

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

Appeal No. 410/ATVAT/22

Date of Judgment: 22/8/2022

M/s Benetton India Pvt. Ltd.,
Domestic Departure PIER, T-3,
Unit No. PD 08A,
New Delhi-110037.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. P.K. Sharma
Counsel representing the Revenue : Sh. P. Tara

JUDGMENT

1. On 28-10-2010, Assessing Authority-VATO levied penalty of Rs. 81510/- on the dealer-assessee, u/s 86(12) of Delhi Value Added Tax Act (here-in-after referred to as the Act) by observing in the manner as:-



“On examination of the records produced by the dealer for audit, it has been found that the dealer has taken input of Rs. 41587/- on interstate purchase of goods worth Rs. 1039686/- vide bill dated 22-12-2006 by M/s Gartex Insta Apparels, Noida which is disallowed and the input tax credit claimed on this bill is treated as tax deficiency for the tax period of December, 2006. The

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dealer is, therefore, liable to pay the penalty on deficiency of tax detected now, as per the provisions of 86(12) of the DVAT Act for the period of default. The dealer liability is assessed accordingly.”

2. The matter pertains to tax period December 2006.
3. Dealer-assessee filed objections before learned OHA vide order dated 28-06-2017. Learned OHA remanded the matter to Assessing Authority for re-examination.

On 23-04-2018, learned Assessing Authority, who dealt with the matter after remand, did not accept the case of the dealer-assessee regarding its bona-fides ^{on} ~~and~~ deposit of ITC only after it was pointed out by the audit. ✓

4. The assessee challenged the above said assessment of penalty before learned OHA.
5. Learned OHA-Special Commissioner has dismissed the objections filed by the dealer-assessee and upheld the levy of penalty by observing that the objector had admitted additional demand of tax and interest raised by way of assessment on account of avilment of wrongful ITC on inter-state purchases, and as such it is a clear case of tax deficiency as

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provided u/s 86(1) which correctly led to imposition of penalty u/s 86(12).

6. On behalf of the dealer, it was submitted before learned OHA that availing ITC on inter-state purchase was purely a human error and neither deliberate nor intentional and as such the same deserved to be condoned. The said contention was rejected by learned OHA for the reasons recorded therein.
7. Arguments heard. File perused.
8. Learned counsel for the dealer – appellant has contended that keeping in view the bona-fides of the dealer in having deposited the requisite amount of tax ^{with interest,} which was not deposited due to bona-fide mistake, while applying the decision in **Siemens Ltd. vs. The Commissioner, Department of Trade & Taxes & Anr.**, (2015) 53 DSTC 22 – (Delhi), the penalty levied by the Assessing authority be set-aside.
9. On the other hand, learned counsel for the Revenue has submitted that there is no merit in the contention raised by learned counsel for the appellant as the dealer – appellant deposited tax with interest only after framing of the default assessment of tax and interest, whereas in case of bona-fides

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and inadvertent mistake, dealer should have deposited the same soon after the audit of its books was carried out in respect of the tax period December, 2006. Learned counsel has further submitted that the decision in Siemens Ltd.'s case (supra) does not come to the help of the appellant as same is distinguishable on facts.

10. As noticed above, it was on examination of records produced by the dealer for audit that the Department found that dealer – assessee had claimed input tax credit of Rs. 41,587/- on inter-State purchase of goods as per bill dated 22/12/2006.
11. Admittedly, on the inter-State purchase of goods vide the said bill, no input tax credit could be claimed by the dealer under the law. Present assessment was framed on 28/10/2010. It pertains to tax period December, 2006. It is not believable that only on examination of the records for the purpose of audit, the dealer came to know that input tax credit had been wrongly claimed in the return.

In the given situation, the dealer – assessee should have immediately revised the return and paid the requisite tax, so that there was no tax deficiency as defined u/s 86(1) of DVAT Act.

12. It is true that the dealer deposited the requisite amount of tax with interest, but the said amount was deposited only after the



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framing of the default assessment in the year 2010. Had the dealer – assessee voluntarily disclosed to the Commissioner in writing the existence of tax deficiency even before the Commissioner informed the dealer that audit of its tax applications was to be carried out, the dealer would have become entitled to reduction of the amount of penalty by 80%. In the given facts and circumstances, the dealer even failed to avail of this concession as provided u/s 87(2) of DVAT Act.

13. So far as decision in Siemens Ltd.'s case (supra) is concerned, Hon'ble High Court observed that the petitioner therein had paid tax and interest even prior to the Amnesty Scheme; that it was anomalous that the person who paid part tax and interest would be entitled, while calculating the tax dues, under clause 3 of the Amnesty Scheme to seek waiver of penalty, whereas the person has paid tax and interest and challenge the levy of penalty would not be entitled to seek waiver.



The decision in Siemens Ltd.'s case (supra) does not come to the aid of the dealer because same is distinguishable on facts.

14. Section 86(2) of DVAT Act, as in force prior to September, 2013 provided that penalty imposed under this section can be remitted where a person is able to prove existence of a

reasonable cause for the Act or omission giving rise to penalty during objections proceedings u/s 74 of DVAT Act.

In this case, before learned OHA, the plea put forth on behalf of the objector was that purely because of human error, ITC on inter-State purchases was claimed. While relying on decision in **M/s. Jatinder Mittal Engineers and Contractors vs. Commissioner of Trade & Taxes, Delhi**, STA No. 3/2011 decided on 12/5/2011, learned OHA rejected this plea.

However, taking into consideration that this is the only tax period where the dealer claimed ITC on inter-State purchase and deposited the requisite amount of tax with interest soon *in view of provisions of sec. 86(2)* after the default assessment was made, I deem it to be a fit case to reduce the amount of penalty from Rs. 81,510/- to Rs. 41,587/-.

15. No other argument was advanced by learned counsel for the parties in this appeal.

Conclusion

16. As a result, this appeal is partly allowed and the impugned order passed by learned OHA and the impugned assessment framed by learned Assessing Authority u/s 33 of DVAT Act



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are modified with reduction of the amount of penalty from Rs. 81,510/- to Rs. 41,587/-.

17. 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 : 22/8/2022



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(Narinder Kumar)
Member (J)

Appeal No. 410/ATVAT/22/5354-61

Dated: 22/08/22

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 DVAT/GST, Delhi - through EDP branch. | |

REGISTRAR

