

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

Appeal No. : 241-244/ATVAT/16

Date of Judgment: 5/8/2022

M/s. Aayush Electronics,  
204, Holland House Jwala Heri,  
Paschim Vihar,  
Delhi-110063.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. A. K. Babbar  
Counsel representing the Revenue : Sh. P. Tara

**JUDGMENT**

1. Dealer-appellant registered with Department of Trade and Taxes vide TIN No. 07340339591 is feeling aggrieved by order dated 03/11/2016 passed by learned OHA-Special Commissioner-1, whereby two objections filed u/s 74(1) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), have been rejected.

2. The dealer filed objections u/s 74 of the Act feeling dissatisfied with the notices of default assessments of tax and



*Narinder Kumar*  
5/8/2022

interest <sup>& penalty</sup> issued by Assessing Authority – AVATO (Ward 56),  
on 23/09/2015.

The assessments were made by Assessing Authority in respect of tax period 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2014, due to the following reasons:

“During the survey, the team found discrepancies of cash variation of Rs. 10,759/- (excess). Further the dealer has shown interstate sales of Rs. 3,49,26,282/- to 02 suspicious bogus firms namely M/s Global Enterprises and M/s Sun Enterprises of Gurgaon and Bhadurgarh respectively during the financial year 2014-2015. Prior to survey of the dealer a team of enforcement branch also visited the Deputy Excise and Taxation Commissioner, Gurgaon West (ST) to verify the genuineness of the dealer M/s Global Enterprises (06401940705) registered at Shop No. 20, Pankaj Complex, Hans Enclave, NH-08 Gurgaon, Haryana. At the time of visit the firm was found non-existent and non-functional. Thereafter a clarification was also received from the Deputy Excise and Taxation Commissioner (ST), Gurgaon, West vide his Letter No. 2001DTI/ Dt. 22/06/2015 informing that the registration of the dealer M/s Global Enterprises, 06401940705 has been cancelled being a bogus dealer.

In pursuance of the information the dealer was issued notice u/s 59(2) directing to produce all documents/ Proof relating to the transactions on 17/08/2015. Shri Satish Dikshit, Advocate, appeared on 17/08/2015 and submitted all the documents on



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25/08/2015. GR against the transactions to M/s Global Enterprises and M/s Sun Enterprises were not produced and the advocate of the dealer told that the goods were delivered in the vehicle of M/s Bharti Electronics run by the spouse of the dealer. Any kind of proof for delivery of the goods could be produced by the dealer.

3. Further, the following <sup>observations were made</sup> ~~have been observed~~ from the record: ✓

“1. In the statement given by the dealer at the time of registration of M/s Aayush Electronics, Shri Rajiv Aggarwal has self declared as Manager of the Firm and Romila Aggarwal as owner of the firm **functioning at 204, 2nd Floor, Holland House, Jwala Heri Markit, Paschim Vihar, New Delhi.**

The firm is functioning in rented premises which belongs to one Shree **Darshan Singh Lakra, S/o of Shri Mahasingh and r/o D-530, New Basti, Nagloi, Delhi-110041**, as per rent agreement given at the time of registration.

2. The dealer having its registered address at 204, 2nd floor, Holland House, Jwala Heri Market, Paschim Vihar, the tax invoices have been issued to **Aayush Electronics, at 7, Basement Bhera Enclave, Paschim Vihar**, by the selling dealer M/s Bharti Electronics whose registered address is also the same. It prove that both the firms are working from the same address and Proprietor of M/s Bharti Electronics, Shri Rajiv Aggarwal is also the Manager of M/s Aayush Electronics run by his wife Romila Aggarwal as per the statement at the time of registration.



578



The dealer **could not produce any kind of proof** having delivered the material to the purchasing dealer or any proof of having the material crossed the border when there is sales tax barrier on road while entering vehicle in Bahadurgarh and Gurgaon.

In view of the foregoing facts, the Central Sales of Rs. 3,49,26,282/- made to M/s Global Enterprises (Rs. 2,52,80,555/-) and M/s Sun Enterprises (Rs. 9,64,5,727/-) are disallowed and taxed @ 10.5% and cash variation of Rs. 10,759/- is taxed @ 12.5%. Penalty u/s 86(11) is also levied."

The Assessing Authority also levied penalty u/s 86(11) of DVAT Act to the tune of Rs. 36,68,604/- in respect of both the above said quarters.

4. While disposing of the objections u/s 74, learned OHA has observed:

"I have heard the arguments/ submissions made by the Counsel for the objector and also carefully gone through the impugned default assessment and penalty order and records produced before me. Perusal of the record reveals that the objector failed to prove the movement of the goods in course of Inter State Trade or Commerce. Merely stating that the dealer despatched the goods through a vehicle owned by him is not sufficient. Moreover it cannot be a mere coincident that the RCs of all the dealers to whom the central sales have been claimed to be made were cancelled within short span of time. The objector failed to file any documentary evidence in support of his claim. I find



22/5/18

that the assessment orders of tax, interest and penalty do not suffer from any infirmity and the objections are, therefore, rejected.”

5. Hence these four appeals.
6. Arguments heard. File perused.
7. As noticed above, the assessment, framed under Central Sales Tax Act ~~and~~ relate to the 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2014.
8. As regards movement of goods from one state to another, case of the dealer is that this fact was verified from the copies of invoices, copy of registration book of the vehicle and that of driving license of the driver.
9. As per claim of the dealer-appellant before learned OHA during hearing on objections notices were issued by learned OHA to M/s Global Enterprises and M/s Sun Enterprises to produce the following documents:-
  - i. Copies of returns under Local VAT Act and CST Act filed for the specified period i.e. 2013-14 and FY 14-15.
  - ii. Details of inter-state purchase made by those parties during the specified period i.e. FY 2013-14 and 2014-15.
  - iii. Ledger account of M/s Aayush Electronics with payment proof.
10. Learned counsel for the appellant has submitted that the above named two dealers produced requisite documents



12/5/16

before OHA, but the same were nowhere discussed while affirming the impugned assessments, and as such the impugned orders deserves to be set-aside and matter is required to be remanded for decision afresh.

11. Learned counsel for the Revenue has gone through the impugned order, particularly page four, where learned OHA observed that requisite information was received from the above named two dealers i.e. Global Enterprises & Sun Enterprises.
12. On going through the impugned order, it is found that learned OHA has not discussed any of the documents produced by the above named two dealers. There is no reason in the impugned order for rejection of the said record produced by the two dealers. In the given facts and circumstances, learned OHA was required to discuss the said record produced by the representative of the said two dealers, before upholding the assessments of tax, interest & penalty. For want of any discussion of the said record, the impugned order passed by learned OHA deserves to be set-aside and the matter is required to be remanded to learned OHA for decision afresh, taking into consideration the entire material available on record and after providing reasonable opportunity to the dealer of being heard.



22/5/16



13. As a result, this <sup>set-af four</sup>appeals is disposed of, impugned orders passed by learned OHA affirming the assessment of tax, interest & penalty is set-aside and the matter is remanded to learned OHA for decision afresh, taking into consideration the entire material available on record and after providing reasonable opportunity to the dealer of being heard.
14. Dealer is hereby directed to appear before learned OHA on 29/8/2022 (29<sup>th</sup> Aug. 2022).
15. 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 : 05/08/2022



*Narinder Kumar*  
5/8/2022  
(Narinder Kumar)  
Member (J)

Appeal No. 241-244/ATVAT/22/5258-65

Dated: 5/8/2022

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<br>DVAT/GST, Delhi - through EDP branch. |                |

  
**REGISTRAR**

