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

Appeal No. 553-554/ATVAT/09
Date of Judgment: 08/07/2022

M/s Hindustan Refrigeration Stores,
2, 4 & 5 Netaji Subhash Marg,
Darya Ganj, New Delhi-110002.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. H. C. Bhatia
Counsel representing the Revenue : Sh. M. L. Garg

JUDGMENT

1. By way of Appeal Nos. 553 and 554/2009, dealer has challenged order dated 11.09.2009 passed by Ld. OHA- Joint Commissioner/IV, whereby objections filed by the register dealer (Appellant), u/s 74(1) of Delhi Value Added Tax Act (hereinafter referred to as DVAT ACT) came to be rejected.

Ld. OHA has upheld notice of default assessments of tax and interest as well as the notice of assessment of penalty

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issued/passed by the Assessing Authority-VATO (Audit) while observing that the same were legally sound and valid.

2. Record reveals that the above mentioned notices of default assessment of tax and interest and notice of levy of penalty came to be issued u/s 32 and 33 read with section 86 (10) of DVAT Act.

3. The same came to be issued with directions to the dealer to pay Rs.2,76,821/- i.e. Rs. 2,65,431/- towards tax and Rs.11,390/- towards interest, for the tax period- March 2007-08, due to following reasons:-

> "The firm has purchased vehicles such as Car/ Three wheeler/truck and furniture etc. during the tax period of 2005-06, 2006-07, 2007-08, 1/3 of the total ITC of Rs.47,371/-, 78,327/- and 79,305/- respectively. Since the ITC on these items is not admissible, the firm is liable to reverse it. Further, the firm has received credit notes/incentive in the month of March 2008 from Principal parties amounting to Rs. 55,605/- on which ITC has not been reversed and the dealer is liable to reverse the ITC amounting to Rs.6,178/-.
>
> ITC of Rs.47,371/- for the period of 2005-06, claimed in March 2006 and Rs. 78,327/- for the period of 2006-07, claimed in March 2007. Hence the ITC on capital goods on both periods, claimed Rs. 1,25,698/- is disallowed and interest charged of Rs.14,711/- and Rs. 11,749/- for respective periods.

During this period, the firm has revised it return on 07.08.08 i.e. after receipt of notice for audit dated 01.08.08 in which purchases amount to Rs. 3,30,286/- have been enhanced and input has been enhanced for Rs. 34,468/- which is disallowed as the revised return cannot be accepted without the orders of Appellate Authority, if issued, after the dealer filed an objection for claiming excess ITC. Hence total demand of Rs. 2,65,431/- is assessed along with interest."

The other notice regarding levy of penalty was issued by the Assessing Authority u/s 33 of DVAT Act read with section 86(10) of DVAT Act thereby levying penalty of Rs. 2,65,431/-, for the above said reasons.

4. It may be mentioned here that of 15.09.2008- the Assessing Authority issued rectification order (Suo Moto), thereby enhancing the demand as under:-

Description	Tax	Interest	Total
Demand After Assessment	2,65,431/-	11,390/-	2,76,821/-
Demand After Rectified	2,72,109/-	13,419/-	2,85,528/-

At the same time, the Assessing Authority issued another order dated 15.09.2008 by way of rectification order (Suo Moto), enhancing the amount of penalty to Rs.2,72,109/- from the one already imposed u/s 33 read with section 86(10) of DVAT Act.

5. Feeling aggrieved by the said orders, the Dealer-Objectors filed objection u/s 74(1) of DVAT Act challenging the following reasons with led to framing of assessments :

> "That the dealer has claimed ITC on purchase of vehicles such as car/three wheelers, truck and furniture etc. which was not admissible as per rules.
>
> That the dealer has not reversed the ITC on credit notes received in the month of March 2008.
>
> That the dealer has revised his return for the month of March 2008 after the receipt of notice and has enhanced the input tax credit which is in contravention of provisions of section 28(2) of DVAT Act, 2004."

6. After providing opportunity to the dealer of being heard, Ld. OHA vide impugned order dated 11.09.2009 partly upheld the assessment of tax, interest and that of levy of penalty and thereby partly accepted the objections only as regrds filing of revised return.

7. The reasons given by Ld. OHA in the impugned order read as under:-

> "It is apparent from the record that the dealer filed the revised return on 07.08.2008 i.e., after the receipt of notice for audit dated 01.08.2008. In the said return, the dealer has claimed additional ITC

of Rs. 34,468/- on purchases of Rs. 3,30,286/- without filing objection as required under the provision of section 28(2) of DVAT Act, 2004. It is relevant to mention here that any person who discovers a mistake or error in any return furnished by him under this Act, and as a result has paid more tax than was due under this Act may lodge an objection against the assessment. Thus, VATO (Audit) was on a sound legal footing while rejecting the said revised returns because the objector was required to file an objection u/s 28(2) read with section 74 of DVAT Act. However, now the objector has filed objection under the relevant provisions of law. He has also filed copies of tax invoices for an amount of Rs 34468/- issued by the selling dealer. VATO (Ward-08 may consider the said invoices for the purpose of allowing ITC subject to verification of said invoices and after ascertaining tax deposition of selling dealers.

The other issue is regarding disallowing of input tax credit on capital goods purchased by the dealer such as vehicles, furniture, photocopier etc. As per Schedule VII, the said goods are covered under the category of non-creditable goods. Hence, The ITC is not admissible on such goods. The claim of ITC on account in the revised return is in contravention of the provisions of section 9(2)(b) of DVAT Act, 2004 read with Schedule VIII of the Act.

As regards, the issue of credit notes is concerned; it is relevant to refer to the provision of Section 51 of DVAT Act, 2004 which lays down that:

"Where a tax invoice has been issued in respect of a sale and –

(a) the amount shown as tax in that tax invoice exceeds the tax payable in respect of the sale, the dealer shall provide the purchaser with a credit note, containing such particulars as may be prescribed; or

(b) the tax payable in respect of the sale exceeds the amount shown as tax on the tax invoice, the dealer shall provide the purchaser with a debit note, containing such particulars as may be prescribed."

From a keen perusal of the above said provision, it is abundantly clear that a selling dealer can issue credit notes only if the amount shown as tax in the relevant tax invoice exceeds the tax payable in respect of the sale. In the present case the above said prerequisite did not necessitate issuance of credit notes: That is the reason the selling dealer did not indicate the variation in the claim/adjustments. Thus, provision of section 51 of DVAT Act read with Rule 45 of DVAT Rules does not come to the rescue of the objector.

In the instant case, the credit notes have been issued for reasons other then those laid down in Section 51 of DVAT 2004. Whatever might have been the reason, the net result or consequence of the discount that the purchasing dealer reduced the value of the purchases proportionally and computed and paid output tax on the value so reduced plus the incremental component. Consequently, the sale price was shown considerably lower than the purchase price as mentioned in the tax invoices.

Since, the ITC was claimed on the purchase price as mentioned in the tax invoices, the objector is liable to reduce the ITC proportionally consequent upon the receipt of the discounts in view

of provision of Section 10(1) of DVAT Act. It is also relevant to mention here that the selling dealer is entitled to file a claim, subject of course to restrictions of limitation. If tomorrow the selling dealer(s) also raises a claim, for refund on account of reduction in tax liability in view of allowance of discounts, then it will be difficult for the department to deny the claim subject of course to the observance of provisions governing limitation.

Under The Delhi Sales Tax Act, 1975, tax was levied and collected either at the first point or at the last point of sale. Consequent upon coming into force of DVAT Act, 2004 w.e.f, 1.4.2005, the tax is being levied and collected on each point of sale with the provision of set off in respect of the input tax paid on purchase of goods. Thus, the DVAT system, tax is levied/ charged on value addition at each paint of sale. The governing idea under the present system is to earn more revenue by taxing the value of addition at each paint of sale. In the instant case there is no incremental component and hence no tax on incremental component on the contrary sale price is lower than the purchase price, although the balance sheet reflects net profit, which goes against the basic philosophy of DVAT system.

The moot question involved in the objections is whether the purchasing dealer, who is in receipt of credit notes from its selling dealer in lieu of trade/sales discounts offered to him is entitled to adjust/ incorporate such discounts against the purchases and tax credit claimed by him in the returns. Before deciding the matter under consideration, it would be worthwhile to go through the various provisions of DVAT Act, 2004 and Rules framed there under which are as under:

Section 2(1)(zd)(vii)(a) of DVAT Act defines 'Sale Price' as - "Sale price exclude any sum allowed as discount which goes to reduce the sale price according to the practice normally, prevailing in trade".

Here it is also relevant to refer to the provisions of Section 8(1)(c) which lays down as under:

"Section 8 - Adjustments to tax-(1) {Subject to such conditions as may be prescribed, this section shall apply where, in relation to the sale of goods by any dealer-}

(a).....

(b).....

(c) the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason:"

The objector has filed letters issued in his favour by the selling dealer stating that they have not received VAT on credit notes:

Further, section 8(2) of DVAT Act, 2004 lays down that "where a dealer has accounted for an incorrect amount of tax that dealer shall make an adjustment in calculating the tax payable by that dealer in the return for the tax period during which it has become apparent that the tax is incorrect."

From the keen perusal of above said provisions it is evident that adjustment of output tax by seller and tax credit by purchaser on account of credit notes, as the case may be, are independent of each

other. Non-adjustment of output tax by seller does not entitle the purchaser (objector) to violate provisions of Section 10 (1) of DVAT Act, 2004 which lays down as under:

"(1) Where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned."

From the perusal of provisions of Section 2(1)(zd)(vii)(a), Section 8(1)(c) and Section 10(1) of DVAT Act, 2004, it is abundantly clear that on receipt of credit notes from the selling dealer, it was incumbent upon the objector to decrease the purchases and proportionately decrease the tax credit claimed in the respective tax periods, which has not been done by the dealer.

I have gone through the objections filed in DVAT-38 forms, notices of default assessment of tax and interest/notices of assessment of penalty, the documents furnished in support of said objections, the provisions of the DVAT Act, 2004 and Rules framed there under and have also heard the arguments of the counsels of the objector and those of DR, whereupon, I am of the view that the notices of default assessment of tax and interest and notices of assessment of penalty issued/passed by VATO (Audit) are legally sound and valid,

therefore, the same are upheld. Accordingly, the objections filed by **M/s. Hindustan Refrigeration Stores** are rejected".

Hence, these appeals challenging the impugned order passed by Ld. OHA.

8. Arguments heard. File perused.

Disallowing of claim of ITC on purchase of capital goods – cars, three wheelers, trucks and furnitures

9. As noticed above, while framing assessment, learned Assessing Authority observed that the dealer – assessee purchased car, three- wheeler, truck and furniture etc. during the tax period 2005-06, 2006-07 and the dealer had claimed one third of the total ITC of Rs. 47,371/- and Rs. 78,327/- respectively, but no ITC is admissible on these items and as such the dealer – assessee was liable to reverse it. Accordingly, the Assessing Authority levied tax on this ground.

When the matter came up before learned OHA by way of objections u/s 74(1) of DVAT Act, he observed in para no. 3 of the impugned order that the objector had however remained silent on the issue of claiming ITC on capital goods.

Subsequently, in the same paragraph, learned OHA observed that claim of ITC on this ground, in the revised return, was in contravention of the provisions of Section 9(2)(b) of DVAT Act 2004 and Schedules 7 of the Act.

10. Learned counsel for the Revenue has referred to Section 9(2)(b) of DVAT Act and Schedule-VII available under the Act and supported the reasons recorded by learned OHA for disallowing of ITC on these items which were non-creditable goods.

11. It may be mentioned here that in the course of final arguments, learned counsel for the appellant has placed on record copies of two challans, one dated 29-08-2008 & other dated 10-11-2018, and has not pressed these appeals so far as claim of ITC of purchase of vehicle etc. such as car, three-wheelers, trucks and furniture is concerned, by submitting that the dealer has subsequently deposited the requisite tax and interest as per said assessments.

Accordingly, these appeals challenging assessments framed on the said ground are hereby partly dismissed as not pressed. Consequently, the two assessments framed on this ground and the reasons recorded above and the impugned order passed by learned OHA are upheld. I order accordingly.

Non-reversal of ITC on credit goods in the month of March 2008.

12. In the default assessment u/s 32 of DVAT Act, learned Assessing Authority observed that the dealer – assessee had received credit notes/incentive to the tune of Rs. 55,605/- from the principal parties in the month of March 2008, and further that the dealer – assessee was required to reverse the ITC amounting to Rs. 6,178/-, but dealer did not reverse the same. Accordingly, learned Assessing Authority levied tax on the dealer on this ground.

Learned OHA dismissed objections for the reasons given in the impugned order, while observing that on receipt of credit notes from the selling dealer, it was incumbent upon the objector to decrease the value of the purchases and proportionately decrease the tax credit claimed in the respective tax periods, which was not done by the dealer.

Learned counsel for the dealer-appellant has referred to decision in **Challenger Computers Ltd. v. CTT** (2015) 8TMI 1005 (Delhi) and contended that it was not obligatory for the buying dealer to resort to the procedure laid down u/s 10(1) of DVAT Act. Further, it has been pointed out that in these appeals dealer has submitted certificates issued by Voltas Ltd. intimating that the said company i.e. Voltas Ltd. had not claimed deduction in

taxable turnover and correspondingly not reduced their output tax pertaining to the credit notes issued to the dealer-appellant.

The contention raised by learned counsel for the appellant is that in view of the certificates issued by the selling dealer and applying the decision in Challengers Computers Ltd., the impugned order passed by learned OHA and impugned assessments framed by the Assessing Authority on the point of receipt of credit notes and non-reversal of ITC by the dealer, deserve to be set-aside. I order accordingly.

13. In **Challenger Computers Ltd.'s** case (supra), it has been held by our own Hon'ble High Court that where the selling dealer has issued certificates stating that they have not claimed any refund of tax from the department or sought any adjustment in their respective output tax liability in respect of credit notes issued by them, the purchasing dealer is not required to reverse its input tax credit. The judgment was delivered by the Hon'ble High Court on 21-08-2015.

The impugned default assessment of tax and interest framed in this matter are of September 2008, whereas the impugned order passed by learned OHA is of September 2009.

Available on record is true copy of letter/certificate dated 17-11-2008 issued by Manager (F&C), Voltas ltd.-selling dealer to the

purchasing dealer i.e. the appellant herein. As per contents of this letter, the credit notes as per detailed list enclosed therewith, were issued on the basis of applicable quantity and turnover scheme. As further clarified in the said letter, the selling dealer had not claimed deduction in taxable turnover and correspondingly not reduced its output tax pertaining to these credit notes.

Another letter/certificate dated 15-01-2009 to the same effect came to be issued by the selling dealer-Voltas Ltd. to the appellant-purchasing dealer in respect of more credit notes worth Rs. 3.54 lacs issued during financial year 2007-08.

14. Learned counsel for the Revenue has candidly submitted that decision in challenger computer's case fully applies to the facts of this case. Revenue does not challenge the two certificates issued by the selling dealer.

15. In view of the decision in Challenger Computer's case by our own Hon'ble High Court, and taking into consideration the letter/certificates, it is held that the impugned default assessments of tax, interest & penalty and the impugned order passed by learned OHA on the point of credit notes deserve to be set aside.

Disallowing of ITC, when revised return filed without filing objections u/s 28 of DVAT Act

16. In this regard, in the default assessment, learned Assessing Authority observed that during March 2008, dealer revised its return on 07/08/2008 i.e. after receipt of notice dated 01/08/2008 issued for the purpose of its audit; that in the revised return, the dealer enhanced the value of the purchases to Rs. 3,30,286/- and thereby enhanced the input tax credit.

Learned Assessing Authority while disallowing the said input tax credit observed that revised return could not be accepted without the orders of Appellate Authority seeking permission to claim excess ITC.

17. It may be mentioned here that when the matter came up before learned OHA, he dealt with the objections raised on this point by the dealer by observing in the manner as:

> "It is apparent from the record that the dealer filed the revised return on 07.08.2008 i.e., after the receipt of notice for audit dated 01.08.2008. In the said return, the dealer has claimed additional ITC of Rs. 34,468/- on purchases of Rs. 3,30,286/- without filing objection as required under the provision of section 28(2) of DVAT Act, 2004. It is relevant to mention here that any person who discovers a mistake or error in any return furnished by him under this Act, and as a result has paid more tax than was due under this Act

may lodge an objection against the assessment. Thus, VATO (Audit) was on a sound legal footing while rejecting the said revised returns because the objector was required to file an objection u/s 28(2) read with section 74 of DVAT Act. However, now the objector has filed objection under the relevant provisions of law. He has also filed copies of tax invoices for an amount of Rs 34,468/- issued by the selling dealer. VATO (Ward-08 may consider the said invoices for the purpose of allowing ITC subject to verification of said invoices and after ascertaining tax deposition of selling dealers."

18. In view of the above said observations and reasons given by Learned OHA, and also the directions issued by him to the concerned VATO, it was for the dealer-appellant to take appropriate steps for the purpose of allowing ITC subject to verification of said invoices and after ascertaining tax deposition of selling dealers. Learned counsel for the dealer-appellant submits that in case of the dealer has not taken steps in this regard; same shall be taken in accordance with law.

18. As a result of the above discussion, it can safely be said that the impugned assessments passed by learned Assessing Authority on this ground do not survive. Assessing Authority to take steps in this regard in accordance with law.

19. Consequently, both these appeals are partly allowed in the manner indicated above and partly dismissed as not pressed, in the manner indicated above.

20. 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 : 8/7/2022

Narinder Kumar 8/7/2022

(Narinder Kumar)
Member (Judicial)

Appeal No. 553-554/ATVAT/09/4978-85 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
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