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

Appeal No : 228A/ATVAT/18
Date of Decision : 11/08/2022

M/s Evogreen Trading Pvt. Ltd.
1/5, W.H.S. Kirti Nagar,
New Delhi-110015. .....Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. V. Lalwani.
Counsel representing the Revenue : Sh. C.M. Sharma.

JUDGMENT

1. By way of present appeal, dealer-objector-assessee has challenged order dated 30-11-2018, passed by learned Special Commissioner-III-Objection Hearing Authority (hereinafter referred to as OHA).
2. Vide impugned order dated 30-11-2018, learned OHA while accepted the submission said to have been put forth during hearing on objections raised by the dealer u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), that no opportunity of being heard was provided to it by the Assessing Authority, remanded the matter to the Assessing Authority (ward-53). Learned OHA directed the Assessing Authority to provide to the

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Learned OHA directed the Assessing Authority to provide to the dealer an opportunity of being heard and pass assessment order afresh after examining books of account and their records required to be maintained by the objector u/s 48(6) of DVAT Act and the rules framed thereunder.

3. Dealer had filed objections before learned OHA challenging default assessment of tax and interest framed on 30-03-2015 under Central Sales Tax Act, 1956 (hereinafter referred to as CST Act) by VATO (Ward-53).

4. VATO (Ward-53) framed assessment dated 30-03-2015 for the tax period Annual 2010-11 while observing that as per Central Sales declared in the latest return for the said period, dealer had made concessional sales but nowhere declared the status of the Central statutory forms received against such concessional sales neither in Column R-10 of the return for 3rd quarter of 2013-14 nor in CST form no. 9 for the financial year 2010-11. As such the Assessing Authority treated the said sales on full rate of tax payable under CST Act.

5. While disposing of the objections, after hearing arguments, learned OHA observed as under:-

> "I have also perused the written submissions filed as well as the judicial pronouncements relied upon by the counsel. On perusing them all it comes up that the ground taken by the counsel that the assessment order passed is barred by limitation doesn't stand because the period for which the assessment has been issued is 2010-11 and the impugned order has been issued on 30-03-2015 which is well within the limitation period of four years prescribed in section 34(1) of the DVAT Act, 2004. Likewise, the ground taken by the objector that

instead of issuing the assessment quarter wise the same has been issued on annual basis, also doesn't succeed because as per provision of sec 32(1)(d) of the DVAT Act, 2004, assessment of the objector could well be made on annual basis. However, in so far as the argument of the objector that before issuing the impugned order he was not only not given any opportunity of being heard and to present his case but also, the order issued is unsigned as well as system generated is concerned, the objector appears to have a case."

6. With the above observations, learned OHA disposed of the objections and remanded the matter to learned Assessing Authority for decision afresh. Hence, this appeal.
7. Arguments heard. File perused.

8. As per claim of the appellant, for all the 4 quarters of 2010-11, dealer-appellant filed returns on the following dates:-

S. no.	Month & Year	Original return filed on
1.	1st Qr. 2010	12-02-2011
2.	2nd Qr. 2010	12-02-2011
3.	3rd Qr. 2010	12-02-2011
4.	4th Qr. 2010-11	22-08-2011 (05-09-2011) Revised

Case of the dealer-appellant is that default assessments were framed on 30-03-2015, whereas as regards 1st, 2nd and 3rd quarter, the default assessments were to be completed by 11-02-2015 and for the 4th quarter, the default assessment was to be completed by 21-08-2015.

9. Learned counsel for the appellant has contended that the impugned assessment is a system general and unsigned assessment; that the

assessment; that the assessment dated 30-03-2015 pertaining to the entire year i.e. tax period Annual 2010-11 has been framed without giving any detail as regards each quarter; that the dealer used to furnish quarterly returns, and as such framing of Annual assessment was against law; that since the assessment in respect of 1st, 2nd and 3rd quarter was barred by limitation and consequently one composite order framing Annual assessment is also barred by limitation, and as such the impugned assessment deserves to be set aside.

A composite assessment-Validity

10. In support of the contention that assessment was to be framed for each quarter and not by way of a composite assessment for the entire financial year, reliance has been placed on decision in **State of M. P. and others vs. Shyama Charan Shukla,** 79 STC 439, wherein a composite assessment covering quarters within and beyond the period of limitation was quashed by Hon'ble High Court and the decision was upheld by Hon'ble Supreme Court.

11. Decision in Shyama Charan Shukla's case (supra) of the year 1990 pertains to assessment made under C.P. and Berar Sales Tax Act, 1947, whereas in this case provisions of CST Act, 1956 read with DVAT Act 2004 are applicable. Even otherwise, for the reasons given hereinafter, this case is distinguishable on facts, and as such it does not come to the help of the dealer-appellant.

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12. In **Art Yarn India vs. Commissioner of Trade & Taxes,** 2014 Delhi Sales Tax Cases J- 316, cited on behalf of the appellant, the dispute pertained to tax period 2006-2007. Therein, reference was made to decision in ITD-ITD CEM JV's case (supra). Appellant filed quarterly returns relating to period of 2006-07 and default assessment order was framed on 11.05.2011 which was a common order and it was also framed beyond the period of four years but no reason, as visualized by proviso to section 34, was mentioned in the default notice dated 11.05.2011. Hence, it was held to be time barred.

Decision in M/s **Protean Computers Industries Pvt. Ltd. vs. Commissioner of Trade & Taxes,** Appeal no. 1414-1416/ATVAT/11-12, decided by the Appellate Tribunal on 05/05/2016 was a case where the appellant company had initially filed return for VAT for the 4th quarter of 2005-06 in time but in December 2006 filed revised return after the audit of books of accounts, which revealed certain discrepancies.

Present case is not a case of computation of period of limitation on account of revised return and as such the decisions cited do not come to the case of the dealer-appellant.

In **Samsung India Electronics Private Limited vs. Government of NCT of Delhi & Ors.**, W.P.(C) 2685/2014, decided by our own Hon'ble High Court on 07/04/2016, the contention on behalf of respondent was that for all of the tax periods mentioned in para 32 of the said judgement, period of four years came to an end only on 31/03/2013 and that the department had time up to said date to complete the assessment in terms of section 34(1)(b) of DVAT Act. Hon'ble Court held that barring the default notices of assessment pertaining to February and March 2010 all notices for the assessment year 2009-10 were barred by limitation. Therein, the period of four years was calculated from the date of filing of the return and there was no possibility of invoking the extended period of limitation. Here, facts are distinguishable from the facts of Samsung India Electronics Pvt. Ltd's case as is going to be discussed in the subsequent paragraphs.

Is it a case of system generated assessment ?

13. In support of the contention that the impugned assessment framed by the Assessing Authority is a system generated and unsigned order and for want of application of mind an invalid assessment, reliance is placed by counsel for the appellant on the following decisions:

    1. **M/s. Soni Tent House vs. Commissioner of Trade & Taxes, Delhi**, Appeal No. 367/ATVAT/22, decided by this Appellate Tribunal on 28/04/2022.

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2. **M/s Choudhary Plastics Works vs. Commissioner of Trade & Taxes, Delhi**, Appeal No. 395-395/22, decided by this Appellate Tribunal on 17/06/2022;
3. **Kilasho Devi Burman and Ors. vs. Commr. of Income Tax,** West Bengal, Calcutta, MANU/SC/0818/1996;
4. **Railsys Engineers Private Limited & Anr. vs. The Additional Commissioner of Central Goods and Services Tax (Appeals-II) & Anr.**, W.P.(C) 4712/2022, decided by our own Hon'ble High Court on 21/07/2022.

14. On the other hand, Learned Counsel for the Revenue has drawn attention to Objection No. 1 of the objections submitted by the dealer before Learned OHA wherein the dealer-objector pleaded to have obtained certified copy of impugned order on 28/04/2015 as default assessment was never served upon the dealer-objector, and it came to know about the default assessment only on visit to the office of Department of Trade & Taxes in connection with pending refund.

The contention raised by Learned Counsel for the Revenue is that in this appeal dealer-appellant has not filed certified copy said to have been obtained by the dealer and rather he has placed on file with the memorandum of appeal some other copy of assessment dated 30/03/2015, but there is no explanation from the appellant as to where from he has collected this copy dated 30/03/2015 filed with the appeal.

Therefore, Learned Counsel for the Revenue has urged that the contention raised by Learned Counsel for the appellant that the

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impugned order is a system generated and unsigned order, is without any basis.

At Page No. 9 of the memorandum of appeal, the dealer has filed photocopy of notice of default assessment of tax and interest framed under CST Act on 30/03/2015. Even if it is a copy of system generated default assessment, with particulars filled therein and reasons given in the middle, it was for the dealer to explain as to from where it collected this document i.e. copy of the default assessment. Dealer has nowhere explained in the memorandum of appeal as to from where this copy of the default assessment has been collected/obtained by him. It is not case of the dealer that it received the said copy from the department. In the objections filed before Learned OHA, the dealer alleged that no such default assessment was served on the dealer-objector. If it was so, it was for the dealer to explain about the source of supply of this document. Even in the course of arguments, Counsel for the appellant has not replied the contention raised by Counsel for the Revenue to apprise of the source from where the said document was collected for being placed on record.

Undisputably, the dealer-appellant has not placed on record certified copy said to have been obtained on 28/04/2015. Accordingly, the contention put forth by Counsel for the appellant challenging impugned assessment on the ground that the same is a system generated and unsigned order, is without any basis and the same is liable to be rejected.

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15. However, taking into consideration the specific plea put forth by the dealer-objector before Learned OHA that no notice of default assessment was served on the dealer, Learned OHA should not have opted to remand the matter and rather should have herself decided even the other objections raised u/s 74 of DVAT Act, particularly when it was not taken to be a case where the objections were barred by limitation.

Is the default assessment barred by limitation?

16. The other argument advanced by Learned Counsel for the appellant is that the default assessment as framed on 30/03/2015 is barred by limitation in view of period of four years prescribed u/s 34 of DVAT Act.

In support of his submission, Learned Counsel has relied on decision in **M/s Protean Computers Industries Pvt. Ltd's** case (supra) and **Samsung India Electronics Private Limited's** case (supra).

On the other hand, Learned Counsel for the Revenue has contended that the impugned assessment was framed within the prescribed period of limitation and as such there is no merit in the contention raised by Learned Counsel for the appellant.

17. This matter pertains to the year 2010-2011. Default assessment was framed on 30/03/2015. As per provisions of Section 34 of DVAT Act as in force with effect from 01/04/2005 to 31/03/2013 i.e. before the amendment dated 30/03/2013, no assessment or reassessment u/s 32 of DVAT Act shall be framed by the

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Commissioner after the expiry of four years from the date on which the person furnished a return u/s 26 or sub-section (1) of Section 28 of the Act. As per proviso, where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclosure fully material particulars on the part of the person, the said period shall stand extended to six years.

Same objection was raised by the objector before Learned OHA and he was of the opinion that in view of provisions of Section 34(1) of DVAT Act, the default assessment framed on 30/03/2015 was well within the prescribed period of four years.

18. Section 34 of DVAT Act w.e.f. 01/04/2013 reads as under –

> "(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –
>
> (a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of this Act; or
>
> (b) the date on which the Commissioner made an assessment of tax for the tax period. Whichever is the earlier:
>
> Provided that where the commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.
>
> (2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in

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consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person."

19. Before amendment vide notification No. F.14(4)/LA-2013/ cons2law/11, dated 28/3/2013, read with section No. 3(17) Fin. (Rev.-1)/2012-13/dsvi/263; dated 30/3/2013, - enforced w.e.f. 1/4/2013, section 34 read as under –

"1. No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period. Whichever is the earlier:

Provided that where the commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2). Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person."

20. Since amendment in section 34 of DVAT Act came into force w.e.f. 01/04/2013, period of four years could not be calculated by

Learned OHA from the end of the year comprising of one or more tax period.

On this point, I have carefully gone through the decisions cited by learned counsel for the appellant. Significant to mention here that present case has peculiar facts and circumstances distinguishable from the facts of the decisions cited by learned counsel for the appellant on the point of limitation.

21. As noticed above, assessment came to be framed as the dealer failed to declare the status of Central Statutory Forms received by it against such concessional sales. As observed by the Assessing Authority in the assessment order, material particulars as regards the status of Central Statutory Forms received by it against concessional sales were to be disclosed in Column R-10 for the 3rd Quarter return for the year 2013-14 or in Reconciliation Return in CST Form 9 for the financial year 2010-11.

22. It is true that in the copy of default assessment made available by the dealer with the appeals, details of the concessional sales do not find mention. It has not provided any such detail to this Appellate Tribunal.

Dealer-objector has not furnished certified copy of default assessment of tax and interest for the reasons best known to it. In absence thereof, it cannot be said as to what were the contents of the default assessment actually issued or as per the certified copy thereof collected by the dealer.

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23. In the given circumstances, it was for Learned OHA firstly to find out as to in respect of which Central Sales Transactions, it was a case of non-declaration of status of Central Statutory Forms, so that learned OHA could determine if it was a case covered by Section 34(1)- as unamended- or a case covered by the proviso to Section 34(1) i.e. a case of non-payment of tax by reason of concealment, omission or failure to disclose fully material particulars by the dealer.

24. At this stage, it is pertinent to mention that earlier Reconciliation Return DVAT 51 used to be furnished in addition to the returns required under Rule 3 of CST (Delhi) Rules, 2005, within a period of 3 months after the end of each quarter. However, in respect of the period from 1st April 2005 to 30th September, 2005, every dealer was furnish to the commissioner by 31st December, 2006, a Reconciliation Return in Form DVAT-51 for the whole period.

Rule 4 of CST (Delhi) Rules, 2005, earlier read as under:

> "4 Annual Reconciliation Statement- In addition to the returns required under rule 4, every dealer shall also furnish an annual reconciliation statement within a period of nine months from the end of the year, in Form DVAT-51 of the Delhi Value Added Tax Rules, 2005"

In this regard, subsequently Circular no. 5 of 2014-15 dated 04/08/2014 came to be issued by the department. As per the extracts of Circular no. 5 of 2014-15 dated 04/08/2014 available in para 7.3.19.1, at page B-315, in Delhi VAT Ready Recknoner by

Versatile's, 2016 Edi.- Vol.I, all eligible dealers were required to furnish relevant information for the year 2013-14 latest by 30/09/2014 (or the extended date). In the Form 9, dealer could also furnish the details of pendency of forms for preceding three years, viz. 2010-11, 2011-12, 2012-13, if no assessment had been framed for the relevant year.

Accordingly, Assessing Authorities were not allowed to frame any central assessment related to Central declaration forms and where no refund was involved, as the same were to be generated by the Systems & Operation Branch on the basis of the information furnished by the dealer in Form 9. However, Assessing Authorities were allowed to frame the central assessment order of the dealer, only in such cases where it was required for processing the refund claims.

As per the above circular dated 04/08/2014, even for the financial year 2010-11, the dealers was afforded an opportunity to declare the status of Central Statutory forms in Reconciliation Return in CST Form 9 However, as observed by learned Assessing Authority, the dealer-assessee-appellant failed to declare the status of Central Statutory forms in Reconciliation Return in CST Form 9 for the financial year 2010-11. Here, neither in the appeal nor in the objections before OHA it was pleaded that details of requisite statutory forms was provided by the dealer in the return or that copies of said forms were also furnished to the department. Even in

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this appeal, no such detail has been provided about furnishing of Central Statutory Forms.

As per the above circular, the dealer got an opportunity to declare the status of Central Statutory forms received by it against concessional sales in the financial year 2010-11, even while filling in Column R-10 for the 3rd quarter Return for the year 2013-14. However, as observed by learned Assessing Authority, the dealer-assessee-appellant failed to declare the status of Central Statutory forms even in R-10 of the 3rd quarter Return for the year 2013-14.

In view of the provisions of the above said circular and the opportunities afforded to the dealer, the dealer cannot eat the cake and have it too. In other words, when the department afforded him opportunity to declare the status of Central Statutory Forms in respect of concessional sales during the financial year 2010-11 by way of Reconciliation Return in CST Form 9 and then by furnishing the same in column R-10 for the 3rd quarter return for the year 2013-14, it having failed to avail of this opportunity, now it does not lie in its mouth to say that the assessment framed by the Assessing Authority on 30/03/2015 is barred by limitation. Rather in the given facts and circumstances and in view of the circular dated 04/08/2014, the assessment framed on 30/03/2015 is well within limitation. In view of said circular, the concerned Authority was justified in not framing assessment earlier, so that suchlike dealer who was yet to declare such details in the return and the requisite Reconciliation Form, could avail of the opportunity.

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For the same reasons, I do not find any merit in the contention of learned counsel for the appellant that since the dealer was liable to pay tax and furnish return quarterly, the assessment dated 30/03/2015 pertaining to tax period Annual 2010-11, deserves to be set-aside.

In view of the peculiar facts and circumstances of this case to which provisions of circular date 04/08/2014 are applicable, with respect I may observe that said decisions cited by learned counsel for the appellant do not come to the aid of the appellant.

25. One of the contentions raised by counsel for the appellant is that in the impugned order, Learned OHA has of her own recorded about submission on behalf of the objector that no opportunity of being heard was provided to the dealer. The contention is that no such objection was raised by the Objector before Learned OHA and as such instead of remanding the matter, Learned OHA should have disposed of the objections on merits.

On this point, reference has been made to decisions in **Auto pins (India) & Anr. vs Sales Tax Officer,** 1986, 61 STC 287; **M/s Shree Cement Ltd. vs. Commissioner of Trade & Taxes,** 2010-11, Delhi DSTC J-29, by this Appellate Tribunal; **M/s MIL India Ltd. vs. Commissioner of Central Excise,** India, (2007)3SCC533.

It is true that in the objections under section 74 of DVAT Act, there is no mention of any such ground. But from the impugned order it appears that in the course of arguments a submission was

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made on behalf of the Objector that the impugned assessment was framed without giving any opportunity of being heard to the assessee.

Even if such a submission was made during arguments on objections, I find that this is a case where Learned OHA should not have passed order of remand for decision afresh by the Assessing Authority, and rather proceeded to decide the objections on merits to find out if the assessment was valid or not. Accordingly, the order as regards remand of the matter to learned Assessing Authority deserves to be set-aside. I order accordingly.

26. Neither any other argument was advanced by learned counsel for the parties nor any other decision was cited by any one of them from the lists furnished in the course of arguments.

Result

27. As a result, the appeal is disposed of and with the adjudication of the legal grounds/objections raised on behalf of the appellant, the matter is remanded to learned OHA for decision of the remaining objections on merits i.e. as to whether the dealer failed to declare status of Central Statutory Forms received by it against any concessional sale as declared in the latest return furnished for the year 2010-11, and if so, its effect on the framing of assessment dated 30/03/2015.

Of course, learned OHA to provide reasonable opportunity to the dealer of being heard on the aforesaid points.

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28. Dealer to appear before learned Objection Hearing Authority on 30/08/2022.

29. 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 : 11/08/2022

Narinder Kumar 11/8/2022

(Narinder Kumar)
Member (J)

Appeal no. 228A/ATVAT/18/5306-12 Dated: 12/8/22

Copy to:-

(1) VATO (Ward-53)

(2) Second Case File

(3) Govt. Counsel

(4) Secretary (Sales Bar Association)

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

(6) Dealer

(7) Guard File

(8) AC(L&J)

APPELLATE TRIBUNAL VAT DELHI

REGISTRAR