

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

Appeal No : 276/ATVAT/15  
Date of Judgment : 02/08/2022

M/s. Organizing Committee,  
Commonwealth Games, 2010,  
2<sup>nd</sup> Floor, JNU Stadium Complex,  
Lodhi Road,  
New Delhi – 110003.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Neeraj Choudhary.  
Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. By way of present appeal captioned above, dealer - M/s. Organizing Committee, Commonwealth Games, 2010 has challenged order dated 24/7/2013 and 7/9/2015 passed by learned Objection Hearing Authority (OHA) – Special Commissioner. Vide impugned order dated 7/9/2015, application filed by the dealer seeking review of order dated 24/7/2013 passed by learned

*Narinder Kumar*  
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OHA – Special Commissioner-I has been dismissed while observing that review application was not maintainable, the reason being that other remedies were available to the dealer to get the notice of assessment withdrawn/cancelled.

2. Vide order dated 24/7/2013, learned OHA had dismissed the objections filed by the dealer – objector u/s 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act).

The objections were filed by the dealer challenging notice of default assessment of penalty dated 26/4/2012 issued u/s 33 of DVAT Act.

3. Vide notice of assessment dated 26/4/2012, learned Assessing Authority levied penalty of Rs. 94,05,905/- on the dealer – assessee due to the reason that the dealer failed to deduct TDS from the payment of Rs. 15,67,65,089/- made in lieu of Works Contract activities.
4. Prior to the levy of penalty, notice dated 28/12/2011 was issued to the dealer. It was followed by reminders dated 8/2/2012 & 28/2/2012. Vide said notices, dealer was required to furnish details of TDS deducted and in case the same was not deducted,

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reasons for the same.

As per reply to the notice, the dealer – assessee took up the plea that the work awarded to the contractors for overlays was on rental basis and as such notices issued by the Department were not admissible.

5. Learned Assessing Authority, while levying penalty on 26/4/2012, observed that work relating to civil constructions is covered by the definition of works contract. With this opinion learned Assessing Authority rejected the plea put forth by the dealer that the work contract for overlays was on rental basis.
6. Assessing Authority further observed as under :

“The OC has not provided the details regarding the item-wise payment made to the contractors. Hence, on the basis of figures submitted by the contractors during their individual audit proceedings the amount Involved in the works contract activities is arrived at as under:-

1. ESA JVD Art India Ltd.	Rs. 2,50,16,001/-
2. Pico Deepali Overlays Consortium	Rs.1,85,29,078/-
3. Nussli Swizerland	Rs.5,21,70,000/-

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4. GL Litmus

Rs.6,10,50,000/-

**Total**

**Rs.15,67,65,079/-**

Amount in respect of 3 & 4 have been arrived at on the basis of percentage of the works contract activities. i.e. civil construction work involved in the contract between OC and ESA JVD Art India Ltd. because these two dealers have not provided the details of payment received.

As per the section 36(A) of DVAT Act 2004, wherever any payment is made to a dealer for discharging any liability on account of valuable consideration payable for the transfer of property in goods (whether as goods or in some other form) in pursuance of a works contract, for value exceeding Rs.20000/-, the awarder in such cases is required to deduct 2% and 4% amount as TDS from the such payments made to the registered and unregistered contractors respectively.

In accordance with the above provision, the OC was liable to deduct the TDS from the payment made to the aforesaid companies in respect of the amount related to these WCT activities but failed to do so.”

7. Accordingly, learned Assessing Authority held that it was a case of violation of the provisions of section 36A of DVAT Act, and consequently levied penalty of Rs. 62,70,604/- i.e. twice the

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amount of the tax to be deducted besides the tax deductible i.e. Rs. 31,35,301/- but which was not deducted.

8. While disposing of objections u/s 74 of DVAT Act, learned OHA observed that there was no doubt that the Organizing Committee—objector had engaged four firms - contractors namely (i) PICO-Deepali Consortium Ltd., (ii) NUSSLI (Switzerland) Ltd., (iii) GL Events and (iv) ESAJV ART INDO Consortium during Commonwealth Games, for completion of work allocated to them through an agreement. As observed by learned OHA, once payment was released against the works contract, section 36(A) came into application. Accordingly learned OHA upheld the assessment framed on account of failure of the Organizing Committee to deduct tax at the prescribed rate.

Hence, this appeal challenging the order passed on review application; order passed on objections; and the notice of assessment dated 26/4/2012.

It may be mentioned here that the official who used to register the appeal mis-took as if two appeals had been filed. Actually only one appeal has been filed challenging the impugned orders which upheld the assessment of penalty framed by the Assessing



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Authority. Accordingly, necessary directions have been issued to make corrections in the record regarding institution and pendency.

9. Arguments heard. File perused.
10. Learned counsel for the appellant has submitted that on an application filed by another company namely GL LITMUS filed u/s 36A(2) of DVAT Act for grant of certificate of 'nil deduction' vide order dated 24/9/2010 said application was allowed, but learned Special Commissioner, while passing the impugned order in this matter did not take into consideration the said order dated 24/9/2010, which was fully applicable to the similar facts of the present case. Therefore, contention is that the dealer also deserves to be treated in the same manner.
11. As noticed above, Organizing Committee – dealer awarded contracts to the above named four companies for supply, installation, commissioning, erection etc. of overlays. Assessing Authority found that works relating to supply, installation, erection etc. in respect of following items were awarded to the contractors by the dealer:



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- “1. Marquees.
2. Tents.
3. Prefabricated Office Units.
4. Porta Cabins.
5. Containers.
6. Security Fencing, Barricades and Gates.
7. Wooden Structures.
8. Metal Structures.
9. Furniture and Fixtures.
10. Public Display Systems.
11. Look & image.
12. Floor Finishes.
13. Plumbing Services.
14. Electrical and Mechanical Services.
15. Temporary Lighting
16. Civil Construction.
17. Material Handling Equipments.
18. Athletes Exercise and Warm up Equipments.
19. Installation, erection & Commissioning of minor equipments.
20. Miscellaneous Equipments.”



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12. Learned Assessing Authority further observed that item No. 16 relating to civil construction falls under the category of Works Contract as it involves the works like Gypsum dry wall construction to meet existing legacy venue construction standards, preparation of sub grade by consolidating with road roller to achieve 99% compression, Consolidation of sub-grade single layers 50mm thick with power road roller of 8-12T capacity; that laying of cement concrete pavered tiles 40mm thick designed to take vehicular load of upto 40T track vehicular load, supply and laying of stones 50-60mm of size etc. In the said works contract activity, properties in goods are stood transferred to the contractee.

Keeping in view, the provisions of Section 2(1)(zo) of DVAT Act which defines works contract and the work awarded by the dealer to the contractors, Assessing Authority was of the opinion that the works awarded relating to civil construction was covered by the definition of works contract.

13. Learned counsel for the appellant has submitted that various objections were raised by the dealer before OHA but learned OHA did not decide or discuss the same so far as facts are concerned. Learned counsel for the Revenue does not dispute that learned OHA *while rejecting objections* neither discussed facts nor observed in the



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impugned order as to which of the fact mentioned by the Assessing Authority in the annexure to the assessment for penalty *stood* ~~was~~ established.

Record reveals that learned OHA while disposing of the objections did not discuss the grounds of objections raised by the dealer – objector, and which find mentioned in para 7 of the impugned order dated 24/7/2013, so as to specify that such and such fact stood established and that is why provisions of section 36A of DVAT Act was applicable to the case. So this is a case where reasons have not been given *as regards* ~~in proof of~~ disputed facts, *before* ~~applying law.~~

14. In the given situation, learned counsel for the parties are in *with the view expressed* agreement/that the matter needs to be remanded to learned OHA for decision on the objections afresh so as to afford reasonable opportunity to the dealer-objector of being heard.
15. As a result, this appeal is disposed of and matter is remanded to learned OHA for decision on the objections afresh so as to afford reasonable opportunity to the dealer-objector of being heard.
16. Dealer is hereby directed to appear before learned OHA on 23/8/2022.
17. File be consigned to the record room. Copy of the order be




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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 : 02/08/2022

  
(Narinder Kumar)  
Member (J)



Appeal No. 276/ATVAT/15/5210-17

Dated: 03/08/22

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

