

**BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI**

Sh. Narinder Kumar, Member (Judicial)

Appeal Nos. : 152-154/ATVAT/11

Date of Judgment: 16/8/2022

M/s. Bansal Service Station,  
Rohtak Road, Nangloi,  
Delhi-110041.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

CA representing the Appellant : Sh. Sunil Kumar Gupta.

Counsel representing the Revenue : Sh. C. M. Sharma.

**JUDGMENT**

1. Two instant Appeal Nos. 152-153/11 pertain to tax period 2005-06. Appeal No. 152/11 pertains to assessment of tax and interest and appeal No. 153 /11 pertains to assessment of penalty.

The third Appeal No. 154/11 pertains to tax period 2006-07. It has been filed challenging assessment of tax and interest.

2. Appellant, a partnership firm, is a dealer registered with Department of Trade & Taxes under Local Act of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act). It is engaged in the business of Petroleum Products i.e. by running

  
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a Petrol-Pump. It has been filing returns under DVAT Act, monthly, as per Rule 26(1)(d) of DVAT Rules.

3. On 30/12/2010, Assessing Authority – VATO (Ward-63), framed default assessment in respect of tax and interest, u/s 32 of DVAT Act and called upon the dealer to pay tax and interest.

The default assessment was framed on the ground that the dealer-assessee had claimed ITC on petrol/ diesel which evaporated, and as such the Assessing Authority did not allow ITC for the same.

Assessing Authority also took into consideration that the dealer had not paid any output tax. Therefore, he reversed the ITC.

4. Feeling aggrieved by the above said default assessment, dealer-assessee filed objections before Learned OHA. Learned Additional Commissioner (Special Zone), vide order dated 10/03/2011 rejected the objections, for the reasons recorded therein. Hence, these appeals.
5. Arguments heard. File perused.
6. It may be mentioned here that the Assessing Authority clearly observed in the default assessment that it was subject to final outcome of decision by the Hon'ble High Court of Delhi in **M/s Delhi Petrol Dealers Association vs. Commissioner, New Delhi** and others, 2014 (8) TMI 445,.

In **Delhi Petrol Dealers Association and BPCL Petrol Dealers Association** case (supra), it was argued on behalf of the petitioner therein that even the evaporation loss component is added as credit claim. In this regard, reference was made to circular No. 47 of 2005-06 issued in January 2006. It was argued on behalf of the petitioner therein that the directions issued by the Commissioner vide said circular were without authority of law.

On the other hand, it was argued that the circular could not be read as direction to take a particular position with regard to assessment proceedings, but had to be construed more as a guidance.

Our own Hon'ble High Court, while disposing of the petition, observed that the impugned circular shall not bind the authorities in taking a particular view to disallow the claims for the evaporation losses claimed as credit by the petitioners therein at the point of sale to their customers, and further that such claims shall be examined in taking into account by the Assessing Authority on a factual basis.

7. Learned CA for the applicant has ~~also~~ placed on record copy of order dated 19/12/2005 issued by the Ministry of Petroleum and Natural Gas <sup>order</sup> which contains the relevant provisions <sup>or parameters</sup> and argued that the matter needs to be remanded to learned Assessing

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Authority as the circular issued by Commissioner, Trade & Taxes was ultimately set-aside and the Assessing Authority is required to consider all the facts and circumstances, <sup>or order</sup> and while implementing the notification <sup>✓</sup> issued by the Ministry. In support of his contention, learned counsel has referred to decision in **M/s Ruchika Service Station v. Commissioner of Trade & Taxes, Delhi**, (2018) 56 DSTC 361-(Delhi)

8. Learned counsel for the Revenue admits that when the circular issued by the Commissioner, Trade & Taxes stands set-aside, matter deserves to be remanded to learned Assessing Authority to consider all the relevant fact and circumstances and frame assessment afresh in consonance with the notification issued by the Ministry.
9. Schedule-I available in this order issued by the Ministry pertains to the percentage as regards evaporation / handling losses in case of motors spirit and high speed diesel, and variation in stocks in the underground tanks.
10. From the observations made by the Assessing Authority in the assessment orders as regards tax & interest, it appears that the account books and other relevant documents of the dealer – appellant were yet to be considered, to find out as to at what rate the ITC was claimed by the dealer on the point of evaporation and if the percentage of evaporation / handling losses was or was

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not within permissible limits or in terms of the directions contained in the notification<sup>or order</sup> dated 19/12/2005.

11. In M/s Ruchika Service Station's case (supra) this Appellate Tribunal, while dealing with the same point, remanded the matter to learned VATO for framing of fresh assessment ~~while~~ deciding claim of tax credit on losses due to evaporation, with the directions to find out if the ITC so claimed was reasonable and within parameters.
12. Keeping in view the provisions of the order dated 19/12/2005, issued by the Ministry of Petroleum and Natural Gas, and the decision in **M/s Ruchika Service Station's** case (supra), Appeal Nos. 152/11 & 154/11 are disposed of and while setting aside the impugned assessment of tax and interest for the year 2005-06 and 2006-07, and the impugned order passed by learned OHA, matter is remanded to learned Assessing Authority to find out as to at what rate the ITC was claimed by the dealer on the point of evaporation and if the percentage of evaporation / handling losses was or was not within permissible limits or in terms of the directions contained in the notification dated 19/12/2005 issued by the Ministry of Petroleum and Natural Gas Order. Of course, learned Assessing Authority shall provide opportunity to the dealer of being heard.

  
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13. Consequently, the impugned assessment of penalty, for the tax period 2005-06, and the impugned order passed by learned OHA are also set-aside and while disposing of appeal No. 153/11, matter is remanded to learned Assessing Authority for fresh assessment in accordance with law.
14. Appellant is hereby directed to appear before the Assessing Authority on 30/8/2022.
15. No other argument was advanced by learned counsel for the appellant in these appals.
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 : 16/8/2022

  
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(Narinder Kumar)  
Member (J)

Appeal no. 152-154/ATVAT/11/5338-45

Dated: 17/8/22

Copy to:-

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|--|----------------|
| (1) VATO (Ward-63)   | (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 17/8/22