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

Appeal Nos.- 401/17 & 402/17
Date of Judgment: 11/07/2022

M/s Global Ceramics Pvt. Ltd.
218A, Rama market,
Pitampura, New Delhi-110034. .....Appellant

v.

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

Counsel representing the Appellant : Sh. A. K. Babbar.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. This common judgment is to dispose of the above captioned two appeals.

2. Appeal Nos. 401/17 & 402/17 have been filed challenging the impugned order dated 19-01-2018 passed by learned Objection Hearing Authority (hereinafter referred to as OHA) whereby objections filed by the dealer as regards tax, interest and penalty pertaining to tax period 2011-12 have been disposed of.

By way of one objection, the dealer had challenged default assessment of tax and interest framed on 29-09-2016 by Assessing Authority u/s 32 of Delhi Value Added Tax Act in respect of financial year 2011-12. Vide said assessment, a

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demand of Rs. 93,33,152/- was raised i.e. Rs. 53,29,547/- towards additional tax and Rs. 40,03,605/- towards interest.

The other objection pertained to default assessment of penalty of same date i.e. 29-09-2016 whereby Assessing Authority imposed penalty of Rs. 53,29,547/- u/s 86(10) read with Section 33 of DVAT Act, in respect of same tax period 2011-12.

3. The dealer had got registered itself with Department of Trade & Taxes under DVAT 2004 and Central Sales Tax 1956 (hereinafter referred to as CST Act). In respect of tax period 2011-12, the dealer submitted monthly return under each Act.

4. Initially, learned Assessing Authority had framed two separate assessments of Tax & interest for the same tax period, vide order dated 16-04-14 under each Act i.e. DVAT Act and CST Act. Assessment of penalty was also framed u/s 33 of DVAT Act regarding said tax period.

It was on the basis of information and material collected on audit by party of AGCR that the subsequent assessments of tax, interest and penalty dated 29-09-16 were framed. The subject matter of these subsequent assessments was central sales & statutory forms, but somehow, these appear to have been issued under DVAT Act, and not under CST Act-the relevant Act under which these were required to be framed.

Dealer-appellant felt aggrieved by these subsequent assessments. It challenged the same before learned OHA.

Learned OHA noticed the mistake as pointed by the dealer and also that the dealer required opportunity. Therefore, he remanded the matter to Assessing Authority, for the reasons recorded therein. Dealer has challenged said order of remand.

5. Arguments heard. File Perused.

As regards the period of limitation

6. The first ground raised by the dealer before learned OHA was that the assessments dated 29-09-016 in respect of tax period 2011-12 were barred by limitation, in view of the period prescribed u/s 34(1) of DVAT Act.

Learned OHA did not find any merit in this ground and recorded findings that the matter was squarely covered by the provision of Section 34(1) of DVAT Act and that the period of limitation of four years stood extended to six years in view of the approval granted by learned Commissioner.

7. Learned counsel for the appellant has referred to the provisions of section 34(1) of DVAT Act and submitted that as per its proviso the period of 4 years provided for assessment or re-assessment u/s 32 of DVAT Act shall stand extended to 6 years only where Commissioner has reasons to believe that tax was not paid by the reasons of concealment, omission or failure to disclose fully material particulars on the part of the person, but this is not a case of concealment,

omission or failure on the part of the dealer-appellant, and as such the period of assessment or re-assessment cannot be said to have been extended to 6 years.

8. Learned counsel for the Revenue has opposed this contention by submitting that in view of what transpired during audit and stands recorded in the re-assessment assessment dated 29-09-2016, this is a clear case where the period of limitation deserved to be extended for six years and was rightly extended so by the Commissioner, and as such the re-assessment framed on 29-09-2016 is well within limitation.

9. Another contention raised by learned counsel for the appellant is that DVAT Act and CST Act are two independent Acts and that vide assessment framed on 16-04-2014 under CST Act, dealer was allowed exemption in view of 'C' forms submitted before the Assessing Authority.

The contention is that vide subsequent assessment order dated 29-09-2016, the Assessing Authority framed fresh assessment again under DVAT Act, and not under CST Act and further that when the Assessments pertaining to tax, interest and penalty under CST Act framed on 16-04-2014 were not the subject matter of the objections, and same having attained finality, Learned OHA erred in passing the order regarding remand, which deserves to be set aside.

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Learned counsel for the appellant then referred to decision in **M/s Nav Bharat Enterprises Ltd. v. Sales Tax Officer,** (1987) 066 STC 0252 and submitted that in view of the said decision discussed in **M/s. Amway India Enterprises Pvt. Ltd. v. Commissioner of Trade & Taxes**, Delhi, Review No. 238/ATVAT/2021, decided by this Appellate Tribunal on 06/09/2021, the impugned order passed by learned OHA deserves to be set aside.

In support of the submission learned counsel has also referred to decisions in **A.R. Antulay v. R.S. Nayak & Anr,** 1988 AIR 1531 (SC) and **M/s RH Enterprises v. Commissioner of Sales Tax,** 1991 (43) DLT 285.

10. In A.R. Antulay's case (supra), Hon'ble Apex Court observed that the procedure established by law must strictly be complied with and not departed from to the disadvantage or detriment of the person. These observations were made in respect of Fundamental Right under Article 14 of our Constitution and as regards the procedure to be followed for deprivation of personal liberty.

In R.H. Enterprises' case (supra), our own Hon'ble High Court observed that Central Sales Tax Act is distinct and separate from the Delhi Sales Tax Act and merely because its officers appointed under the DST Act, who administer the provisions of the Central Sales Tax Act would not empower

those officers to take recourse to the provisions of the Delhi Sales Tax Act for the purpose of passing an order relating to the Central Sales Tax Act.

In the course of arguments, the above legal proposition has not been disputed by Learned Counsel for the Revenue.

Learned Counsel for the Revenue also does not dispute that two separate assessments were required to be framed while dealing with the present matter i.e. one under DVAT Act and another under CST Act.

11. On the other hand, Learned counsel for Revenue has referred to the provisions of Section 80 of DVAT Act to defend the order of remand.

Learned counsel for Revenue has also contended that the OHA, in exercise of powers vested with him u/s 74(7) of DVAT Act, correctly remanded the matter pertaining to assessment under CST Act for framing of correct assessment, particularly, when objection in this regard was raised by the appellant itself that the assessment having been framed under DVAT Act was incorrect assessment, and also because no opportunity was granted to the dealer of being heard.

In this regard, learned counsel for Revenue has also relied on decision of this Appellate Tribunal in Amway's case (supra) and also in **M/s Shaila Enterprises v. Commissioner of**

Value Added Tax, (2016) 94 VST 367 (Del), to point out that same contains discussion as to the power of OHA on the point of remand, and to issue directions for making of fresh assessment as contained u/s 34(2) of DVAT Act. Reference has also been made to decision in **M/s Aimil Ltd. v. Commissioner of Value Added Tax,** W. P. (C) No. 4597/2017, decided on 24/5/2017 by our own Hon'ble High Court.

12. Learned counsel for the Revenue has pointed out that as per order dated 21/11/2016 passed by the Hon'ble High Court, W. P. (C) No. 11020/16 filed by the dealer-appellant challenging the re-assessment order was disposed of while observing that the petitioner-appellant must avail and exhaust its appellate remedies and further that it shall deposit 10% of the tax liability (without interest and without any requirement of pre-deposit of penalty).

Learned Counsel has submitted that these facts regarding Writ Petition filed before the Hon'ble High Court and about the directions issued by the Hon'ble High Court on 21/11/2016, have not been pleaded by the appellant in these memorandum of appeals, which show that the appellant withheld this valuable information while filing the appeal.

13. It is true that copy of the order dated 21/11/2016 passed by Hon'ble High Court in W. P. (C) No. 11020/16 has been

submitted by Counsel for the appellant just now. It did not form part of the record earlier. Admittedly, these facts were also nowhere alleged by the appellant in the memorandum of appeal. These should have been specifically pleaded.

Even then, this Appellate Tribunal is to decide the legality or illegality of the impugned order passed by learned OHA where the proceedings concluded with directions for remand.

14. Admittedly, in the re-assessment order dated 29-09-2016 it stands recorded that notice u/s 52(2) of DVAT Act was issued by the Assessing Authority to the dealer-appellant after taking approval from Commissioner VAT, u/s 34(1) of the Act.

U/s 34(1) of DVAT Act where approval has been granted by the Commissioner extending the period of limitation from 4 years to 6 years, it cannot be said to be a case where the Assessing Authority, framed assessment dated 29-09-2016 simply following the dictates of the officer.

As per case of the Revenue, audit party of AGCR pointed out that the dealer M/s Global Ceramics Ltd. (TIN 07280345153) while filing his return for the year 2011-12 had claimed excess/irregular concessional rate of tax on interstate sale of Rs. 5.08 Cr. (Rs.243.79 lakh & 263.78 lakh) by submitting false declaration; that this was deduced by the audit party after cross verification of 6 "C" forms produced by the dealer with the sales tax deptt. Manipur and Nagaland; that it was found that in case of 4 "C" forms, excess interstate sale of Rs.

243.79 lakh (Rs 254.15-Rs.10.35 lakh) was claimed by the assessee; that in case of the remaining two forms having value of Rs. 263.78 lakh, it was noticed that these were not issued to the purchasing dealer M/s Rural Trading Co. by the sale Deptt. of Manipur and hence concessional rate of tax claimed by the assessee against these statutory form was irregular.

In view of the above facts which transpired on audit, it cannot be said that the period of limitation did not stand extended to six years.

Decision in Nav Bharat's case

Therein, in nutshell, therein, Hon'ble High Court observed that it was not a case which could be regarded as having been remanded, the reason being that the appellate authority was not seized of any appeal arising under the Central Act, and rather it was seized of appeal under the Local Act, and further that in the given situation, while dealing with appeal under Local Act, if directions are issued with regard to taxability of items under Central Sales Tax Act, proceedings could not be initiated under Central Sales Tax Act, by treating it as a case having been remanded to it.

Nav Bharat's decision is distinguishable

In Nav Bharat's case, sales tax returns were filed by the petitioner under local Act i.e. Delhi Sales Tax Act; and also

under the Central Sales Tax Act. Therein, 2 orders were passed. In the separate order, as regards Central Sales Tax Act, there was no tax payable under the said Act. However, the petitioner was sought to be taxed only under the local Act i.e. Delhi Sales Tax Act. Therein, the order under CST Act had attained finality.

15. Here, initially, two separate assessments were passed by the Assessing Authority. Objections were filed against the assessment framed under DVAT Act, whereas the assessments under CST Act were not challenged.

In Nav Bharat's case, only when the dealer-petitioner challenged by way of appeal, the order pertaining to local tax, the Assistant Commissioner observed that the given turnover was taxable under the provisions of Central Sales Tax Act, and further observed that the orders under CST Act, required revision by the competent authority.

In Nav Bharat's case, the appellate authority was not seized of any appeal or matter arising under Central Act, and rather it was dealing with appeal or matter only under provisions of Local Act. In the given situation, Hon'ble Judge observed that had any direction been issued with regard to taxability of some items under the local Act, then possibly a fresh order could be passed in furtherance of the directions issued.

16. Here, Learned OHA was seized of objections against single notice of default assessment issued under DVAT Act even though same pertained to turnover of Central Sales.

17. In Nav Bharat's case, the dealer challenged levy of tax under Local Act.

Herein, as noticed above, the Learned OHA accepted the objection of the appellant-objector that the dealer was not allowed opportunity. At the same time, Learned OHA found that the Assessing Authority had committed a mistake having framed assessment regarding central sales, under DVAT Act in place of CST Act.

18. Learned OHA has deemed it to be an appropriate case to remand the matter to learned Assessing Authority by observing in the manner as :-

> "Therefore, on merits, the Assessing Authority has correctly decided the issue and accordingly imposed additional liability of tax, interest & penalty on the objector dealer. However, the **objector dealer has contended that assessing/reassessing the interstate sales under DVAT Act is incorrect.**
>
> Besides it, as seems from the assessment order dated 29-09-16 and also **as claimed the objector dealer has not been provided due opportunity of hearing**. Therefore, even though the Assessing Authority has correctly decided the issue, however, the Assessing Authority has made technical mistake by assessing interstate sale/central sales without "C"

Forms under the provisions of DVAT Act-2004 and therefore, I am inclined the remand the matter on this issue to the Assessing Authority to pass fresh and appropriate orders in respect of tax and interest as well as penalty under the relevant provisions of CST Act to meet the end of justice within next 02 months after providing due opportunity of hearing and to produce documents/records to the objector dealer.

If the objector dealer does not appear for hearing or do not produce the relevant records/documents despite of providing due opportunity, the Assessing Authority shall be free to pass appropriate orders as per law. The objector dealer shall appear for hearing along with relevant records/documents before Assessing Authority on 15-02-2018 at 11:00 a.m. accordingly, both the objections are accepted with above directions."

19. In Nav Bharat's case, Hon'ble Judge upheld the observations made by the Assistant Commissioner in the order dated 16.9.1982 that the competent authority should take proceedings to revise the order under CST Act. Significant to note that there the directions by the Assistant Commissioner were to revise the order under CST Act.

Here, as noticed above, Learned OHA remanded the matter to Assessing Authority to pass fresh and appropriate orders in respect of tax and interest as well as penalty under the relevant provisions of CST Act to meet the end of justice within next

02 months and that too after providing due opportunity of hearing and to produce documents/records to the objector dealer, as per his own request. He so remanded also ~~when~~ because **objector dealer contended that assessing/reassessing the interstate sales under DVAT Act was incorrect.**

20. As a result, I find merit in the contention of learned counsel for the Revenue that in view of the inadvertent mistake made by the Assessing Authority, by framing assessment pertaining to central sales turnover under DVAT Act and not under CST Act, the Learned OHA was justified to take such steps for rectification of the mistake apparent on record and in issuing above said directions to the Assessing Officer.

21. Consequently, there is no merit in the contentions raised by learned counsel for the appellant. The order of remand passed by Learned OHA with directions stipulated therein, in the given facts and circumstances, deserves to be upheld.

Change in law after Nav Bharat's case

22. Nav Bharat's case pertained to assessment year 1975. Therein, sales tax returns were filed under Delhi Sales Tax Act and Central Sales Tax Act and two orders of assessment were issued on 10.4.1978. As per order under CST Act, no tax was payable. However, sales were taxed under Local Act-Delhi Sales Tax Act; dealer filed appeal only against order under

Local Act. Assistant Commissioner passed order on 16.9.1982 for revision of turnover which was taxable under Central Sales Tax Act (and not under Local Act), by the competent authority.

23. Present matter pertains to the assessment year 2011-12.

Delhi Value Added Act, 2004 came into force w.e.f. 1.4.2005. In Nav Bharat's case, Hon'ble Judge observed that the procedure for imposing tax under Central Sales Tax Act was the one provided by the Local Act, but the two proceedings are independent of each other. At the same time, Hon'ble Judge observed, "it is true that in some cases orders may be interrelated, interlinked or interconnected because a controversy may arise as to whether a particular type of sale is taxable under the local Act or the Central Sales Tax Act." It was very clearly observed that separate assessment orders are passed when two separate returns are to be filed.

At this stage, reference to the relevant provisions of section 74 B of DVAT Act, is of much significance. There is a proviso to sub-sec. (2) of Section 74 B. It clearly empowers the authority passing the order on objection, notwithstanding anything contained in this Act, to rectify the order or part of the order on any matter *other than the matter which has been so considered and decided in any proceedings by way of objection,* in relation to any order or part of an order.

During the period, when dispute in Nav Bharat's case arose, no provision or say proviso to sub-section (2) of Section 74 B as available in DVAT Act, was in force. In view of powers conferred on Learned OHA under this proviso to sub-section (2) of Section 74 B of DVAT Act, he is competent to rectify the order or any part thereof, while hearing objections against the said order, on any matter other than the matter *which has been so considered and decided in any proceedings by way of objection.*

In other words, where an Assessing Authority makes such like mistake of issuing notice of default assessment in respect of turnover of central sales or VAT, the Objection Hearing Authority dealing with objections against such an order filed under section 74 B of DVAT Act, shall be competent to rectify the order or part of the order on any matter other than the matter considered and decided in the objections.

Therefore, even on this ground decision in Nav Bharat's case does not come to the aid of the appellant.

24. Consequently, applying the law in force in the form of proviso to sub-section (2) of DVAT Act, 2004, to the facts of present case, it is again held that Learned OHA was justified in passing the impugned order for the purposes of rectification of mistake pointed out by the dealer itself and to provide opportunity of being heard at the request of the dealer itself.

Time Limit

25. Section 74 B of DVAT Act, 2004 deals with rectification of mistakes and review. It provides two separate time limits of four years for rectification of mistake.

26. Firstly, sub-section (1) of section 74 B, provides a maximum period of 4 years from the end of the year in which the order passed by him, was served. It is so, where Commissioner on his own motion, is to rectify the mistake apparent on record.

Secondly, sub-section (1) of section 74B of DVAT Act, prescribes that the Commissioner may rectify any such mistake, in case any person affected by an order, brings to the notice of the Commissioner -

(a) within " a period of 4 years" from the end of the year in which the order passed by him, was served or

(b) "thereafter".

The only condition is that the person who is affected by an order, should bring to the notice of the Commissioner for rectification of mistake apparent on record, within the aforesaid period of 4 years.

Present case is not a case, where the Commissioner has of his own motion, ordered for remand for rectification of the mistake in the initial assessment after providing reasonable

opportunity of being heard to the dealer.

Here, the relevant provision applicable to the present case is the proviso to sub-section (2) of Section 74 B. Sub-section (2) postulates that provisions of sub-section (1) of section 74 B shall apply to the rectification of a mistake by the appellate authority or an objection hearing authority. It means, where objection is filed by any person affected by the order, the OHA hearing the objections is empowered to rectify a mistake apparent on record within a period of 4 years from the end of the year in which the order passed by him, was served, or thereafter.

Since the dealer filed objections and also pointed out that corrections in the assessment were required to be made in the manner indicated above, Learned OHA was very much competent to pass the impugned order of remand.

While passing the impugned order, Learned OHA also prescribed a period for implementation of the impugned order.

27. In view of above discussion, the decisions cited by learned counsel for the appellant on the point of limitation do not come to the aid of the appellant.

28. As a result of the above discussion, these appeals are without merit and accordingly hereby dismissed.

Dealer to appear before Learned Assessing Authority on 20/07/2022.

29. File be consigned to record room. Copy of the judgment be placed in the connected file No. 402/17. One copy each 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: 11/07/2022

Narinder Kumar 11/7/2022

(Narinder Kumar)
Member (J)

Appeal No. 401/17 & 402/17/5003-10 Dated: 11/07/22

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR