

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal Nos.: 739-740/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

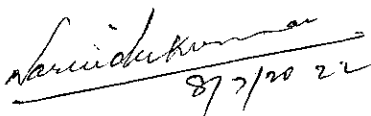
Counsel representing the Appellant : Sh. H.C. Bhatia

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

JUDGMENT

1. Assessing Authority – VATO (Ward-08), by way of Notice of Default Assessment of Tax & Interest, issued u/s. 32 of Delhi Value Added Tax Act, 2004 (herein after referred to as DVAT Act), raised demand of Rs. 33,620/- by way of tax and Rs. 3730/-, by way of interest in respect of tax period October 2007-08, by observing in the manner as:-

“During the month of Oct. 2008, the firm has received credit notes/incentives amounting to Rs.298303/- from the local principal parties from whom purchases are made. Receipts of credit notes on the purchases are a regular feature which is shown in other income


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and is related to purchase only. The firm has not reversed the ITC on these incentives/credit notes. Therefore the firm is liable to reverse the ITC amounting to Rs. 33620/- Hence demand of Rs. 33620/- is assessed along with interest.”

At the same time, vide separate notice u/s. 33 read with Section 86(10) of DVAT Act, the Assessing Authority – VATO imposed penalty on the dealer, to the tune of Rs. 33,620/- for the aforesaid reasons.

2. Feeling aggrieved by the above said Default Assessment of Tax, Interest and imposition of penalty, the dealer filed objections before Ld. OHA – Dy. Commissioner (Zone –III).
3. After hearing and going through the impugned assessment order and order of penalty, grounds of objections and documents filed by the dealer, Ld. OHA was of the view that the dealer had committed a mistake by reducing its purchase and claimed ITC.

Ld. OHA rejected the objections by observing that the incentive received by the dealer (whether item wise or on the basis of gross sale made by the dealer) is directly related to its sale activity, and in these circumstances creation of demand with interest and levy of penalty were justified.

It may be mentioned here that the objector filed review application before Ld. OHA stating therein that the selling dealer did not give incentive in relation to the sale price and that the

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selling dealer had paid tax on its original price. Ld. OHA dismissed the application for review of the order while expressing opinion that reversal of ITC and imposition of penalty for claiming ITC on incentive/ credit note had already been discussed in the previous order dated 19/03/2009.

4. Record reveals that one of the objections raised by the objector before the Ld.OHA was that selling dealer had not claimed any deduction in taxable turnover and output tax in respect of the credit notes issued by Voltas Ltd; and that these credit notes pertained to the quantity off take during the claim period as commission/ incentive, for which the purchase price was not changed; and that the selling dealer treated the said amount as commission and deducted TDS from the incentive amount paid to the dealer u/s. 194 H of Income Tax Act.
5. Here, one of the grounds of appeal raised by the dealer is that ^{since} Government has already received full tax and the selling dealer did not alter its sale price after giving incentive, there was no question of reversing the entry of ITC in its Books of Account.
6. Arguments heard. File perused.
7. As noticed above, the Assessing Authority framed assessment mainly on the ground that the dealer had not reversed the ITC in view of the incentive/ credit notes amounting to Rs. 2,98,303/- received by the dealer-appellant from the local principal parties,

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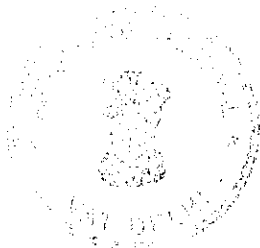
from whom purchases were made, and as such firm/dealer was liable to reverse the ITC and also liable to pay Rs. 33,620/- by way of tax with interest.

Learned OHA dismissed objections for the reasons given in the impugned order, while observing that the dealer had committed a mistake by reducing its purchase and in claiming ITC.

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 certificate issued by the selling dealer and applying the decision in **Challengers Computers Ltd.**, the impugned order passed by learned OHA and impugned assessment 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.

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8. 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 is of 12-09-2008, whereas the impugned order passed by learned OHA is dated 19-03-2009.

Available on record is true copy of letter/certificate dated 17-01-2008 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 worth Rs. 3,53,950/-, 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 credit notes worth Rs. 3.54 lacs issued during financial year 2007-08.

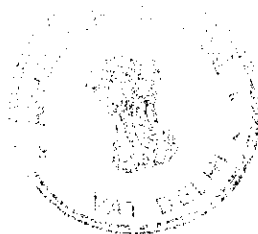
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9. Learned counsel for the Revenue has candidly submitted that decision in challenger computer's case fully applies to the facts of this case. Revenue does not challenge the two certificates issued by the selling dealer.
10. In view of the decision 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.
11. As a result, both these appeals are allowed and the impugned default assessments of tax, interest & penalty and the impugned order passed by learned OHA are set aside.
12. 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. ~~739~~ 740/ATVAT/09/4986-93

Dated: 11/07/22

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