

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

Sh. Narinder Kumar, Member (Judicial)

Appeal Nos.: 313-316/ATVAT/17

Date of Judgment : 25/07/2022

M/s. Suchi Chem & Plastic Industries,  
80, Shahzada Bagh, Old Rohtak Road,  
Delhi-110035.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. A.K. Babbar.  
Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. Dealer – appellant, having Tin No. 07190068316, is a Proprietorship concern. It has challenged order dated 6/11/2017 passed by learned Additional Commissioner - Objection Hearing Authority (OHA).
2. Vide impugned order, learned OHA dismissed all the four objections filed by the dealer u/s 74(1) of Delhi Value Added Tax Act-2004 (here-in-after referred to as the DVAT Act).

*Narinder Kumar*  
25/7/2022



3. Dealer filed objections before learned OHA feeling aggrieved by notices of default assessment of tax, interest and penalty.

The assessments were framed by the Assessing Authority vide order dated 18/11/2015, u/s 32 of DVAT Act whereby the dealer was directed to pay a total sum of Rs. 58,14,417/- i.e. Rs. 48,53,104/- towards additional tax and Rs. 9,61,313/- towards interest, *for the 1<sup>st</sup> quarter of 2014* ; Rs. 58,17,689/- i.e. Rs. 50,14,065/- towards additional tax and Rs. 8,03,624/- towards interest, *for the 2<sup>nd</sup> quarter of 2014*; due to the following reasons :-

#### **First Quarter - 2014**

“M/s. Sushi Chem & Plastic Industries Tin No. 07190068316 has reflected high sea sales to M/s Indopol India, Haryana (Tin No. 06193020867) for Rs. 9,70,62,085/- in the 1<sup>st</sup> quarter of the year 2014-15. To verify the sales, a request letter was sent to DETC (Sales Tax) on 21/3/2015. The Deputy Excise & Taxation Commissioner (ST), Sonapat, Haryana Government vide letter dated 29/7/2015 informed that the dealer, M/s Indopol India, (Tin No. 06193020867), has not reflected any high sea purchases from M/s. Sushi Chem & Plastic Industries during the above period. A notice u/s 59(2) of DVAT Act, 2004 was issued to the dealer. None appeared nor any intimation received from the dealer. Hence, considering the reply of the ETO Sonapat, the High Sea sales made by the dealer to M/s. Indopol are rejected and treated as local sales which is taxed @ 5% alongwith interest and penalty”.

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## Second Quarter – 2014

“M/s. Sushi Chem & Plastic Industries Tin No. 07190068316 has reflected high sea sales to M/s Indopol India, Haryana (Tin No. 06193020867) for Rs. 10,02,81,300/- in the 2<sup>nd</sup> quarter of the year 2014-15. To verify the sales, a request letter was sent to DETC (Sales Tax) on 21/3/2015. The Deputy Excise & Taxation Commissioner (ST), Sonapat, Haryana Government vide letter dated 29/7/2015 informed that the dealer, M/s Indopol India, (Tin No. 06193020867), has not reflected any high sea purchases from M/s. Sushi Chem & Plastic Industries during the above period. A notice u/s 59(2) of DVAT Act, 2004 was issued to the dealer. None appeared nor any intimation received from the dealer. Hence, considering the reply of the ETO Sonapat, the High Sea sales made by the dealer to M/s. Indopol are rejected and treated as local sales which is taxed @ 5% alongwith interest and penalty”.

4. By way of notice of assessment of penalty u/s 33 of DVAT Act, Assessing Authority levied penalty of Rs. 48,53,104/- for the 1<sup>st</sup> quarter of 2014, due to violation of provision of section 86(10) of DVAT Act.
5. By way of separate notice of assessment of penalty u/s 33 of DVAT Act, Assessing Authority levied penalty of Rs. 50,14,065/- for the 2<sup>nd</sup> quarter of 2014, due to violation of provision of section 86(10) of DVAT Act.

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6. While dismissing the objections filed by the dealer, learned OHA observed in the manner as :-

“From the analysis of the facts and documents available on record, it is observed that the objector dealer made agreement for High Seas Sales with M/s Indopol India, Sonapat, Haryana, and the invoices for the said sales was also issued to M/s Indopol India, Sonapat, Haryana. However, the objector dealer has claimed that the said goods have been got released from the custom Authorities by the M/s Indopol India, Delhi.

The claim of the objector dealer that both the entities M/s Indopol India, Sonapat, Haryana and M/s Indopol India, Delhi are one and the same is not tenable only because the Proprietor of the both the firms are one and same. Both the firms are registered in two separate states with concerned VAT Authorities with different Tin Nos.

As per DP-1 of the dealer available on DVAT Module, M/s Indopol India, Delhi is registered with Delhi with PAN No. DMYPK9049H, whereas objector dealer has submitted a copy of PAN Card of Proprietor, Sh. Raj Kumar showing PAN No. as DMYPK9049G and therefore, the PAN NO. is also different.

Besides it, Annexure 2A (purchase summary) filed by objector dealer in respect of M/s Indopol India, Delhi for 1<sup>st</sup> & 2<sup>nd</sup> quarter of 2014-15, nowhere showing high seas purchases from the objector dealer. The copies of Annexure 2A are placed on record. As per last revised Annexure-2A filed by M/s Indopol India, Delhi in respect of 1<sup>st</sup> quarter of 2014-15, it is noticed that no high seas purchases from objector dealer namely M/s Sushi Chem & Plastic

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Industries, has been shown by him. The summary of purchases filed by the M/s Indopol India, Delhi nowhere shows the name and Tin No. of the objector dealer in respect of high seas purchases made by him.

The Assessing Authority in its assessment order has already got clarification from the M/s Indopol India, Sonapat, Haryana, that M/s Indopol India, Sonapat, Haryana has not even reflected any high seas purchases from the objector dealer during the both quarters. Since M/s Indopol India, Delhi has revised the originally filed returns. Annexure-2A during the available timeline as per law, therefore, it can be safely presumed that if there would have been any mistake in filing of information by M/s M/s Indopol India, Delhi had already taken it into consideration while revising the returns.

Further, a careful perusal of the various bill of entry filed by the dealer in support of grounds of objection taken by him reveals that they have been filed on behalf of M/s Indopol India, Sonapat, Haryana.

Therefore, the dealer has failed to establish whether these goods have moved to Haryana or remained in Delhi for further sales on which due tax to Government exchequer was required to be paid. The objections on this ground is also liable to be rejected because the dealer has not approached the OHA with clean hands and taking contrary arguments to justify his claim of objection."

7. Hence, these appeals.





8. Learned Counsel for the dealer-appellant has submitted that before Learned OHA, the objector had also challenged levy of tax in respect of both the quarters, but in the first paragraph of the impugned order, Learned OHA has not shown in the table demand raised by way of tax.
9. Indisputably, by way of default assessment, tax was also levied upon the dealer.
10. Counsel for appellant has referred to Annexure P-3, which is copy of application dated 02/11/2017 submitted before Learned OHA to the effect that updated form DVAT-38 with columns in point No. 13 properly filled up, was submitted before Learned OHA. Learned Counsel submits that it was due to oversight that the tax amount was not shown in point No. 13 of form DVAT-38. In other words, Learned Counsel for the dealer-appellant has submitted that default assessment of tax was also challenged before Learned OHA by way of the said application dated 09/11/2017.
11. It is true that in the impugned order, Learned OHA has not referred to filing of the said application dated 02/11/2017 and also nowhere mentioned therein if the application was allowed or disallowed. However, from the impugned order, it can safely be said that Learned OHA considered objections raised by the

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dealer-objector even on the point of levy of tax. Learned Counsel for the Revenue is not in disagreement on this point that the objections raised as to the levy of tax were also considered by Learned OHA.

12. As noticed above, tax, interest and penalty came to be imposed because the department rejected the claim put-forth by the dealer as regards High Seas Sales to M/s Indopol India and treated the said sales as local sales.
13. Learned Assessing Authority observed that M/s Indopol India had not reflected any High Seas Sales from the dealer-appellant and that the dealer did not participate in the assessment proceedings despite notice u/s 59(2).
14. When the matter came up before Learned OHA, what was observed by Learned Additional Commissioner can be summarized as under:
  - (i) That the agreement for High Seas Sales was with M/s Indopol India, Sonapat, Haryana but the goods were claimed to have been got released from the Custom Authorities by M/s Indopol India, Delhi;
  - (ii) That both the said firms had separate registration and TIN Nos. in each State for the purpose of VAT;

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- (iii) That there was difference in PAN Nos. of Shr. Raj Kumar, proprietor of the said two concerns i.e. one registered in Sonapat and the other registered in Delhi;
- (iv) That M/s Indopol India, Delhi had not shown High- seas purchases from the dealer, in Annexure-2A relating to 1<sup>st</sup> and 2<sup>nd</sup> quarter of 2014-15 or even in the revised Annexure-2A furnished in respect of 1<sup>st</sup> quarter of 2014-15;
- (v) That the dealer failed to establish if the goods moved to Haryana or remained in Delhi for further sales.

15. Learned Counsel for the dealer-appellant has submitted that when the agreement for High Seas Sales was entered into between M/s Indopol India, Sonapat (Haryana), it was not for the dealer-appellant either to explain as to how the goods came to be released from the Custom Authorities by M/s Indopol India, Delhi or to explain the deficiencies noticed by Learned OHA in the impugned order as regards PAN No. of the proprietor of both the concerns and non-reflection of the said purchases by M/s Indopol India, Delhi in Annexure-2A submitted initially and Annexure-2A submitted subsequently in respect of 1<sup>st</sup> quarter of 2014-15.

16. In the given facts and circumstances, the dealer having raised objections against the default assessments, it was for the objector to substantiate its claim by leading cogent and convincing





evidence, including corroboratory evidence, so as to prove its claim as regards exemption sought in respect of High Seas Sales turnovers. In this regard, the dealer could collect affidavit from M/s Indopol India, Sonapat, Haryana and M/s Indopol India, Delhi to explain the things. In the alternative, the objector could have assistance of the Learned OHA in securing presence of the proprietor of the said concerns. Even Learned OHA could call upon the objector to do so. For the purpose of disposal of the objections, summons could also be issued by Learned OHA to the proprietor of the said concerns, so as to arrive at the truth, for the purposes of legally due tax, interest and penalty. However, no such step appears to have been taken either by the objector or by Learned OHA.

17. In the given facts and circumstances, when it has been expressed by the Appellate Tribunal that this is a case where matter deserves to be remanded to Learned OHA for inquiry on the disputed facts noticed above, with the participation of M/s Indopol India, Sonapat, Haryana and M/s Indopol India, Delhi for decision of the objections afresh, Learned Counsel for the parties are in agreement that the matter needs to be remanded to Learned OHA for inquiry and decision afresh after joining concerned dealers i.e. M/s Indopol India, Sonapat, Haryana and M/s Indopol India, Delhi in the objection proceedings and also

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by providing reasonable opportunity of hearing to the dealer-appellant, for a thorough inquiry on the point of mismatch and the disputed facts as noticed above.

18. As a result, *these appeals are disposed of* the impugned order passed by Learned OHA is set aside and matter is remanded to Learned Objection Hearing Authority for inquiry on the above noted disputed or unexplained facts involved in the matter, with the participation of M/s Indopol India, Sonapat, Haryana and M/s Indopol India, Delhi, and for decision of the objections afresh after joining concerned dealers namely M/s Indopol India, Delhi and M/s Indopol India, Sonapat, Haryana in the objection proceedings and also by providing reasonable opportunity of hearing to the dealer-appellant.
19. Accordingly, dealer-appellant to appear before Learned OHA on 12/08/2022.
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 : 25/07/2022



*Narinder Kumar*  
25/7/2022  
(Narinder Kumar)  
Member (J)

Appeal No. 313-316/ATVAT/17/5170-77

Dated: 27/07/2022

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