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

Appeal Nos. : 1344/ATVAT/11
Date of Judgment: August 16th, 2022.

M/s. Electronic Paradise (North)
13, Ground Floor,
Vaishali, Pitampura,
New Delhi – 110 034. .....Appellant

v.

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

Counsel representing the Appellant : Sh. S.K.Verma
Counsel representing the Revenue : Sh. P.Tara

JUDGMENT

1. Dealer – Appellant - a partnership firm registered vide TIN 07900267600 has challenged order dated 16/11/2011 passed by Learned Additional Commissioner (Special Zone).

   Vide impugned order, Learned Additional Commissioner declined the request of the dealer-appellant to submit revised returns, and thereby disposed of objections u/s. 28 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act).

2. The dealer sought furnishing of revised return for the tax period February 2009, March 2009, April 2010, May 2010,

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June 2010, July 2010and August 2010 on the ground that excess tax had been paid by the dealer.

3. Case of the dealer-appellant, as available from the Memorandum of Appeal is that the appellant used to purchase from LG Electronics electronic goods for resale as its distributor in the defined territory. The dealer received periodical credit notes from LG Electronics representing the discount given as per pre-sale settlement between the parties. However, due to mistake in legal interpretation of the provisions of DVAT Act, the dealer – appellant reversed input tax credit on all such credit in respect of the above said tax periods, when actually LG Electronics had paid tax on their total sales turnover, without adjusting their sale price with the value of the credit notes issued to the dealer. In other words, the seller had not reduced the sale price for transactions done with the dealer – appellant.

Further, it is case of dealer that during correspondence by the dealer-appellant with LG Electronics, later the seller confirmed through certificates issued by them that no tax benefit had been taken by them in the returns filed by LG Electronics with the department for the relevant tax periods.

4. In this way, the case of the dealer-appellant is that it paid tax more than that was due, which led to the filing of the aforesaid application/ objection u/s. 28 of DVAT Act .

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5. Hence this appeal.

6. Arguments heard. File perused.

7. Section 28(2) of DVAT Act, 2004, as it was in enforce during the relevant period, being the relevant provision applicable in the present case is reproduced below:

> "If, within the four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated in section 74 of this Act."

8. While passing the impugned order, Learned Additional Commissioner referred to provisions of Section 10 (1) and Section 51(a) of the Act read with Rule 45 of the DVAT Rules.

Learned Additional Commissioner was of the opinion that benefit of credit note could have been obtained u/s. 10(1) of the DVAT Act only in case credit notes were issued u/s. 51 (a) of DVAT Act. He went on to observe that credit note in the instant case did not fulfil the requirement of Rule 45 as credit note for each transaction should have been separately issued and a credit note issued without containing details of invoice, against which the same was issued, could not be considered for adjustment u/s. 10 of DVAT Act.

Ultimately, Learned Additional Commissioner was of the view that the dealer did not commit any mistake while reducing its input tax credit on the credit notices received from the selling dealer and further that in case revised return was allowed, that would defeat the provisions of Section 10(1) read with Section 51 of DVAT Act 2004 and Rule 45 of DVAT Rules, 2005.It has been argued on behalf of the appellant that Learned Additional Commissioner did not appreciate the full scope of the provisions of Rule 45 read with Section 10 of DVAT Act; that only section 8 of DVAT Act was relevant; that while making observations in para 12 of the impugned order, OHA exceeded the scope; and that OHA did not peruse the credit notes. In support of his contentions, learned counsel for appellant has relied on following two decisions:

(i) M/s Andhra Agencies v. State of A.P., decided by Hon'ble Apex Court on 18.11.2008 (complete particulars of the case and that of citation not made available in the text provided by counsel for the appellant).

(ii) Challenger Computers Ltd. v. Commissioner of Trade & Taxes, Delhi, ST. Appeal 76/2014 decided by Hon'ble High Court of Delhi on August 21, 2015.

9. On the other hand, learned counsel for Revenue has contended that the appellant - a buying dealer correctly reduced ITC as it

was liable to reduce the purchase price in view of a specific note given by the selling dealer-LG in a number of the credit notes that purchaser was required to reduce the proportionate ITC; that the OHA provided opportunity to the dealer to prove its claim and only after going through the contents of the credit notes observed that the credit notes neither contained invoice number(s) nor satisfied the quality of credit notes as provided under Rule 45 of DVAT Rules. Therefore, learned counsel has urged that the impugned order does not suffer from any illegality or irregularity, and this appeal deserves to be dismissed.

10. As noticed above, under section 28(2) of DVAT Act, an objection would be maintainable where a dealer discovers a mistake or error in any return furnished by him under the Act and as a result of said mistake or error the dealer paid more tax than was due under this Act.

Existence of an assessment

It is significant to note that such an objection would be maintainable against the assessment. So, there must be an assessment. In the course of arguments, on query, counsel for the appellant has displayed ignorance if any assessment was framed on the basis of the return(s) for the given tax period(s) or if any objection was or was not filed by the dealer against such assessment.

Subsequent discovery of Mistake or error in the return

As required under section 28, it was for the dealer-appellant to prove before OHA that it was a case of mistake or error in the return(s) for the relevant tax period(s), which was discovered subsequently.

In the impugned order, while referring to the case of dealer-Objector in the objections observed that it was claimed to be a case where dealer inadvertently reversed tax credit during the above said tax periods on the credit notes issued by the selling dealer. The reason as put forth by the objector was that the certificate issued by the selling dealer that it had not taken any tax benefit escaped its attention.

In the impugned order, learned OHA has observed that the dealer-objector was required to reduce the purchase price and to pay tax on the value addition at his own, which he rightly did; that the net effect of any credit note is a less purchase price; that the dealer committed no mistake while reducing the tax credit; and as such its case is not covered by the provisions of section 28 of DVT Act.

In the memorandum of appeal, case of dealer-appellant is that on subsequent request it was informed by the selling dealer-LG that " No Tax benefit had been taken" by them-the selling dealer-for the relevant tax periods. Further, it was averred in

the appeal that copies of credit notes received were being separately given in the form of Paper Book.

However, it may be mentioned here that no such credit notes were furnished with the appeal. Only on 12/8/2022 at the time of final arguments counsel for the appellant presented an application to place on record copies of credit notes received from the selling dealer. At the time of final arguments, counsel for the appellant has submitted that inadvertently these copies could not be submitted earlier. In the application, it has been alleged that copies of credit notes were also submitted before OHA. In view of this submission, when the prayer for their production has not been opposed, copies of credit notes are taken on record.

So far as contention on behalf of the dealer that OHA did not go through the credit notes, in view of the discussion in the impugned order as regards the credit notes it cannot be said that same were not considered by the OHA.

In para 14 of the impugned order, OHA observed as under:

> "The credit note in the instant case does not fulfil the requirement of rule 45 as credit note for each transaction should have been separately issued. A credit note issued without containing details of invoices against which the same is issued, cannot be considered for adjustment u/s 10 of DVAT Act."

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In the course of arguments, Learned counsel for the appellant has candidly admitted that tax invoice number(s) against which the credit notes are stated to have been issued do not find mention in the credit notes relied upon.

Tax invoice number helps in co-relating itself the credit note and vice versa. In absence of tax invoice, it cannot be made out as to against which transaction or tax invoice said credit note has been given. Authorities are required to strictly follow the rules framed under the Act. When Rule 45 of DVAT Rules provides that serial number of relevant tax invoice affected by the credit note is also to be mentioned in the credit note for the purposes of section 51 of the Act, Learned OHA correctly decided not to rely upon the credit notes.

11. In the course of arguments, learned counsel for the appellant has referred to certain credit notes for the months of June, July & August, 2010 to which simply a note has been appended to the following effect:

> "Purchaser are required to reduce the proportionate Input Tax Credit against the corresponding purchases."

Firstly, this unsigned note cannot be considered or treated as a certificate. Secondly, as per this note appended by the selling dealer, it can be said that the selling dealer had required the buying dealer-appellant to reduce proportionate ITC. In other words, when the buying dealer was required to do so, the

selling dealer apprised the appellant that it had taken benefit against the said credit notes to which said note was appended.

As a result, purchasing dealer was not entitled to claim tax credit on the basis of said credit notes, particularly, in absence of any certificate by the selling dealer in favour of the purchasing dealer that it had not taken benefit against the said credit notes.

In Challenger Computers' case (supra), appellant were able to produce certificates from the selling dealers clarifying that they had neither claimed any output tax credit nor sought any refund, and the entire amount of VAT collected by the selling dealer from the buying dealer stood remitted to the department. In this situation, Hon'ble High Court observed that there was neither any question of the selling dealer raising a credit note in accordance with Rule 45 of DVAT Rules, resorting to procedure under section 51(a) nor the dealers were required to resort to the procedure under section 8(1) of DVAT Act or the buying dealer to resort to the procedure under section 10(1) of the Act.

In view of the above discussion, decision in Challenger Computers' case does not come to the aid of the dealer - appellant.

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12. As regards application of provisions i.e. section 8(1) and section 10 of DVAT Act, in Challenger Computers' case, Hon'ble High Court clearly observed that question of purchasing dealer adjusting input tax in terms of section 8(1) would not arise where the selling dealer does not give any credit note under section 51(a) to the purchasing dealer. As regards relevant provision of adjustment of tax credit by the dealer, at the same time, Hon'ble High Court observed that it is clear from the scheme that the same would necessarily involve issuance of credit notes under section 51(a) of DVAT Act as without issuance of such credit notes, it would not be open for the buying dealer to adjust the tax credit in terms of section 10 of the Act.

In view of the above observations by Hon'ble High Court, there is no merit in the contention raised by counsel for the appellant that section 10 of DVAT Act does not at all permit adjustment of tax credit or that observations made by OHA while referring to provisions of section 10 of the Act in this regard is wrong.

13. In the course of arguments, learned counsel for the appellant has referred to some of the credit notes i.e. Feb. & March, 2009 to which a certificate has been appended to the following effect:

"This is to certify that, we have not claimed any tax benefit against this Credit Note."

This certificate available as a foot note to the limited number of credit notes was of no avail to the dealer-appellant especially for want of tax invoice number in the credit notes, when the same could not be co-related to particular transaction for the purposes of verification of the claim.

It is not case of the dealer-appellant that OHA did not allow it to produce or prove before him credit note(s) depicting tax invoice number. Onus to prove its claim was on the buying dealer. Buying dealer-appellant could collect valid credit notes depicting tax invoice number(s) from the selling dealer or could summon its representative to lead convincing evidence in this regard before OHA, but no such step was taken. It was afforded reasonable opportunity to discharge its burden but it failed to co-relate these credit notes to particular transaction(s) for the purposes of verification of claim.

While closing the arguments, counsel for the appellant submitted that appeal be adjourned for a week's time for production of documents after collecting the same from the selling dealer

It remains unexplained as to why the buying dealer was not diligent enough to take such steps before OHA and ever since

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the rejection of the objections or in seeking such permission while filing the appeal about 11 years back.

Therefore, I see no merit in this last contention of counsel for the appellant as well.

14. In M/s Andhra Agencies's case (supra) the issue involved was as to whether the value representing credit notes issued by the manufacturers to the distributors were to be included in the taxable turnover. All the assesses were carrying business in liquor as distributors of the brand manufactured by the companies of Hyderabad. The assesses were intermediate dealers liable to tax only on differential turnover i.e. after excluding the turnover which had already suffered tax.

Therein, it was submitted on behalf of appellants that the whole seller had paid tax on the whole amount before adjustment of the credit notes.

It subsequently transpired that the assesses had received periodical credit notes representing the discount. These were not taken into account. It was conceded that books of account were not produced before the authorities. There was no document to show that selling dealer had paid tax. Certain documents relating to purchases by the assesses were produced to show the tax amount paid by the selling dealers, but these documents were not considered by the Revenue due

to the reason that books of account had not been produced by the assessee. The stand of assesses was that books were not produced because documents had been seized by certain taxing authorities. In this situation, opportunity sought to produce the documents before the assessing Authority was allowed.

The decision in Andhra Agencies is distinguishable on facts. Here, all the credit notes are stated to have been made available to the OHA and he recorded his observations and disposed of the objections after going through their contents and providing reasonable opportunity of hearing to the dealer-objector.

15. In the course of arguments, on behalf of the appellant reliance was placed on decision in M/s Jeewan Jee Refrigeration Engineers v. Commissioner of Trade & Taxes, Delhi, by this Appellate Tribunal, in Appeal No.344-359/11, disposed of on 21.3.2022.

Therein, Revenue authorities had nowhere observed that selling dealer had claimed refund from the department after having issued credit notes.

Here, the claim of the buying dealer in this regard has been contested and from the note appended to a large number of credit notes said to have been issued by the selling dealer it

stands proved that the buying dealer was required by the selling dealer to reduce proportionate ITC. Therefore, it cannot be said that the entire amount of VAT collected by the selling dealer from the buying dealer was remitted to the department. Decision in Jeewan Jee's case also not does not help the appellant.

16. The contention of learned counsel for the appellant that OHA exceeded scope of enquiry is without merit, as he took into consideration relevant facts to determine the issue involved keeping in view the ingredients of section 28 of DVAT Act.

17. In view of the above discussion, I find that the dealer – appellant ~~was unable~~ failed to establish all the ingredients of section 28 of DVAT Act; that its claim that due to mistake or error the dealer paid more tax than was due under this Act and that certificates were issued by LG that no tax benefit had been claimed by them i.e. the selling dealer. Therefore, Learned OHA was justified in rejecting the objections and disallowing the prayer for furnishing of revised return.

18. It may be mentioned here that even though learned counsel for the appellant has submitted written submissions in the course of final arguments, he has neither argued any point nor referred to any decision other than the point/decisions discussed above.

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Result

19. In view of the foregoing findings, while upholding the rejection of objections furnished by the appellant-Objector before Learned OHA, this appeal is hereby dismissed.

20. File be consigned to the record room. Copy of the order be sent 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 :16th of August, 2022.

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(Narinder Kumar)
Member (J)

Appeal no. 1344/ATVAT/11/5330-37 Dated: 17/8/22

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)

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