

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeals No. 402 - 405/ATVAT/22

Date of Judgment: 8/7/2022

M/s V. A. Infosolutions Pvt. Ltd.
707 CA Appts, Paschim Vihar,
New Delhi-110063.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Rahul Gupta

Counsel representing the Revenue : Sh. M.L. Garg

JUDGMENT

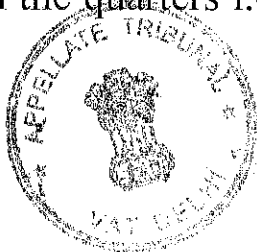
1. These appeals have been filed challenging the orders dated 24/12/2021 passed by learned OHA whereby imposition of penalty of Rs. 2 lakh i.e. Rs. 50,000/- for first quarter and second quarter of 2014, u/s 33 DVAT Act-2004 and 9(2) of Central Sales Tax Act, 1956 (CST) read with section 86(9) of DVAT Act separately, by the Assessing Authority has been upheld.
2. Record reveals that on 19/08/15 learned VATO (ward-56) imposed the above referred to penalty of Rs. 2 lakh, u/s 9(2) of

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CST Act read with section 86 of DVAT Act, due to the reason that the dealer-applicant company failed to furnish return(s) by the prescribed date. Learned Assessing Authority observed that return for the first quarter of 2014 (under CST Act and also under DVAT Act) was late by 206 days; that the return for the second quarter of 2014 (under CST Act and also under DVAT Act) was late by 197 days.

3. Dealer filed objections before learned OHA. Learned OHA dismissed the objections vide impugned order dated 24/12/2021 observing that despite notice no one appear^{ed} before him on behalf of the objector.
4. Feeling aggrieved by the impugned order passed by learned OHA, dealer company has come up in appeal. It may be mentioned here that in terms of order u/s 76(4) of DVAT Act, dealer has deposited by way of pre-deposited a sum of Rs. 20,000/- i.e. Rs. 10,000/- for each quarter.
5. Arguments heard. File perused.
6. ~~Ultimately~~ learned OHA ^{has} upheld the impugned assessments regarding imposition of penalty under each Act and in respect of both the quarters i.e. first and second. It is not case of the dealer



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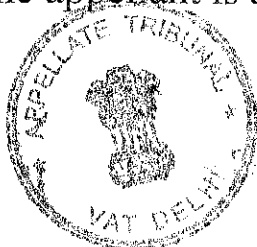
that any application for review was filed by the dealer before learned OHA to justify absence of the objector.

7. 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; that same are without signatures of the concerned officer-VATO; and that same do not depict the name of the concerned officer. The contention is that for the aforesaid deficiencies, the assessments framed by VATO suffer from illegality and as such the appeals deserve to be allowed.

In support of his contention, learned counsel referred to decision dated 17/6/2022 by this Appellate Tribunal in appeal No. 395-396/2022 in **M/s. Choudhary Plastics Works v. Commissioner of Trade & Taxes, Delhi.**

8. Learned counsel for the Revenue has submitted that the dealer filed objections before learned OHA only on the ground that no notice was served upon the appellant.
9. A perusal for form DVAT-38 reveals that the dealer also raised the ground that the imposition of penalty was unlawful and illegal. Even otherwise, the ground put forth by learned counsel for the appellant is a legal ground.

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10. In **M/s. Choudhary Plastics Works case** (Supra), an appeal where imposition of penalty due to late filing of return was challenge^d, this Appellate Tribunal decided the same legal ground raised on behalf of the dealer ^{therein} ~~appellant~~.

In that case, this Appellate Tribunal took into consideration provisions of section 100A of DVAT Act inserted vide notification dated 16/11/2005 and following decisions:

- i. **Kilasho Devi Burman and Ors. V. Commissioner of Income Tax, West Bengal, Calcutta, AIR 1996 SC 3114;**
- ii. **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;
- iii. **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; and
- iv. 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.**

11. As noticed above, learned Assessing Authority imposed penalty for violation of each Act i.e. CST Act and DVAT Act, on the ground of late filing of returns.



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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.
13. Learned counsel for the Revenue, has contended that in view of provisions of section 80 said assessments cannot be said to be invalid on the grounds raised by counsel for the appellant.
14. 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 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



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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.”

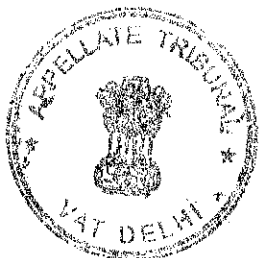
15. It is true that as per section 80 no assessment shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect of omission in such assessment, if such assessment is in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

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.

Had the dealer acted upon the said order, it would have been a different matter. Rather, the dealer challenged the assessment before learned OHA. It is a different matter that the objector did not appear before learned OHA.

Learned counsel for the Revenue has pointed that the objections were filed by the dealer beyond the prescribed period of limitation.

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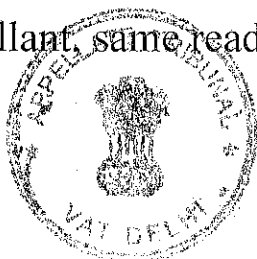
It is true that the objections were filed beyond prescribed period of limitation, ^{by/-} it was for the learned OHA to deal with this point while disposing of the objections. It appears that learned OHA ^{neither} ~~did not~~ decide the point of limitation, or dismissed the objections being barred by limitation.

16. As regards, the manner an order is to be signed and uploaded, as per directions issued by Commissioner, DVAT, 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."

17. As regards section 100A of DVAT Act, referred to by counsel for the appellant, same reads as under:



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"100A. Automation.

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

18. Applying the decisions in M/s. Bhumika Enterprises's case (supra) and M/s. Swastik Polymers' case (supra) 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.
19. Admittedly, 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



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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.

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.

20. 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 ^{on} facts. _✓

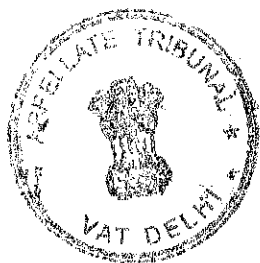
Present case is the one where impugned notices of default assessments / assessment orders have not been digitally signed. But, in the case cited above, on the record produced by the Revenue before the Tribunal, there was no signed assessment order or assessment form. In other words, that was a case where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

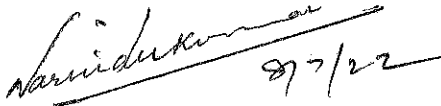


21. In view of the above discussion, when the assessment orders under challenge are system generated and neither bear signatures nor name of the concerned Assessing Authority, the assessment framed by learned Assessing Authority and the impugned order passed by learned OHA upholding the said assessment deserve to be set aside.
22. As a result, all these appeals are allowed and the assessment framed by learned Assessing Authority and the impugned order passed by learned OHA upholding the said assessment are hereby set aside.
23. 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: 8/7/2022.




(Narinder Kumar)
Member (J)

Appeal No. 402-405/ATVAT/27/4970-77

Dated: 08/07/11

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

