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

**Appeal Nos. 1535 & 948/ATVAT/13**
Date of Judgment: 31/08/2022.

M/s Delhi Automobiles,
Sagar Apartment 6,
Tilak Marg,
New Delhi – 110001.

.....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. This common judgment is to dispose of above captioned two appeals as the same pertain to tax period 1992-93, and appeal No. 948/13 is only on the point of additional interest.

2. On 27/3/1997, learned Assistant Commissioner, Zone-II, framed assessment for the year 1992-93 u/s 23(3) of Delhi Sales Tax Act,1975 (hereinafter referred to as DST Act).

3. Subsequently on 31/3/1997 vide rectification order No. 1147 dated 31/3/1997, some modification was carried out in the assessment order dated 27/3/1997 initially framed.

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4. Feeling aggrieved by the assessment, dealer – assessee filed appeal u/s 43 of DST Act. Vide order dated 15/12/2011, learned Special Commissioner-III partly allowed the appeal by observing in the manner as :

> "I have heard the arguments put forth by the learned counsel and gone through the records in detail. He has also produced many court judgments on issues similar in nature.
>
> Regarding the rejection of the registered dealer sales, it has been observed that the **sales were made after the cancellation of the R.C. of the firms M/s. Roman Trading Co., M/s. Venus Trading Co., M/s. Pankaj Traders, M/s. Hindustan Trading Co., M/s. Vishal Industries, M/s. Onkar Sales**. Hence sale to these firms have been rightly rejected and the same is upheld.
>
> **The claim of registered dealer sale in respect of unverified ST-II** accounts and accounts which do not tally are also rejected. However, R.D. sales in respect of the verified ST-II accounts are allowed.
>
> Regarding the sale from Chandigarh branch, it is not disputed that the cars moved from Chandigarh to Delhi I pursuance of an order placed by the customer. The invoices are raised at Chandigarh. Prima facie it satisfy the basic condition of a central sale that goods move from one state to another in pursuance of a contract of sale. Hence the sales are interstate sale at Chandigarh. The learned counsel also informed that the cars have been taxed



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at Chandigarh and the company had paid tax at Chandigarh as per law. Hence in the interest of justice, the appeal against taxing of cars at Delhi as local sale is allowed.

The assessing authority is directed to give one more opportunity to the company to produce relevant documents such as copy of orders placed by customers, sale invoices indicating appropriation of vehicles, copy of sale letter, copy of temporary registration, copy of receipt for transportation charges, copy of GR for dispatch of cars from Chandigarh to Delhi, and copy of assessment orders of Chandigarh branch etc.

Regarding the appeal for rejecting the enhancement of sale by 30%, the contention of the learned counsel, that there is no concealment of sale and that the transactions were genuine and recorded in the books of accounts, is allowed. As regards the penalty, necessary provisions of law and proper steps have not been taken before imposing penalty by the Assessing Authority. Accordingly the orders regarding the enhancement of sale by 30% and imposing penalty is set aside.

The appellant is directed to present before the AA (Ward-09) on 12-01-2012 with book of accounts and all other relevant documents in original."


**Appeal No. 948/13**

5. Present appeal came to be instituted on 23/12/2013. Dealer-appellant was engaged in the business of sale or purchase of



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cars, scooters, motorcycles, three-wheelers and automobiles spare parts.

The dealer is feeling aggrieved only because of the demand of interest raised by the Assessing Authority vide assessment dated 30/11/2012 (framed on remand of the matter), and by the order dated 25/10/2013 passed by learned Special Commissioner-I - Learned First Appellate Authority.

6. It may be mentioned here that initially assessment was framed on 27/03/1997 u/s 23(3) of Delhi Sales Tax Act (hereinafter referred to as DST Act). Said assessment was modified vide subsequent order dated 31/03/1997. The dealer filed first appeal. Learned First Appellate Authority vide order dated 12/11/2011 remanded the matter to learned Assessing Authority by observing in the manner as:-

> "Regarding the sale from Chandigarh branch, it is not disputed that the cars moved from Chandigarh to Delhi I pursuance of an order placed by the customer. The invoices are raised at Chandigarh. Prima facie it satisfy the basic condition of a central sale that goods move from one state to another in pursuance of a contract of sale. Hence the sales are interstate sale at Chandigarh. The learned counsel also informed that the cars have been taxed at Chandigarh and the company had paid tax at Chandigarh as per law. Hence in the interest of justice, the appeal against taxing of cars at Delhi as local sale is allowed. The assessing authority is directed to give one more opportunity

to the company to produce relevant documents such as copy of orders placed by customers, sale invoices indicating appropriation of vehicles, copy of sale letter, copy of temporary registration, copy of receipt for transportation charges, copy of GR for dispatch of cars from Chandigarh to Delhi, and copy of assessment orders of Chandigarh branch etc."

7. On remand, fresh assessment was framed by learned Assessing Authority on 30/11/2012 whereby demand of interest to the tune of Rs. 66,05,126/- has also been raised from the dealer.

8. The dealer felt aggrieved mainly on account of additional interest liability and as such filed first appeal. Said first appeal came to be dismissed by learned First Appellate Authority-Special Commissioner-I by observing in the manner as:-

"After due consideration of the submissions made by Ld. Counsel and after examination of the relevant documents and the decision taken by the then OHA, it is reiterated that interest is a compensatory charge liable to be paid by the dealer whenever exchequer is deprived of revenue. Interest becomes payable from the date when tax was due. In the present case tax became due after rejection of statutory forms in support of RD Sales. This view has been upheld by Hon'ble Apex Court in case of M/s Pepsico India Holding Ltd. Vs. CTT (2011) (6 GST 31 SC). The orders of OHA are thus correct on this issue. The assessment made Ld. A.A. is upheld and appeal is rejected. Moreover since the dealer has also filed an appeal against orders of OHA which

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lead to reassessment proceedings this appeal becomes in fructuous. Ordered accordingly."

9. As noticed above, the dealer filed first appeal mainly on account of additional interest liability as earlier there was demand of Rs. 16,92,595/- only, but on remand of the matter learned Assessing Authority raised this demand of Rs. 66,05,126/-.

10. Hence, this appeal only on the point of additional interest.

11. Arguments heard. File perused.

**Cancellation of registration of dealers.**

12. As is available from the assessment framed by learned Assessing Authority one of the grounds for framing of the assessment was cancellation of certificates of registration of concerns namely M/s Roman Trading Co., M/s Venus Trading Co., M/s Pankaj Traders, M/s Hindustan Trading Co., M/s Vishal Industries, M/s Omkar Sales.

13. Certificate of registration of M/s Roman Trading was cancelled w.e.f. 22/06/1992; that of M/s Venus Trading Co. was cancelled w.e.f. 04/10/1990; that of M/s Pankaj Traders was cancelled w.e.f. 09/10/1992; that of M/s Hindustan Trading Co. was cancelled w.e.f. 15/06/1992; that of M/s Vishal Industries was cancelled w.e.f. 12/08/1987 and that of M/s Omkar Sales w.e.f. 27/04/1992.

14. By way of present No. 1535/13 appeal, dealer has challenged the order dated 15/12/2011 passed by learned First Appellate Authority only in so far as the assessment framed by the Assessing Authority rejecting claim of sales to registered dealers and rejection of ST-35 forms is concerned.

15. The claim of sales to various registered dealers was to the tune of Rs. 4,14,73,391/-.

**Contentions**

16. Learned counsel for the appellant has contended that said claim has been wrongly rejected as the purchasing dealers were holding valid registration certificates on the date genuine sales were affected.

As per case of the appellant, it was incumbent upon the authorities to verify that the factum of cancellation of registration of the said dealers was notified by way of a gazetted notification, but no such enquiry was made by the authorities nor any record was summoned from the purchasing dealers.

The contention is that on these grounds, the impugned assessment and the impugned order as regards sales to Registered Dealers deserve to be set aside.

In support of his contention, learned counsel has referred to following decisions:

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i. **State of Maharashtra v. Suresh Trading Company** 1996 (3) SCALE 536(SC).

ii. **State of Orissa v. Santosh Kumar and Co.,** 1983 54 STC 322 Orissa.

iii. **Milk Food Ltd. v. Commissioner of VAT &Ors**, STA no. 14-15/2011, decided by our own Hon'ble High Court on 04/02/2013.

iv. **State of Madras v. M/s Radio and Electricals Ltd. &Anr.,** (1996) 18 STC 222

17. On the point of interest, Learned Counsel has contended that when the dealer had paid tax as per returns, Assessing Authority fell in error in levying interest from the date of return. In this regard, learned counsel has placed reliance on decisions in **M/s Pentex Sales Corporation vs. Commissioner of Sales Tax, Delhi**, ST. REF. 1/1998, decided by our own Hon'ble High Court on 06/05/2022; **State of Rajasthan vs. Ghasilal**, AIR 1965 SC 1454; **J.K. Synthetics vs. Commercial Tax Officer**, (1994) 94 STC 422 (SC); **M/s Pure Drinks (New Delhi) Ltd. vs. The Member, Sales Tax Tribunal & Ors.**, W.P.(C) 1638/1994, decided by our own Hon'ble High Court on 21/03/2013.

18. On the other hand, learned counsel for Revenue has referred to the provision of section 4(2)(a)(v) of Sales Tax Act and submitted that from the copies of the documents submitted by the Department in the form of paper book, it stands established that cancellation of registration of the purchase dealers had

taken place long back as verified after enquiries and as such the assessment has been rightly framed by learned Assessing Authority.

Learned counsel for the Revenue admitted that factum of cancellation of registration of dealers is required to be notified by way of Gazetted Notification. However, his submission is that this fact was notified by way of a Gazetted Notification as regards the purchasing dealers referred to in the assessment, but Department has not been able to lay hands on the said Gazetted Notification.

At the same time, learned counsel for the Revenue has contended that before entering into transactions with the said dealers, it was duty of the appellant to verify that the said dealers stood duly registered with the Department, but in this case the dealer failed to prove that he had verified said fact. The contention is that since registration of the said dealers stood cancelled since long, it cannot be said that the assessment has been wrongly framed when the factum of cancellation of their registration was taken into consideration. Further, it has been contended that simply because Gazetted Notification has not been produced, the verification reports submitted by the officers of the Department regarding cancellation of registration of the said dealers cannot be ignored.



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19. In State of Maharashtra v. Suresh Trading Company's case (supra) Hon'ble Apex Court upheld the view taken by Hon'ble High Court that a purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Hon'ble Apex Court further observed that whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate, when the registration was current.

Therein, it was argued on behalf of the department that it was duty of the person dealing with the registered dealers to find out whether a state of facts exists which would justify the cancellation of registration. The argument was rejected while observing that in case this argument was accepted it would nullify the provisions of the statute which entitles persons dealing with registered dealers to act upon the strength of registration certificate.

20. In State of Orissa v. Santosh Kumar and Company's case (supra) Hon'ble High Court of Orissa observed that once a certificate of registration is issued to a person, he becomes a registered dealer and entitled to certain benefits under the Act. Certificates granted by the public officers have their value and people in the commercial field would in normal course accept

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such certificates to be genuine in normal course, as further observed therein.

21. So far as burden of proof in order to proof publication of notification regarding cancellation of certificate granted to a dealer, in Milk Food Ltd. v. Commissioner of VAT &Ors case (supra), decided by our own Hon'ble High Court on 04/02/2013, reliance was placed on decision by the Hon'ble Supreme Court in State of Madras v. M/s Radio and Electricals Ltd. &Another's case (supra).

In **M/s Radio and Electricals ltd. case** Hon'ble Apex Court observed in the manner as:-

> "The Act seeks to impose tax on transactions, amongst others, of sale and purchase in inter-State trade and commerce. Though the tax under the Act is levied primarily from the seller, the burden is ultimately passed on the consumers of goods because it enters into the price paid by them. Parliament with a view to reduce the burden on the consumer arising out of multiple taxation has, in respect of sales of declared goods which have special importance in inter-State trade or commerce, and other classes of goods which are purchased at an intermediate stage in the stream of trade or commerce, prescribed low rates of taxation, when transactions take place in the course of inter-State trade or commerce. Indisputably the seller can have in these transactions no control over the purchaser. He has to rely upon the representations made to him. He must satisfy himself that the purchaser is a registered dealer, and the goods purchased are

specified in his certificates: but his duty extends no further. If he is satisfied on these two matters, on a representation made to him in the manner prescribed by the Rules and the representation is recorded in the certificate in Form „C" the selling dealer is under no further obligation to see to the application of the goods for the purpose for which it was represented that the goods were intended to be used. If the purchasing dealer misapplies the goods he incurs a penalty under section 10. That penalty is incurred by the purchasing dealer and cannot be visited upon the selling dealer. The selling dealer is under the Act authorised to collect from the purchasing dealer the amount payable by him as tax on the transaction, and he can collect that amount only in the light of the declaration mentioned in the certificate in Form „C". He cannot hold an enquiry whether the notified authority who issued the certificate of registration acted properly, or ascertain whether the purchaser, notwithstanding the declaration, was likely to use the goods for a purpose other than the purpose mentioned in the certificate in Form "C". There is nothing in the Act or the Rules that for infraction of the law committed by the purchasing dealer by misapplication of the goods after he purchased them, or for any fraudulent misrepresentation by him, penalty may be visited upon the selling dealer."

22. On the point of burden of proof, reference has also been made by the counsel for the appellant to decisions in **A.D.M. Stores And Anr. v. Commissioner of Sales Tax and Ors.**, 1996 18 STC 305 (PH); **Powerlite Electricals India P. Ltd. v.**

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**Commissioner of Trade & Taxes,** ST. Appeal No. 78/2012, decided by our own Hon'ble High Court on 23/03/2015.

23. It is not case of the department that the purchasing dealers were never registered under the Act. Once they were registered, it was for the Revenue to bring on cogent and convincing evidence regarding cancellation of their registration. It was for the Revenue to prove entire correspondence between the department and the concerned Ward Officers and the reports received. Copies thereof were also required to be supplied to the dealer-assessee. There is nothing on record to suggest as to whether the buying dealers were associated in the process of enquiry, before preparation of reports about their cancellation. In absence of cogent and convincing evidence and any opportunity to the dealer-assessee to challenge the reports received about cancellation of the registration of Registered dealers, no reliance can be placed on the Paper Book submitted on behalf of the revenue in the form of photo state copies of documents bearing reports regarding cancellation of registration.

24. As regards publication of factum of cancellation of registration, Revenue was required to prove the notification got published in this regard. As noticed above, no such notification has been proved on record.

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25. By way of secondary evidence, Revenue could prove as to what steps were taken by the department as a consequence of cancellation of registration of said dealers. For example, in case registration of a dealer is cancelled, such dealer is required to return unused statutory forms or declarations to the department. In this case, there is nothing on record to suggest if the department took any such step to collect unused declarations or statutory forms from said dealers.

In absence thereof, no knowledge of factum of cancellation of registration of said dealers can be attributed to the dealer-assessee at the time it entered into sale transactions with the said registered dealers. As a result, it cannot be said that the dealer-assessee entered into sale transactions with the said dealers fully knowing that they were no more registered dealers.

**As regards statutory declaration forms**

26. Another ground put forth by learned counsel for the appellant is that the authorities wrongly rejected its claim as regards sales to registered dealers on the ground that statutory forms remained unverified. Case of the appellant is that when sales were genuine, purchasing dealers might have furnished false ST-II account and as such on this ground claim of the dealer could not be rejected, particularly when material was produced to show that the sales were genuine.

In support of this contention, learned counsel has relied upon decision in **Powerlite Electricals India P. Ltd.** (supra) decided by our own Hon'ble High Court on 23/03/2015; **Prince Plastics & Chemical Industries and Ors. v. Commissioner of Sales Tax and Ors.** (2003) 131 STC 372 (Del.); **M/s Pentex Sales Corporation v. Commissioner of Sales Tax,** Delhi, ST. Ref. 1/1998, decided by our own Hon'ble High Court on 06/05/2013.

27. On the other hand, learned counsel for the Revenue has submitted that during the relevant period due verification of ST-35 form used to be done by the Assessing Authority to find out as to whether the forms were genuine or forged and as to whether the sales were genuine or not. As further contended, ST-35 forms submitted by the dealer could not be verified and as such the dealer was rightly not allowed deductions on their basis. In this regard, learned counsel has placed relied upon paper book submitted on 10/05/2022.

28. In the assessment order, Assessing Authority observed that statutory forms supporting local sales were sent for verification and adverse reports were received in respect of forms specified therein.

In this regard, suffice it to state that there is nothing on record to suggest as to on which date, which of the officers went in connection with verification of the forms and on the basis of

which material reports were submitted. There is also nothing in the impugned assessment to suggest that any copies of the said reports were made available to the dealer. Assessment order also does not reveal if the opposite dealers/buying dealers were also joined in the proceedings. In absence of all these material particulars, applying the decisions cited by the learned counsel for the appellant, it can safely be said that the assessment framed while rejecting the said statutory forms from consideration deserves to be set aside.

**On the point of interest and additional interest**

29. It may be mentioned here that in the impugned order, Learned Special Commissioner -1, First Appellate Authority has observed that the first appeal became infructuous as the dealer had also filed appeal against orders passed by Learned OHA, which led to framing of assessment of tax and interest initially.

As already noticed above, it was on remand of the matter that fresh assessment was made by Learned Assessing Authority on 30/11/2012, as regards interest as well.

30. As per remand order, learned Assessing Authority was to provide opportunity to the dealer of being heard and frame assessment as regards transactions of sale from Chandigarh Branch. Admittedly, on remand, learned Assessing Authority accepted the claim of the dealer as regards transactions of sale

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from Chandigarh Branch. However, keeping in view that the dealer had failed to produce any fresh declaration in support of this claim against ST-35 to the tune of Rs. 56,72,505/- and local RD sale for Rs. 4,14,79,991/- respectively, learned Assessing Authority levied tax and interest.

When the direction of remand pertained to the transactions of sale from Chandigarh Branch, learned Assessing Authority could not exceed the scope of the assessment proceedings so as to grant additional interest, when assessment of interest - had already been framed.

The dealer filed appeal against the reassessment as framed on remand of the case, challenging only the grant of additional interest liability. Learned First Appellate Authority upheld the levy of interest by observing that interest became payable from the date when the tax was due and that in this case, tax had become due after rejection of statutory forms in support of RD Sales.

In view of the above findings, the assessment as regards levy of interest by way of additional interest deserves to be set-aside. Consequently the levy of additional interest and the impugned order upholding the same are hereby set-aside.

**Result**

31. In view of the above findings, both these appeals are allowed and the impugned orders passed by learned OHA and the

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impugned assessments framed by learned Assessing Authority are hereby set aside, as regards cancellation of registered dealers and RD Sales as well as interest, including additional interest are hereby set aside.

32. File be consigned to the record room. Copy of the judgment be also placed in the file of connected appeal No. 948/13. 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. Copy of the

Announced in open Court.

Date : 31/08/2022

Narinder Kumar 31/8/2022

(Narinder Kumar)
Member (J)

Appeal no. 1535 & 948/ATVAT/13/5434-41 Dated: 01/09/2022

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