

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

Appeal No. 237/ATVAT/17  
Date of Judgment: 03/08/2022

M/s Vortex Rubber Industries Pvt Ltd.  
½ 1557-1558, Mezanine Floor,  
Church Road, Kashmere Gate,  
New Delhi-110006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. H.C. Bhatia.  
Counsel representing the Revenue : Sh. S. B. Jain.

**JUDGMENT**

1. The dealer – applicant is a dealer registered under DVAT Act. Earlier, vide judgment dated 25/06/18 Appeal No. 237/ATVAT/17 was disposed of by this Appellate Tribunal. Review petition was filed by dealer-appellant, with prayer for review of judgment dated 25.6.2018. Review petition stands dismissed.
2. Dealer filed VAT Appeal No. 10 of 2022, before Hon'ble High Court. Vide order dated 27/5/2022, Hon'ble High Court has remanded the matter to this Appellate Tribunal for a *de novo* hearing. Matter has been remanded in view of the



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observations that the Appellate Tribunal being the final fact-finding authority, it ought to have given an opportunity to the appellant to prove that the subject transactions<sup>✓</sup> were inter-state sale transactions, contrary to what was contended by the respondents/revenue, but no opportunity was given to the appellant by the appellate Tribunal to establish the subject transactions were inter-state sale transactions.

3. It may be mentioned here that appeal No. 237/17 was filed by the dealer-applicant challenging order dated 16/10/17 passed by Ld. OHA-Joint Commissioner. Vide order dated 16/10/17, Learned OHA had disposed of objections filed by the dealer – assessee against the assessment framed on 11/04/16.

Vide notice of Default Assessment of Tax and Interest under CST Act, Assessing Authority imposed tax to the tune of Rs.9,59,564/- with interest of Rs.1,75,876/-, for the tax period 3<sup>rd</sup> Quarter 2014, on the basis of information received from Assistant Commissioner (BIU) vide letter dated 01/02/16. Said letter was accompanied by copy of letter dated 09/11/15 from the Assistant Commercial Tax Officer Ward –II, Circle, Jaipur.

The information communicated to the Assessing Authority – VATO (Ward 65), Delhi was to the effect that M/s. Sunil Kumar and Sons had obtained registration by deliberately using false documents and further that online forms issued to the said concern were cancelled.



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One of the said forms was bearing No. RJ/C/2014-15-000883267, which is stated to have been issued to the dealer-~~applicant~~<sup>appellant</sup> herein.

Since the dealer – ~~applicant~~<sup>appellant</sup> failed to furnish any explanation to the Assessing Authority despite issuance of notice u/s. 59(2) of DVAT Act, as regards the cancelled C Forms, the Assessing Authority disallowed the concessional sale against the said form and levied tax @ 12.5%.

Feeling aggrieved by the said assessment, the dealer-~~applicant~~<sup>appellant</sup> filed objections u/s. 74 of DVAT Act.

Ld. OHA dismissed the objections filed while observing that there was no reason to accept the same in view of the material available on record. That is how, the dealer – ~~applicant~~<sup>appellant</sup> filed appeal No. 237/17 against the order passed by Ld. OHA. Said appeal came to be dismissed by this Appellate Tribunal.

4. Admittedly, the point for determination before the Assessing Authority and learned OHA was as to whether the appellant was entitled to avail benefit of concessional rate of tax on the basis of C-forms said to have been issued by the purchaser located in the State of Rajasthan. Registration of the said purchaser – dealer was cancelled with retrospective effect. That is how, benefit of C-forms was denied to the dealer – appellant.

Admittedly, in the course of arguments, before the Appellate Tribunal in the first round, learned counsel for the Revenue



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had submitted that the dealer was required to establish, in the first instance that the subject transactions were inter-state sale transactions. The Appellate Tribunal accepted this argument advanced by learned counsel for the Revenue.

As noticed above, the impugned judgment dated 25/6/2018 passed by this Appellate Tribunal has been set-aside and matter remanded for a de novo hearing.

5. At this stage, reference may be made to the following specific observation made by the Hon'ble High Court in VAT Appeal No. 10/22, vide which the matter has been remanded:

“13.1 In case the Tribunal is of the view that it needs to examine, as to whether the subject transactions were, in fact, inter-state sale transactions, it will give due opportunity to the appellant to establish its case.”

6. On remand, first of all this Appellate Tribunal heard learned counsel for the parties, so as to find out if this Tribunal needs to examine as to whether the subject transactions were, in fact, inter-state sale transactions.

Learnt counsel for the parties *in peculiar fact & circumstances of this matter* have submitted that there is no need to examine this aspect i.e. whether the subject transactions are in fact, inter-state sale transactions, the reason

being that this question does not crop up for determination of the point in issue i.e. whether the dealer is entitled to avail

benefit on the basis of C-forms *subsequently cancelled, when department did not raise any such issue earlier.*

In the given fact and circumstances and particularly the reasons given by the Assessing Authority and the learned



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OHA while framing the impugned assessments and upholding thereof, I also find that in view of the <sup>scope of</sup> controversy involved, there is no need to examine whether the subject transactions are in fact, inter-state sale transactions.

7. Learned Counsel for the appellant has contended that cancellation of C-forms cannot have retrospective effect and as such the impugned assessment and impugned order deserved to be set aside. In support of this contention, counsel for the appellant has referred to decisions in **Jain Manufacturing (India) Pvt Ltd v. The Commissioner Value Added Tax & Anr.**, (2015) 53 DSTC 181 (Delhi) and **Commissioner of Sales Tax v. Hari Ram Oil Co.**, 1992 (Vol.87) Sale Tax Cases 495.
8. As noticed above, assessment dated 11/04/2016 came to be framed after information was received from Assistant Commissioner (BIU) vide his letter no. F.No1/DT&T/BIU/Misc./1045 dated 01-02-2016 and the information contained in copy of letter 148 dated 09-11-2015 from Assistant Commercial Tax Officer Ward-II, Circle-J, Jaipur, Govt. of Rajasthan.

Information was to the effect that M/s Sunil Kumar & Sons having TIN No. 08384103395 had obtained registration by deliberately using false documents and that online forms issued to him had been cancelled. In this regard, specific



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reference was made to Form No. RJ/C/2014-15 000883267 issued to the dealer.

9. Before framing of this assessment, notice u/s 59(2) of DVAT Act was issued to the dealer-assessee-appellant. The dealer-assessee submitted its reply thereto.

As observed by the Assessing Authority, no explanation was given by the dealer-assessee with regard to the cancelled "C" Forms. That is how, the Assessing Authority disallowed benefit of concessional sale as against the said form and levied tax @ 12.5%, thereby raising demand of additional tax of Rs. 9,59,564/- with interest of Rs. 1,75,876/-.

When the matter came up before Learned OHA, he rejected the objections by referring to the information received from the Government of Rajasthan and the fact that online forms issued to M/s Sunil Kumar & Sons stood cancelled.

10. In the course of arguments, specific query has been raised by this Appellate Tribunal seeking information from Learned Counsel for the Revenue as to on which date registration of M/s Sunil Kumar & Sons was cancelled, and as on which date, Form No. RJ/C/2014-15 000883267 stated to have been issued by M/s Sunil Kumar & Sons to the dealer-appellant-assessee, was cancelled.

Learned Counsel for the Revenue submitted that these details have not been provided by the Assessing Authority in the impugned assessment of tax and interest. No worksheet forms



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part of the notice of default assessment. Even in the impugned order, no information is available regarding date of cancellation of registration of M/s Sunil Kumar & Sons and about the date of cancellation of the statutory form issued by the said dealer to the dealer-assessee.

11. Learned Counsel for the Revenue is in agreement that in absence of the date of cancellation of registration and the date of cancellation of the statutory form, or any document from the department, it cannot be said as to whether it was a case of subsequent cancellation of registration and that of the statutory form *or of cancellation even before the transactions took place.*

12. It is well-settled that the selling dealer is required to satisfy itself that the purchasing dealer is a registered dealer and that the goods purchased have been specified in its certificate.

But, there is nothing in the impugned assessment or in the impugned order to suggest that the dealer-assessee-appellant had not satisfied itself about these two aspects before entering into the transactions with the purchasing dealer.

It is significant to note that the Assessing Authority *also* nowhere opined that it was a case of collusion between the two dealers i.e. the dealer-appellant and M/s Sunil Kumar & Sons.

13. In view of the above discussion, it is held that Learned Assessing Authority erred in framing of default assessment and raising demand of additional tax and interest.

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14. A perusal of the impugned order passed by Learned OHA would reveal that he simply upheld the default assessment of tax and interest without conducting any inquiry as to on which date cancellation of registration of M/s Sunil Kumar & Sons and cancellation of statutory forms took place.

Specific objections were raised by the objector in this regard in the objections u/s 74 of DVAT Act. Learned OHA was required to dispose of the said objections by giving reasons. In the impugned order, Learned OHA did not furnish any reason for upholding the impugned assessment except by referring<sup>to</sup> and relying<sup>on</sup> on the contents of the default assessment.

In absence of any reasons, inquiry and discussion on the objections raised by the dealer-objector, the impugned order passed by Learned OHA also deserves to be set aside.

### **Result**

15. As a result, the appeal is allowed and the impugned assessment framed by the Assessing Authority and impugned order passed by Learned OHA are hereby set aside.
16. 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 : 03/08/2022



*Narinder Kumar*  
3/8/2022  
(Narinder Kumar)  
Member (J)



Appeal no. 237/ATVAT/17/5234-41

Dated: 4/8/22

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 Bar Association)  |                |
| (5) PS to Member (J) for uploading the judgement on the portal of DVAT/GST, Delhi-through EDP branch |                |



  
REGISTRAR