

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

Appeal No : 224/ATVAT/2018

Date of Decision : 26/7/2022

M/s Bahubali Enterprises,
1826/11/43, New Amarnath Building,
Bhagirath Palace,
New Delhi-110006.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Rahul Gupta.
Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

1. Dealer – appellant is a Pvt. Ltd. company registered with Department of Trade & Taxes, Delhi vide Tin No. 07900154304.
2. The dealer – assessee is feeling aggrieved by order dated 20/9/2018 passed by learned Objection Hearing Authority (OHA), (Zone- II, V, VI & Enforcement – I & II), whereby its objections dated 5/12/2017 against notice of default assessment of tax and interest, under Central Sales Tax Act (here-in-after referred to as CST Act) have been rejected.

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3. The notice of default assessment of tax and interest framed by the Assessing Authority is dated 4/9/2017, whereby sales under C+E-I were disallowed and prayer of the dealer seeking C-forms was rejected, and further the sales under C+E-I by the dealer all of which find mentioned in the assessment order, having been rejected the same were treated as sales against full tax, and consequently the dealer was directed to pay total sum of Rs. 6,96,385/- i.e. 6,93,535/- towards additional tax and Rs. 2,850/- towards interest.
4. The said notice of default assessment of tax and interest came to be issued due to the following reasons:
- “M/s. Bahubali Enterprises Pvt. Ltd. has approached the undersigned for seeking C-form against the purchases made by him during 4th qtr. 2016-17. Since the dealer has shown very high GTO and “nil” tax, the dealer was asked about the reasons for “Nil” tax.
- The dealer informed that he is involved in C+E-1 sale and hence no tax.
- The dealer was accordingly asked to furnish the bills (purchase & sale bills) to facilitate the undersigned to issue C-form as sought by the dealer. The dealer on 30/8/2017 furnished 14 sets of purchase and sale bills in r/o each transaction.
5. Learned Assessing Authority observed as under :-



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"A perusal of retail invoice issued by M/s. Jay Overseas, a regd. dealer of Gujrat vide invoice NO. K/R/16-17/011 dated 20/3/2017 reveals the name of M/s. Bahubali Enterprises Pvt. Ltd., a regd. Dealer of Delhi as buyer and M/s. Morepen Laboratories Ltd., a regd. Dealer of Himachal Pradesh as consignee.

Further M/s. Bahubali Enterprises Pvt. Ltd. has issued retail invoice in favour of M/s. Morepen Laboratories vide invoice NO. 1073/22 dated 21/3/2017.

Also perusal of GR bearing NO. 33927 of Arab Road lines reveals that the name of consignor as M/s. Jay Overseas and consignee as M/s. Morepen Laboratories ltd. The name of buyer is nowhere mentioned. But the GR has been endorsed by M/s. Bahubali Enterprises Pvt. Ltd. A perusal of endorsement made by M/s. Bahubali Enterprises Pvt. Ltd. reveals that date of endorsement has not been mentioned. From above it is clear that the goods were directly sold by M/s. Jay Overseas to M/s. Morepen Laboratories ltd. and hence the name of the purchaser appeared on both sale invoice as well as the GR. Had the sale been C+E-1. M/s. Jay Overseas would have sold the goods to the dealer regd. in Delhi, who in turn would have sold it to M/s. Morepen Laboratories Ltd. during transit. Also the GR would have been addressed to the dealer registered in Delhi and then the GR would have been endorsed by the Delhi dealer for further sale to M/s. Morephen Laboratories. But this had not happen.

I therefore, reject the sale under C+E-1 as the very essence of C+E-

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1 sale has been defeated.

Similar is the case with another retail invoice issued by M/s. Jay Overseas, regd. Dealer of Gujrat vide invoice No. K/R/16-17/012 dated 20/3/2017, GR No. 33929 dated 20/3/2017 issued by Arab Road lines and retail invoice issued by M/s. Bahubali Enterprises Pvt. Ltd. vide invoice NO. 1074/22 dated 21/3/2017.

A perusal of retail invoice issued by M/s. Aditya Overseas, regd. Dealer of Delhi vide invoice No. AO/16-17/1210 dated 21/1/17 reveals the name of M/s. Bahubali Enterprises Pvt. Ltd. regd. Dealer of Delhi as buyer and M/s. Reddy Pharmaceuticals Ltd., a regd. Dealer of Telangana as consignee.

Further M/s. Bahubali Enterprises Pvt. Ltd. has issued retail invoice in favour of M/s. Reddy Pharmaceuticals ltd. vide invoice No. 1056/22 dated 23/1/2017.

Also perusal of GR bearing No. 001635 of Tirupati Logistics reveals that the name of consignor as M/s. Aditya Overseas and consignee as M/s. Reddy Pharmaceuticals ltd. the name of buyer is nowhere mentioned. But the GR has been endorsed by M/s. Bahubali Enterprises Pvt. Ltd., a perusal of endorsement made by M/s. Bahubali Enterprises Pvt. Ltd. reveals that date of endorsement has not been mentioned.

From above it is clear that the goods were directly sold by M/s Aditya Overseas to M/s. Reddy Pharmaceuticals ltd. and hence the name of the purchaser appeared on both sale invoice as well as the

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GR. Had the sale been C+E-1. M/s. Aditya Overseas would have sold the goods to the dealer regd. In Delhi, who in turn would have sold it to M/s. Reddy Pharmaceuticals ltd. during transit. Also the GR would have been addressed to the dealer regd. In Delhi and then the GR would have been endorsed by the Delhi dealer for further sale to M/s. Reddy Pharmaceuticals ltd. but this had not happen.

I therefore reject the sale under C+E-1, as the very essence of C+E-1 sale has been defeated.

A perusal of retail invoice issued by M/s. Mody Chemi Pharma Pvt Ltd., a regd. Dealer of Mumbai, Maharashtra vide invoice No. 001341 dated 2/1/2017 reveals the name of M/s. Bahubali Enterprises Pvt. Ltd., a regd. Dealer of Delhi as buyer.

But perusal of GR No. (not available) of Padmashri Road Lines reveals that the name of consignor as M/s. Mody Chemi Pharma Pvt. Ltd. and consignee as M/s Reddy Pharmaceuticals ltd. The name of buyer is nowhere mentioned. The GR has been endorsed by M/s. Bahubali Enterprises Pvt. Ltd., a perusal of endorsement made by M/s. Bahubali Enterprises Pvt. Ltd. reveals that date of endorsement has not been mentioned. Further M/s. Bahubali Enterprises Pvt. Ltd. has issued retail invoice NO. 1052/22 dated 2/1/2017 in favour of M/s Reddy Pharmaceuticals Ltd. a perusal of above invoice issued by M/s. Mody Chemi Pharma Pvt. Ltd. reveals that the dealer M/s. Bahubali Enterprises Pvt. Ltd. is aware of the procedure relating to C+E-1 sale and hence the name of consignee in the instant case has not been mentioned in the invoice issued by

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M/s. Mody Chemi Pharma (P) Ltd. But in Gr. The name of consignee has appeared which shown the goods were not meant of M/s. Bahubali Enterprises Pvt. Ltd. at any stage of time but to evade tax, the Gr. Has been endorsed and bill issued by M/s. Bahubali Enterprises Pvt. Ltd. in favour of M/s. Reddy Pharmaceuticals Ltd.

I accordingly, reject the sale under C+E-1 as the very essence of C+E-1 sale has been defeated.

M/s. Golder Dye Chem, a regd. dealer of Mumbai has sold goods to M/s. Bahubali Enterprises Pvt. Ltd., a regd. Dealer of Delhi vide invoice No. LE/001763 dated 10/1/2017. Perusal of Gr. No. 65775 dated 10/1/2017 of Surabhi Transport Pvt. Ltd. shows the goods if for M/s. Bahubali Enterprises Pvt. Ltd., further M/s. Bahubali Enterprises Pvt. Ltd. vide retail invoice NO. 1055/22 dated 11/1/2017 has further sold the goods to M/s Morepen Laboratories Ltd. a regd. Dealer of Himachal Pradesh. All the procedure adopted by the dealer of Delhi is correct except that the date of stamping the GR is not available. Since no date of stamping the GR is available in any of the GR, it seems the sale made by Delhi dealer is suspicious in nature. It also shows that the Delhi dealer is well aware of the essence of C+W-1 sale and hence he has in the instant case shown purchase in his name and thereafter issued invoice to subsequent purchaser. Whereas, he has not followed the same procedure in other case. Hence I disallow the sale under C+E-1 and reject the request of the dealer for seeking C-form.

At the same time I also disallow/reject C+E-1 sale made by the



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dealer and treat it as sale against full tax.

The dealer has made sale amounting to Rs. 1,38,70,705/- against C+E-1, the same is treated as sale against full tax. Ordered accordingly.”

6. Learned OHA dismissed the objections filed by the dealer by observing in the manner as :-

“The matter is regarding assessment of tax and interest of CST Act for the period First Qtr. 2017 framed by the AA vide order reference NO. 150082350633 dated 4/9/2017. The objector got CTC from AA on 1/12/2017 and filed DVAT form-38 on 6/12/2017.

The AA in the impugned order created tax and interest of Rs. 6,96,385/- by disallowing the sale under C+E-1 and rejecting the request of the dealer for seeking “C” form. The grounds of disallowing the sale have been recorded in the order by the AA at length. The objector has stated that the transactions in dispute are on the strength of statutory form C+E-1.

It is observed that the objector dealer has not come forward with the plausible explanation that the procedure as laid down in section 6(2) of the CST Act, 1956 has not been complied with i.e. the dealer has not produced any document to indicate that subsequent sale during such movement has been effected by a transfer of document of title to such goods to registered dealer. In support, the dealer has filed copies of GRs in which there is no endorsement for effecting transfer of title in the name of subsequent buyer. Rather in some of



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the copies of GRs filed in the column of particulars of consignee there is mention of name and address of subsequent buyer which indicate towards predetermined sale which is not covered for exemption from tax under the provisions made in section 6(2) of CST Act, 1956.

In the light of the above observations and facts on record, I find that there is no basis or grounds to interfere in the impugned order passed by the AA vide reference NO. 150082350633 dated 4/9/2017. Accordingly, the objection of the objector is dismissed.”

7. Hence this appeal.
8. Arguments heard. File perused.
9. The first submission put forth by learned counsel for the appellant is that Assessing Authority framed assessment for the tax period 1st quarter, 2017-18, while taking into consideration certain transactions which relate to tax period 4th quarter of 2016-17 and were shown by the dealer in its return for the said tax period i.e. 4th quarter of 2016-17 as well as in 2A & 2B.

The contention raised by learned counsel for the appellant is that in the given situation the assessment framed by the Assessing Authority being invalid deserves to be set-aside.

Learned counsel for the appellant has also today placed on record copy of order dated 9/9/2020 passed by learned



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Assessing Authority by way of notice of default assessment of tax and interest under CST Act, pertaining to tax period Annual, 2016, and submitted that in view of this assessment for the entire assessment year, it can safely be said that all the transactions of the 4th quarter of 2016 were found to be valid transactions of Inter-state sales.

In support of his contention learned counsel for the appellant has produced the following judgments:

- i. G.A. Galikotwala & Co. (P) Ltd., Madras vs. The State of Madras, AIR 1976 SC 2084;
- ii. State of Gujrat v. Haridas Mulji Thakker, MANU/GJ/ 0116/1991;
- iii. Mitsubishi Corporation India (P) Ltd. v. The Value Added Tax Officer and Ors., 172(2010) DLT 487;
- iv. State of Tamil Nadu v. Kothari Plantations And, decided on 17/12/1997 by Hon'ble High Court of Madras.

10. On the other hand, learned counsel for the Revenue has referred to provisions of section 80⁽¹⁾ of DVAT Act and submitted that this is a case of mistake and that mistake in the assessment does not invalidate the said assessment simply because the transactions pertained to 4th quarter of 2016-17 and in the assessment order/notice the same has been specified to be for the tax period 1st quarter 2017-18.



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Learned counsel for the Revenue has referred to the objection filed by the dealer – objector before learned OHA and pointed out that no such point/ objection was raised by the dealer and as such the same cannot be raised during this appeal.

11. Taking the second submission put forth by learned counsel for the Revenue, first, suffice it to say that section 76(5) of DVAT Act, pertains to the objection/ grounds of appeal raised in the memorandum of appeal, and not to the objections filed u/s 74 of DVAT Act before learned OHA. Even grounds raised in the memorandum of appeal are grounds of objections.

The ground/ objection put forth by learned counsel for the appellant is a legal ground which can be raised in the appeal, even if not raised earlier before learned OHA, subject to all exceptions as provided under DVAT Act, Rules and DVAT Regulations, 2005.

12. So far as application of section 80(1) is concerned, at this stage it is pertinent to refer to the order dated 9/9/2020 passed by learned Assessing Authority by way of notice of default assessment of tax and interest under CST Act, pertaining to tax period Annual, 2016. Its contents are reproduced hereunder for ready reference:

“Present Sh. Ankit Gadodia CA with POA M/s Bahubali

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enterprises (P) Ltd. for assessment of 2016-17 annually under CST Act and filed sale summary, audited balance sheet, original C+E-1 forms. Dealer has made total central sale for annually is Rs. 5,00,37,525/-, No. of 15 C forms submitted. Missing C-forms of Rs. Nil. No. of 57 E-1 form submitted of Rs. 3,98,60,554/- without C-form sale of Rs. 12,128/-. No. of 01 I Form submitted of Rs. 577422/-. Submitted C & E-1 forms are verified from Tinxsys randomly (as provided on DVAT module) and found satisfactory. However, in case of any discrepancy is found in any of the forms, at later stage, action as per the provision of DVAT Act, 2004 shall be followed. Demand raised accordingly.”

13. As noticed ^{earlier} ~~above~~, the above mentioned default assessment dated 9/9/2020 [✓] came to be framed subsequently i.e. even after the disposal of the objections furnished in respect of the assessment under challenge in this appeal.
14. When the impugned assessment had already been framed on 4/9/2017 and the objections were disposed of on 20/9/2018, both these facts should have been brought to the notice of learned AVATO - Assessing Authority who framed the subsequent assessment on 9/9/2020. However, in the subsequent assessment there is no mention about taking into consideration ^{of} ~~the~~ previous assessment dated 4/9/2017 which related to four transactions of 4th quarter, 2016, or about the passing of the impugned order by learned OHA.



Learned counsel for the Revenue has rightly submitted that the dealer could bring these facts i.e. framing of assessment dated 4/9/2017 and passing of the impugned order dated 20/9/2018 to the notice of learned Assessing Authority in the assessment proceedings relating to tax period Annual, 2016.

Of course even department could itself go through the record and find out that already assessment had been framed in respect of some of the transactions pertaining to 4th quarter of 2016-17.

15. In the given circumstances, it transpires that the previous assessments dated 4/9/2017 pertained to some of the transactions pertaining to 4th quarter of 2016-17, but by mistake in the table appearing in the said assessment, words "First quarter, 2017" have been typed.

16. Section 80(1) reads as under :

"No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law."



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17. In this situation, the decisions cited by learned counsel for the appellant do not come to the aid of the appellant at the stage. The matter rather needs to be remanded to learned OHA for decision afresh while taking into consideration the factum of framing of subsequent assessment in respect of tax period Annual, 2016.
18. Learned counsel for the appellant has submitted that the period of limitation available u/s 74A having expired, the proceedings pertaining to Revision cannot be resorted to.
19. The matter is required to be remanded to learned OHA for exercise of powers u/s 74B i.e. for rectification of mistake.
20. Section 74B of DVAT Act, 2004 deals with rectification of mistakes and review. It provides two separate time limits of four years for rectification of mistake.

Firstly, sub-section (1) of section 74B, 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



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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 mistake apparent on record, within the aforesaid period of 4 years.

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.

The subsequent assessment is of 9/9/2020. It is the dealer who has brought the mistake to the notice of this Appellate Tribunal today for the first time during final arguments on this appeal. It is significant to note that present appeal was filed in the year 2018. The dealer appears to have not pointed out to learned Assessing Authority, who conducted proceedings regarding subsequent assessment, about filing of this appeal as well so as to draw his attention particularly regarding the assessment already made in respect of the above mentioned transactions pertaining to fourth quarter of 2016-17.



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Under sub-section (2) of section 74B, OHA has also powers to rectify order or part of the order "on any matter other than the matter which was considered and decided by him."

21. In the given facts and circumstances, the appeal is disposed of, the impugned order is set-aside and matter is remanded to learned OHA for decision afresh in accordance with law, taking into consideration all the ^{relevant} facts and circumstances, and going through the relevant record and after providing opportunity to the dealer of being heard.
22. Dealer is hereby directed to appear before learned OHA on 17/8/2022.
23. 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 : 26/7/2022.



Narinder Kumar
26.7.2022
(Narinder Kumar)
Member (J)

Appeal No. 224/ATVAT/2018/5186-93

Dated: 27/08/2022

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