

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

Appeal No. : 411/ATVAT/2022
Date of Judgment: 12/07/2022

M/s. Enterprise Trading Co. (ASH),
B 3, Rajouri Garden, Vishal Enclave,
New Delhi-110027.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. P. K. Bansal.
Counsel representing the Revenue : Sh. C. M. Sharma.

JUDGMENT

1. On 25/05/2022, learned Objection Hearing Authority – Additional Commissioner dismissed the objections filed by the dealer-appellant under Section 74 of Delhi Value Added Tax Act (hereinafter referred to as the DVAT Act). Hence, this appeal.

2. Objections u/s 74 of DVAT Act were filed ^{while} ~~by~~ challenging assessment of penalty framed on 01/02/2021 by learned Assessing Authority – AVATO (Ward-57). The ground for levy of penalty is that the dealer violated provisions of Section 86(10) of DVAT Act. In having failed to appear before him/or submitted ^{-ing} ~~the~~ documents pertaining to the tax period 2016-17.

3. This appeal came to be entertained vide order dated 24/06/2022 waiving the condition regarding pre-deposit for the reasons recorded therein.

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Arguments heard. File perused.

4. As noticed above, penalty was levied by learned Assessing Authority because of failure of the dealer-appellant to appear and submit documents before him as regards tax period 2016-17.

Case of the dealer-appellant is that in the notice of assessment of penalty, it does not find mention as to by which mode notice u/s 59(2) of DVAT Act was served upon the dealer, before levy of penalty. The contention is that when penalty came to be levied without service of any notice under Section 59(2) of DVAT Act, the same deserves to be set-aside.

Further, it is the case of the dealer that in the impugned notice two provisions of law have been mentioned, which the dealer is said to have violated. There is reference to Section 86(10) of DVAT Act at two places. Section 86(14) of DVAT Act also finds mention in the said notice. The contention is that it remains unexplained as to under which provision of law, the Assessing Authority has actually levied penalty.

5. On the other hand, Learned Counsel for the Revenue has contended that this is a case where the dealer has nowhere specifically ~~had~~ denied receipt of notice u/s 59(2) of DVAT Act, and from the pleadings it appeared ^{only} as if it has challenged ^{the} mode of service.

As regards mentioning of two provisions i.e. u/s 86(10) and 86(14) of DVAT Act in the impugned notice, learned counsel for Revenue has contended that this is a case of mistake and in view of Section 80 of DVAT Act, when the contents of the notice specify the

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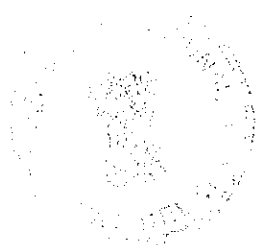
allegation regarding violation by the dealer, mentioning of two provisions of law in the said notice does not come to the aid of the dealer.

6. Appellant has not placed on record copy of notice u/s 59(2) of DVAT Act. Had it been produced, it could be seen as to what were the contents of the notice. From the copy of the notice of default assessment dated 10/03/2022, framed under CST Act in respect of tax period – Annual 2016 filed by the counsel for the appellant today, it transpires that online notice u/s 59(2) of DVAT Act dated 05/01/2021 was issued by the dealer for reconciliation of Sale/Purchase/Form-09/Statutory Forms/Export Sale, ^{but} the dealer failed to appear before the Assessing Authority on the given date.

During the relevant period, instructions issued by Commissioner, VAT, vide circular No.F.3(366)/Policy/VAT/2013/1235-1245 dated 17/01/2014, were in force and to be complied with for the purpose of services of notice or summons or orders i.e. notices/ summons/orders were to be issued by electronic means by pasting the same on web page of individual dealers. In addition to this, an SMS alert on the registered mobile numbers of the respective dealer was also sent, in case the dealer had provided a mobile number ~~had been furnished~~ to the Department.

An SMS alert to the dealer's mobile phone number showing number of notice and date of appearance ^{was} ~~is~~ to be generated.

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Here, there is nothing in the notice of penalty to suggest that compliance was made with the instructions contained in the circular dated 17/01/2014.

Same objection was raised by the dealer before learned OHA. However, learned OHA nowhere recorded any specific finding that this is case where notice u/s 59(2) was duly served upon the dealer in compliance with the instructions contained in the circular dated 17/01/2014.

In absence of any such finding that notice u/s 59(2) was duly served upon the dealer in compliance with the instructions contained in the circular dated 17/01/2014, it cannot be said that notice u/s 59(2) was served upon the dealer. Consequently, this is a case where the dealer cannot be said to have notice that it was required to appear before the Assessing Authority in connection with tax period – Annual 2016-17.

As a result, the impugned order passed by learned OHA upholding the levy of penalty imposed on 01/02/2021 deserves to be set aside.

7. As regards mentioning of two provisions of law i.e. Section 86(10) and 86(14) in the notice of assessment and penalty, from its contents that penalty was being imposed due to non-appearance / non-submission of documents, ^{So,} it can safely be said that the said notice is in substance and effect in conformity with the intent and purpose of

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the Act. Therefore, in this regard, there is no merit in the contention raised by counsel for the appellant.

8. ✓ Consequently, the appeal is allowed and the impugned order dated 25/0⁵2/2022 passed by learned OHA and the impugned assessment of penalty are hereby set aside.

9. ✓ File be consigned to the record room. Copy of the judgment 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: 12/07/2022


(Narinder Kumar)
Member (Judicial)

Appeal No. 411/ATVAT/22/5011-18

Dated: 12/07/22

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