiry on the above said points as regards mis-match, learned counsel for the appellant has no objection to the remand of the matter to learned OHA for decision afresh, though at the earliest.
13. As a result, these appeals are disposed of and while setting aside the impugned orders passed by learned OHA, the matter is remanded to learned OHA for decision afresh after joining the concerned selling dealer(s) in the objection proceedings and also providing a reasonable opportunity of hearing to the dealer(s) including the appellant-assessee, for a thorough enquiry on the above said points as regards mis-match, within a year from today.
14. Appellant to appear before learned OHA on 25/7/2022.

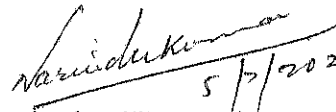
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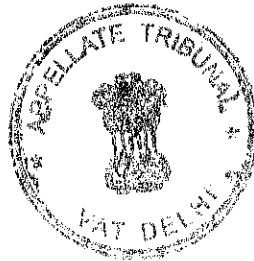


15. File be consigned to the record room. One copy of this order be placed before learned Commissioner, Deptt. of Trade & Taxes, Delhi, Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 5/7/2022


(Narinder Kumar)
Member (J)

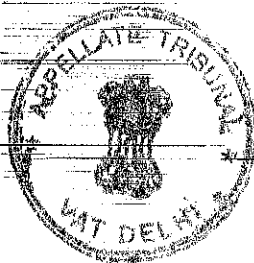


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Dated: 05/07/2022

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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. | |



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