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

Appeal No. 79/ATVAT/06
Date of Judgment: 8/8/2022

M/s Lakra Oil Trading Co.,
WZ-14-D, Manohar Park,
New Delhi. .....Appellant

v.

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

Counsel representing the Appellant : Sh. Rakesh Aggarwal.
Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. Present appeal came to be presented on 21/08/2006 challenging order dated 19/06/2006 passed by learned Additional Commissioner-III, whereby objections filed u/s 76(4) of DVAT by the dealer-objector against assessment dated 2/9/2005 came to be rejected.

2. Said objections were filed by the dealer-appellant-assesssee on 20/10/2005 challenging default assessment of tax and interest framed u/s 32 of DVAT Act and separate assessment of penalty framed u/s 33 of DVAT Act.

3. As per assessment framed u/s 32 of DVAT Act, dealer was directed to pay Rs. 36,24,167/- towards tax and interest. Vide

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separate assessment the dealer was directed to deposit penalty of Rs. 1,00,000/- imposed u/s 86(17); Rs. 35,35,773/- imposed u/s 86(10) of DVAT Act; Rs. 2,82,861/- imposed u/s 86(12) of DVAT Act.

4. It may be mentioned here that earlier this appeal was disposed of by this Appellate Tribunal vide judgment dated 10/6/2014, by observing in the operative part as under :-

> "In view of the above discussions, the impugned order which upheld the default assessment of tax and interest need no interference and as such the appeal filed by the appellant is dismissed being devoid of any merits and substance except to the extent of the relief permissible u/s 86(3) of the DVAT Act which is applicable to the appellant. The impugned orders with regard to penalty is accordingly modified though upheld but appellant is held liable to pay greater penalty u/s 86(10) of the DVAT Act. Orders passed accordingly"

5. Feeling dissatisfied with the decision by this Appellate Tribunal, the dealer-appellant preferred appeal ~~No.~~ STA No. 09/16 before Hon'ble High Court.

6. Vide judgment dated 24/5/2016 Hon'ble High Court remanded the matter to this Appellate Tribunal. That is how, appeal was restored to its original number.

7. As per directions issued by Hon'ble High Court, matter was to be taken up before this Appellate Tribunal on 01/8/2016. However, it may be mentioned here that for about six years the appeal did not see light of the day. On 26/4/2022, it was only when counsel for the Revenue filed a list depicting appeals which were required to be disposed of but had not been put up or listed that this appeal was traced by the Registry and put up on 1/6/2022. Neither the appellant nor counsel for the parties ever appeared or moved any complaint or application with the Registry that this appeal was required to be taken up for disposal. It has been traced out only on being informed by counsel for the Revenue. Matter has been reported to the Commissioner, Department of Trade and Taxes, Government of NCT Delhi, for disciplinary action against the officials responsible and involved.

8. Returning to the stage after restoration of the appeal, it is apposite to mention as to what has been observed by the Hon'ble High Court in the judgment. Relevant portion of the judgment is reproduced for ready reference. Same reads as:

"6.According to the Appellant, it was not allowed credit of VAT paid on purchases of kerosene. It is stated that the Appellant had made sales of Rs. 13,82,000 taxable @ 12.5%. the sale figure was inadvertently shown at Rs. 1,38,82,000 in the return. However, the tax payable on sales of Rs. 13,82,000 which works

out to Rs. 1,72,750 was correctly shown. The Value Added Tax Officer (VATO) is stated to have levied tax on Rs. 1,38,82,000 without confronting the Appellant with the above error.

7.The second grievance is that VATO treated the entire inter-state sales amounting to Rs. 1,45,74,396 as local sales on the ground that the Appellant had not produced copies of GRs. It is stated that out of 38 invoices in respect of the inter-state sales produced by the Appellant, GRs of 18 invoices could not be produced although names of transporters and numbers of GRs were recorded on all 38 invoices. The appellant points out that the goods were accompanied by statutory forms such as form-31/Form-38 issued by the respective State authorities of the purchasing dealers. However, no enquiries were made by the Department from such purchases. The Appellant states that it had filed copies of accounts of purchasing dealers, end use certificates, confirmation from the buyers in other states, bank statement in proof of payment, copies of GRs obtained from the purchasing dealers, form-31/form-38 and other relevant documents.

8. It is submitted that the impugned order dated 10th June, 2014 fails to deal with the issue concerning the error committed by the Appellant in showing the sales figure of SKO as Rs. 1,38,82,000 instead of Rs. 13,82,000. Indeed the impugned order of the AT has not dealt with the above ground as rightly pointed out by learned counsel for the appellant.

9. Further it is noticed that the examination by the AT of the issue concerning treatment of inter-state sales as local sales is perfunctory. There is no discussion of the numerous documents produced by the Appellant. Likewise, the issue concerning denial of input credit on the sales of SKO has also not been adequately dealt with by the AT.

10. For the aforementioned reasons, the impugned order dated 10/6/2014 passed by the learned Single Member of the AT is set aside. The Appeal No. 79/ATVAT/6-7 for the AY 2005-06 is restored to the file of the AT for being disposed of afresh in accordance with law."

9. At this stage, it is relevant to refer to the Default Assessment of tax and interest framed by the Assessing Authority to find out as to on what basis or due to which reasons demand in dispute came to be raised. Same reads as under:

"Whereas I am satisfied that the aforesaid dealer furnished incorrect return that does not comply with the requirements of DVAT Act 2004. During the course of Audit and inspection of books of accounts and other related document the following irregularities have been noticed.

1. Dealer has claimed exemption as tax on sale amounting to Rs. 10,65,103/- in his return in Form DVAT-16. On verification of the books of accounts the aforesaid sale pertain to sale of SKO which is taxable @4%. However the dealer has reflected it as

tax free. The dealer has been confronted to the aforesaid irregularities and there is tax deficiencies of Rs. 42,604/- and interest is also levied.

2. The dealer has reflected the sales of 12.5% amounting to Rs.1,38,82,000/- in the DVAT016. The dealer has calculated tax amounting to Rs. 1,72,750/- where it should have been Rs. 17,35,250/- thus there is calculation error tax deficiency of Rs.15,62,500/-.

3. On perusal of the tax invoices/retail invoices it has been noticed that these have been signed by various persons. Whereas as per Section 50(f), the invoice shall be signed by the manager or agent duly authorized by the dealer. But in the instant case the dealer has not authorized any representative to sign the invoices. Thus the dealer has contravened the provisions of Section 50(f) of DVAT 2004 which is an offense and penalize u/s 86(17) and liable for the penalty of Rs. 1,00,000/-.

4. On examination of the Form-I under the Central Act and the books of the accounts of the dealer it has been noticed that dealer has issued 38 invoices showing inter-state sale. To substantiate the inter-state the dealer were asked to produce documents relating to movement of goods from one state to another. Out of aforesaid invoices the dealer could not produce GR/any other documentary evidences for movement of goods with regard to 18 invoices amounting to Rs. 59,35,508/- In the rest of the invoices he produce the copies of GR. On subsequent verification of these GR's only 5 GR have been duly verified

from the concerned transporters. The rest 14 GR could not verified either due to non-functioning of transport company or verification of the GR numbers. Thus the total sales against these invoices amounting to Rs. 86,38,888/- could not be verified. Out of total sale shown as interstate sale in form-I sale of Rs. 1,45,74,396/- has not been supported with the documents of the movements as per the Sec 3 of CST Act 1956 which says "a sale or purchase of goods shall be deemed to take place in the course of Inter State trade or Commerce if the sale or purchase occasions the movement of goods from one state to another. ISS assumes physical movement of goods from one state to another as per Section 3 of the CST Act 1956 read with Sections 4 and 5 of the said Act. In the instant case the dealer couldnot substantiate the movement of goods to outside Delhi. Thus in the absence of particulars and evidence with regard to movement of goods the sales are presumed to be within Delhi. Therefore sales amounting to Rs. 1,45,74,396/- is added in GTO of DVAT and out this the sale amounting to Rs. 13,07,600/- in respect of MTO is taxed @20% creating tax liability of Rs. 2,61,520/- and the sale amounting to Rs. 1,32,66,796/- in respect of LDO is taxed @12.5% creating tax liability of Rs. 16,58,349/- respectively and the total tax liability comes to Rs. 19,19,869/- as the dealer has not deposited any tax in the return filed under Central Act, thus interest is also levied.

5. Apart from the above inter-state sale dealer has also shown the inter-state sale amounting to Rs. 2,70,000/- against invoice No. 19 and dated 30.05.05 against C form and charged CST @ 4%. On examination of the said invoices the same has not been

found inter-state sale in the regular books of the accounts viz; DVAT-31. The dealer also could not produce documentary evidence with regard to movement of goods from one state to another the same is now added in the GTO of the DVAT and this sale is taxed @ 12.5% being sale of LDO. Therefore the tax liability on account of aforesaid goods is Rs. 10,800/- and interest is also levied."

10. Learned OHA rejected the objections as regards default assessment of tax and interest by observing in the manner as:

"To start with, a tax liability of Rs. 42,604/- along with the interest was created as the dealer did not deposit the tax @4% on the sales of SKO amounting to Rs. 10,65,103/-. The contention of the Ld. Counsel that the dealer, being unaware of the fact and because of no clear policy of the government, did not charge tax on SKO. The tax was charged after Notification dated 25.07.2005 and return was revised accordingly. The contention of the Ld. Counsel is not acceptable as the position of taxability @4% was clear from the very beginning and the dealer charged the same @4% in the preceding month of April, 2005. The dealer did not produce the sale invoices involved in the SKO during the audit of the dealer and at later stage.

Secondly, the ground raised the dealer has reflected 12.5% sales amounting to Rs. 13,82,000/- but the audit and the VATO (KCS) had taken it as Rs. 1,38,82,000/- is also not found convincing. On examination of DVAT-16, it is found that the

figures of sales of goods taxable @12.5% are Rs 1,38,82,000/- as shown by the dealer himself. There is no addition or manipulation in DVAT-16. The dealer himself has shown the local sales of Rs. 1,96,48,103/- in the Central return also which confirm that the dealer has filed incorrect figures of output tax in respect of sales of Rs. 1,38,82,000/- taxable @12.5% in DVAT-16. As claimed by the dealer, no revised return found filed in the case by him. In view of these facts, the tax liability created by the VATO is in order.

Thirdly, Interstate transaction claimed to have made amounting to Rs. 1,45,74,396/- were considered as local sales in the absence of GRs/proof of movement of goods and incomplete and unverified GRs. Out of this, sales amounting to Rs. 13,07,600/- taxed @20% being sale of MTO & remaining sales of Rs. 1,32,66,796/- taxed @12.5% being sale of LDO. It is a matter of record that during the course of audit and default assessment proceedings, the dealer could not produce GRs or any other documentary evidence in respect of movement of goods amounting to Rs. 59,35,508/- and the for the interstate transactions amounting to Rs. 86,08,888/-, the authenticity of GRs was not found verified on spot inspections by the Value Added Tax Inspector. During the course of objection hearing, the Ld. Counsel filed photocopies of the GRs shown issued by the respective transports. On perusal, it appears almost all the GRs are written in the same handwriting which leads to the apprehension that the same have prepared by one source whereas the 38 transporter are spread over at different places in the different States as per details given in the invoices and

DVAT 31. Such copies are not worth-accepting. On producing the photocopies of the GRs by the Ld Counsel during the course of objection hearing, the job of verification of authenticity of GRs was entrusted to the respective Value Added Tax Inspector. On spot inspection by the value Added Tax Inspectors, the position in respect of GRs was found to be the same as was during the course of audit and default assessment proceedings. 17 GRs were not found verified at all. In the remaining cases, where the transporters are found located at the given addresses, discrepancies like consignor's name, address written in different handwriting in the copies of the transporter and dealer and signatures of clerk found not tallying on the carbon copies of the dealer and that available with the transporter and non-recording of freight amount, bill amount etc. were found on the body of the document.

The Ld. Counsel filed copies of End User Certificates from the purchasing dealers in confirmation to the fact that the goods have been received by them and the same used for the purpose for which these were purchased. On noticing the photocopies of End User Certificates filed, it appear that barring on end user certificate given in the name of Bishamber Dayal Ram Niwas Gupta, all other certificates appear to have been prepared on one computer/printer with identical language and format. The dealers are located at different places in different states. Hence these certificates cannot be taken are true proof. Therefore in the absence of proper substantiation of the movement of goods outside Delhi, the claim of the interstate sales transactions rejected by the VATO appears to be in order.

Lastly, the Interstate sales amounting to Rs. 2,70,000/- against the Invoice No. 19 dated 30.05.2006 against 'C' form was rejected. As the same transaction was not found entered in the regular books of accounts. Subsequently, also no documentary proof as regards to the movement of goods from one state to another supported by 'C' form has been produced.

Hence no relief can be granted to the dealer in respect of the tax demand of Rs. 10,800/- on the said transaction.

In view of the facts stated above, tax demand of Rs. 35,35,773/- and interest accrued of Rs. 88,394/- due to tax deficiency as created by the Value Added Tax Officer is sustained and the objection filed on the said default assessment and demand notice issued is rejected."

As regards assessment of **penalty**, learned OHA observed as under:-

"Coming to the objection filed against the penalty demand of Rs. 39,18,634/- penalty of Rs. 1 lac was imposed as the tax invoices/retail invoices were found to be signed by various persons in violation of section 50(f) of the DVAT Act. The ld. Counsel explained during the course of objection hearing that the invoices were signed by the three authorized persons in support of which he filed photocopies of Power of Attorney given to three persons viz, Sh. Surender Goel, Sh. Ashok Goel and Sh. Parveen Garg in different years by Smt. Sushila Rani, proprietor of the firm. On perusal of the Power of Attorney, Sh.

Sureinder Goel has signed as Surinder Gupta. There are no signatures of Sh. Ashok Goel on the Power of Attorney. Further, it is not clear as to whether General Power of Attorney given in the name of the earlier person was withdrawn on seized to exist, when the General Power of Attorney was given in sequence to the other person. In view of this, penalty imposed is upheld.

Penalty of Rs. 35,35,773/- i.e. equivalent to the tax deficiency was imposed u/s 86(10) for filing false and misleading returns. As mentioned above, filing of false and misleading returns has been established on the part of the dealer and therefore the action of the Value Added Tax Officer to impose the penalty to the extent of Rs. 35,35,773/- is justified and the same is upheld. Likewise, on the account of tax deficiency 282861/- was imposed u/s 86(12) which is found to be in order and therefore liable to be upheld."

11. Hence these appeals.

12. Arguments heard. File perused.

Claim regarding exemption from tax on sale of Super Fine Kerosene Oil (SKO).

13. As noticed above, learned Assessing Authority levied tax and interest on sale of SKO, which is taxable @ 4% but the dealer having reflected in DVAT 16 said sale as tax free.

Dealer claimed exemption from tax on sale amounting to Rs. 10,65,103/-. On verification of the books of accounts, it was found that it pertained to sale of SKO.

On this point, Learned counsel for the dealer-appellant has contended that it was a case of misunderstanding that the dealer could not charge tax on the said sale.

As per pleadings, case of the dealer – objector – appellant is that because of no clear policy of the Government, it was unaware of the fact that tax @ 4% was to be deposited on this turnover.

Same contention raised before learned OHA was rejected while observing that position of taxability @ 4% was clear from the very beginning and the dealer charged the same @ 4% in the preceding month of April, 2005.

14. Learned counsel for the dealer – appellant has submitted that when SKO was purchased from Bharat Petroleum, the dealer – assesses paid tax @ 4%. This goes to show that the dealer knew that the item was taxable and not tax free.

Learned counsel has admitted even during arguments that the dealer did not collect tax @ 4% on the said sale of SKO.

In the course of arguments, Learned counsel for appellant has not disputed the observations by Learned OHA that the dealer had charged tax @ 4% in the preceding month of April, 2005.

In the given facts and circumstances, it cannot be said to be a case of any misunderstanding. Having paid tax to a selling dealer on this item, it is not believable that the buying dealer-appellant herein could claim that the item was tax free item, as rightly contended by learned counsel for the Revenue. In the given situation, there is no merit in the submission put forth learned counsel by the dealer – appellant that it was due to misunderstanding that the dealer could not collect tax @ 4% on the said sale.

There is nothing to suggest that any claim was put forth for input tax credit. No submission has been made on this point during final arguments.

Therefore, the assessment framed as regards the said turnover of Rs. 10,65,103/- in respect of which dealer did not charge tax @ 4%, is upheld. For the reasons recorded by learned OHA, the impugned order on this point is also upheld.

As regards this part of the assessment of tax and interest, the appeal deserves to be dismissed. It is ordered accordingly.

So far as imposition of penalty under section 86(10) of DVAT Act, and upheld by learned OHA, in view of the above

discussion when the dealer-assessee furnished false return claiming that the item was tax free, when actually it was exigible to tax @ 4% well within the knowledge of the dealer, assessment of penalty as regard this part of the return deserves to be further upheld. It is ordered accordingly.

Tax deficiency on turnover of Rs. 1,38,82,000/-

15. Learned Assessing Authority has levied tax while observing that the dealer – assessee reflected in the return sales of Rs. 1,38,82,000/-, but to have calculated tax to the tune of Rs. 1,72,750/- in place of Rs. 17,35,250/- .

When the matter came up before learned OHA, on this point he observed that this figure of sale of goods was shown by the dealer itself not only in DVAT -16 but it had also shown in Central Return, local sales of Rs. 1,96,48,103/-. Learned OHA further observed that the dealer filed incorrect figures of output tax in respect of sales of Rs. 1,38,82,000/- in DVAT-16.

16. Learned counsel for the dealer – appellant admits in the course of arguments that the returns under DVAT Act and CST Act must have been filed by the dealer by 28/6/2005. But his contention is that the Assessing Authority and OHA could go

through the books of accounts and relevant invoices to find out the actual turnover of sale, but no such step was taken.

17. Significant to note that this is a case where audit was admittedly conducted by the Department on 2/9/2005. Returns were filed by 28.6.2005, as submitted. At the time of audit, inspection of books of accounts of the dealer was conducted. During objections, dealer got opportunity to prove that the entries in the account books tallied with the invoices and that actual turnover was not shown in the two returns i.e. one filed under DVAT Act and the other filed under CST Act, but the dealer failed to satisfy the OHA on this aspect.

The dealer is stated to have filed revised return for the month of May, 2005 subsequent to the framing of the default assessment.No step was taken by the dealer to revise the return immediately after it was filed. Admittedly, no step was taken to present revised return before Learned OHA while raising objections against the assessments. Learned OHA observed in the impugned order that no revised return was found to have been filed by the dealer. Undisputably, no revised return was accepted by the department.

It was for the dealer to prove and explain that actual turnover could not be reflected in the two returns for such and such

reason. No document appears to have been placed before Learned OHA to explain that wrong turnover came to be shown in both the returns for such and such reason. From the impugned order it does not transpire if any material was placed during objection -proceedings to explain as to whether it was a case of fault on the part of Chartered Accountant or anyone else from the office of the dealer. No such evidence appears to have been led before Learned OHA.

At this stage, it may be mentioned here that for the first time, before this Appellate Tribunal, today during final arguments, the dealer while submitting written submissions annexed thereto 2 documents i.e. copy of revised return and copy of certificate by the Chartered Accountant. Appeal was presented long back. Since then no application was filed by the dealer to place on record any of the two annexures. Even today, no application came to be filed seeking permission from this Appellate Tribunal for production of these two documents. For the reasons recorded in the order passed separately, said two annexures made part of written submissions and of the Index have been rejected to be taken on record, and accordingly, ordered to be returned to the dealer.

In absence of any convincing material and explanation by way of any revised return, Learned OHA was justified in rejecting

the plea put forth by the dealer on this point and in accepting the claim put forth in the two returns regarding the turnover(s).

It is significant to note that even in the course of arguments, learned counsel for the dealer has not made any pointed reference to any books of accounts or invoices to show that such and such was the actual turnover.

18. In the given facts and circumstances, there is no merit in the contention raised by counsel for the appellant challenging the framing of assessment and the impugned order on this point. So as regards this part of the default assessment of tax and interest, the appeal deserves to be dismissed. It is ordered accordingly.

Inter-State Sale Transactions.

(1)Goods Receipts

19. On this point, Assessing Authority observed that out of 38 invoices issued by the dealer – assessee depicting inter-State sales, in respect of 18 invoices the dealer could not produce GR or any other documentary evidence to prove movement of goods; that out of the remaining 20 invoices, 5 GRs stood verified from the concerned transporters but 14 GRs could not

be verified either due to non functioning of the transport company or verification of numbers of GRs.

In this regard, learned OHA observed in the impugned order that photocopies of GRs were filed before him but same were found to be doubtful as the said documents were found written in the same handwriting, even though 38 transporters were situated in different States as per details available in invoices and DVAT-31.

Verification or authenticity of GR was entrusted by learned OHA to respective VAT Inspectors and the report was to the effect that 17 GRs could not be verified at all. In respect of remaining GRs, discrepancies were noticed in the names and addresses of the consignor, when the copies of the transporters and dealer were compared; that even signatures of the clerk issuing the GRs did not tally with the signatures available on the carbon copies produced by the dealer and the copies said to have been received from the transporters; and that freight amount was not found recorded therein.

20. Learned counsel for the dealer – appellant has rightly submitted that in view of such discrepancies and report submitted by VAT Inspectors regarding GRs, OHA should

have afforded an opportunity to the dealer to call or summon the concerned transporters or dealers to substantiate its claim.

Learned counsel for the Revenue has contended that onus to prove its claim was on the dealer, and since it failed to lead any such evidence, no further opportunity was required to be afforded by the OHA.

It is true that onus to prove its claim on the point of movement of goods was on the dealer, but once the Assessing Authority and OHA could not verify certain facts and doubts crept in, Learned OHA could call upon the dealer-objector to bring the officials or representatives of the concerned transporters or purchasing dealers to substantiate movement of the goods to prove its claim of Inter-state Sales. Had any such opportunity been given by Learned OHA by passing a specific order or had the dealer not availed of such an opportunity, it would have been a different matter. Learned counsel for the Revenue could not satisfy in the course of final arguments if any such order affording opportunity in this regard to the dealer - appellant was passed during objections. In suchlike situation i.e. as is in the present matter, it would have been in the interest of justice to afford such an opportunity to the dealer-appellant to substantiate its claim, particularly, when officers of the

department submitted reports which created doubt on the point of movement of goods and in the genuineness of GRs.

(2) End Users Certificates

21. Learned counsel for the dealer has submitted that End Users Certificate issued by the purchasing dealers were submitted before learned OHA but the same were rejected on the ground that except one certificate all other certificates appeared to have been prepared on same computer/printer with identical language and format, whereas the dealers were located in different States.

In the interest of justice, regarding movement of goods outside Delhi, when learned OHA expressed doubt over the End Users Certificate, he should have afforded an opportunity to the dealer to summon or produce representative of the said purchasing dealers for their examination and explanation. However, no such step appears to have been taken by learned OHA.

So matter needs to be remanded to Learned OHA for consideration and decision afresh on this point.

Invoice No. 19 dated 3/5/2006.

22. As observed by learned Assessing Authority, on examination of record, said invoice was found to have not been entered in regular books of accounts i.e. DVAT-31 and furthermore, the dealer could not produce documentary evidence with regard to movement of the goods under this invoice.

    Learned OHA also similarly observed while rejecting the objections.

23. Learned counsel for the dealer has referred to page 267 i.e. invoice No. 19 and page 268 i.e. copy of GR relating to this transaction and then to page 22 of the Memorandum of Appeal to submit that invoice No. 19 was depicted in DVAT-31 and the copy of the GR was annexed to the documents submitted with the return and also before learned OHA.

    Copy of DVAT-31 forms part of memorandum of appeal and copy of invoice number 19 and the GR also form part of the memorandum of appeal, Counsel for the appellant states at the bar that these documents were available even before learned OHA. But Learned OHA has recorded finding to the contrary. Admittedly, no review application was filed by the dealer before Learned OHA on this point.

Be that as it may, when the matter is going to be remanded to Learned OHA for consideration and decision afresh, as already observed above, dealer may draw attention of Learned OHA to any such document i.e. invoice No. 19 dated 20/5/2005 with copy of GR, if actually and already available in the record of objections, or if reflected in DVAT-31 already submitted to Learned OHA.

Result

24. Consequently, on this point of movement of goods as regards Inter-state Sales, the matters needs to be remanded to learned OHA for consideration and decision afresh after affording reasonable opportunity to the dealer of being heard to lead evidence only as regards GRs and End-user Certificates.

Penalty

25. Admittedly the penalty that survives is the one imposed u/s 86(10) of DVAT Act on the allegation of filing of false and misleading return.

26. Since as discussed above, this Appellate Tribunal is of the opinion that matters needs to be remanded ~~on~~ to learned OHA on the point of inter-State sales , objection against imposition of

penalty under section 86(10) of Act only as regards inter-state sales need to be decided afresh by learned OHA. If ultimately this is actually found to be a case of violation of section 86(10) of the Act even as regards inter-state Sales, Learned OHA to proceed in accordance with law .

Conclusion

27. In view of the above discussion, the matter is remanded to learned OHA even on this point of penalty as regards inter-state sale, for decision afresh after providing reasonable opportunity to the dealer of being heard, to find out as to whether it is a case of violation of provisions of section 86(10) of the Act on the point of inter-State Sales. It is ordered accordingly.

Result

28. In view of the above discussions and findings, this appeal is partly dismissed –

(i) so far as levy of tax, interest under section 32 of DVAT Act and penalty under section 33 read with section 86(10) of DVAT Act, as regards sales of Super Fine Kerosene Oil, and ;

(ii) default assessment of tax and interest, on the point of reflection of turnover of Rs. 1,38,82,000/-in the return are concerned.

29. As regards default assessment of tax and interest on the point of Inter-state Sales and penalty under section 86(10) of DVAT Act and that too only as regards violation, if any, in respect of Inter-state Sales, as already directed above, the appeal is disposed of and matter is remanded to learned OHA for decision afresh after affording opportunity to the dealer of being heard in accordance with law.

30. Dealer is hereby directed to appear before learned OHA on 30/8/2022.

31. No other argument was advanced by learned counsel for the appellant in these appals.

32. 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 :08/08/2022

APPELLATE TRIBUNAL VAT DELHI

Narinder Kumar 8/8/2022

(Narinder Kumar)
Member (J)

.Appeal no. 79/ATVAT/06/5279-81 Dated: 10/8/2022

Copy to:-

(1) VATO (Ward-)

(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)

REGISTRAR