

**BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI**

Sh. Narinder Kumar, Member (Judicial)

Appeal No : 277/ATVAT/2021

Date of Judgment : 21/7/2022

M/s Bajrang Bali Industries  
QU-171B, Pitam Pura,  
New Delhi - 110034.

.....Appellant

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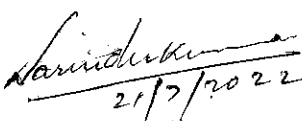
Commissioner of Trade & Taxes, Delhi

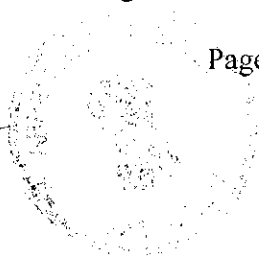
..... Respondent

Representing the Appellant : Sh. H.L. Madan, CA.  
Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. Appellant – dealer is feeling aggrieved by order dated 11/8/2021 passed by learned Objection Hearing Authority (OHA), whereby the objections filed by the dealer against notice of default assessment of tax and interest framed on 29/6/2018, by the Assessing Authority, have been rejected.
2. Matter pertains to tax period 1/10/2008 to 31/03/2009.
3. Vide default assessment of tax and interest framed on 29/6/2018, Assessing Authority observed that the selling dealer

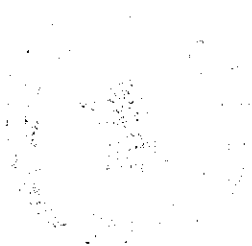
  
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had not furnished returns i.e. DVAT-16 for all the four quarters of assessment year 2008-09.

4. As per case of the dealer – appellant while rejecting the claim i.e. ITC of the dealer – applicant, the Assessing Authority could not issue the notice of default assessment of tax and interest particularly when the turnover assessed was ‘zero’, even as per the table available in the said notice issued by the Revenue. Consequently, it has been submitted that the learned OHA fell in error in upholding the notice of default assessment.
5. Earlier this Appellate Tribunal vide order communicated vide endorsement dated 3/5/2018 had remanded the matter to VATO, while setting-aside the previous assessment dated <sup>30/5/2012</sup>~~14/8/2012~~ passed by VATO as well as the order passed by the learned OHA, with the direction for reconsideration of the matter pertaining to refund claimed by the dealer and to pass orders afresh.
6. Arguments heard. File perused.
7. Admittedly, by way of default assessment framed earlier on 30/05/2012, the Assessing Authority had rejected the claim of the dealer – assessee for refund, so far as tax period – 2<sup>nd</sup> half yearly – 2008 is concerned. This assessment was challenged by way of objections u/s. 74 of DVAT Act, which were disposed

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of vide order dated 19/07/2017 passed by Learned OHA.

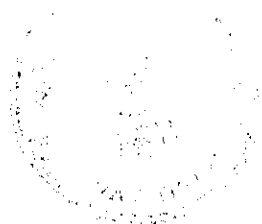
When the matter came up before this Appellate Tribunal, vide judgment dated 24/04/18, for the reasons given therein VATO was directed to consider refund of the dealer – assessee.

That is how, the impugned assessment dated 29/06/18 came to be framed, whereby learned Assessing Authority not only rejected the refund claim of the dealer – assessee but also levied tax and interest on the ground that claim of ITC of Rs. 44,422/-, put-forth by the dealer – assessee as regards purchases from M/s. Swadeshi Oil Corporation could not be verified.

8. Learned CA has contended that no notice was served by the Learned Assessing Authority and as such this is a case of no opportunity to the dealer – assessee for the purpose of making of assessment.

Learned Assessing Authority in the impugned assessment specifically mentioned that notices dated 11/05/18 and 16/06/18 were issued to the dealer – assessee for 31/05/18 and 19/06/18 respectively to furnish the requisite information, so as to consider its claim regarding refund, as per directions issued by this Appellate Tribunal, but the dealer failed to furnish the requisite information.

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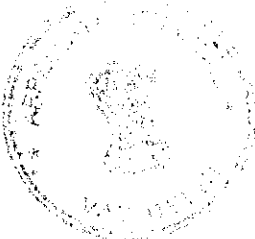
9. The submission put-forth by the dealer – objector before Learned OHA was to the effect that the Assessing Authority had failed to provide opportunity of being heard. Learned OHA found that sufficient and reasonable opportunities were provided by the Assessing Authority to the dealer by issuing notices u/s. 59(2) of DVAT Act.

It may be mentioned here that in Para 4 of the objections before Learned OHA, the dealer-objector had pleaded that notice dated 11/05/18 issued for 31/05/18 was not received within the specified time. Nowhere it was pleaded as to on which date the said notice dated 11/05/18 was actually received or that it was received after 31/05/18. In the absence of any such specific objection, it cannot be said that notice dated 11/05/18 issued by the Assessing Authority was not served upon the dealer – assessee.

As regards the other notice dated 12/06/18 issued for 19/06/18, the dealer – objector pleaded in the objections that the Assessing Authority provided very less time to furnish the desired documents. From this plea, it can safely be said that the dealer admitted receipt of said notice dated 12/06/18.

In view of the above discussion, there is no merit in the contention raised by learned CA on the point of service of

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notices.

10. So far as rejection of ITC for Rs. 44,422/- is concerned, Learned CA for the dealer – assessee has submitted that it was rejected because M/s. Swadeshi Oil Corporation that selling dealer had not furnished returns for all the four quarters of the assessment year 2008-09.

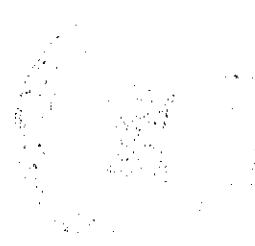
The contention is that actually the selling dealer had furnished returns i.e. DVAT 16 in respect of the said 4 quarters and there was no ambiguity or mismatch regarding the sale / purchase made by them in the relevant tax period.

As noticed above, sufficient opportunity was given by the Assessing Authority to the dealer by way of two notices calling upon it to furnish requisite information so as to process its claim for refund, but it failed to do so.

11. Even if the dealer – assessee failed to appear before Learned Assessing Authority in response to the two notices despite service, Learned Assessing Authority could call upon the selling dealer to look into its account books regarding sales if any made to the dealer – assessee in the concerned quarter.

Learned Assessing Authority could also call upon the dealer – assessee to summon the representative of the selling dealer with

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requisite record. However, no such step appears to have been taken by the Assessing Authority.

In the given situation, when it has been expressed that this is a case for remand of the matter, Learned Counsels for the parties are in agreement that the matter be remanded to Learned Assessing Authority for decision afresh.

12. In the given facts and circumstances, this appeal is here by disposed of and while setting aside the impugned order passed by Learned OHA and the impugned assessment framed on 29/06/18 by Learned Assessing Authority, the matter is remanded to Learned Assessing Authority for decision a fresh after summoning M/s Swadeshi Oil Corporation in respect of transaction of sale with the dealer – assessee during the relevant period i.e. 2<sup>nd</sup> half year 2008-09, or to provide opportunity to the dealer – assessee to secure presence of the said selling dealer for the said purpose, to decide the claim of refund ~~and~~ ~~put~~ put-forth by the dealer – assessee.

Of course, Assessing Authority shall provide reasonable opportunity of being heard to the dealer – assessee.

13. Dealer – assessee is hereby directed to appear before Assessing Authority on 12/08/2022.

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14. 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 website.

Announced in open Court.

Date : 21/7/2022

*Narinder Kumar*  
*21/7/2022*

(Narinder Kumar)

Member (J)



Appeal No. 277/ATVAT/22/5143-50

Dated: 22/07/22

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**

