

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

Appeal Nos. 971-992/ATVAT/2017
Date of Judgment: September 1, 2022.

M/s. Horizon Technologies,
704, Meghdoot Building,
94, Nehru Place,
New Delhi – 19.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. A.K. Babbar.
Counsel representing the Revenue : Sh. S.B. Jain..

JUDGMENT

1. Dealer – Appellantis feeling aggrieved by impugned order dated 27/7/2011 passed by learned Addl. Commissioner (Special Zone) – Objection Hearing Authority (OHA), whereby its objections u/s 74(1) of Delhi Value Added Tax Act 2004 (here-in-after referred to as ^{DVAT} the Act) came to be disposed of thereby upholding demands of tax, interest and penalty raised by the Assessing Authority.

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2. The matter pertains to the assessment year 2008-09. The following tables depicts levy of tax, interest and imposition of penalty as per taxed period :

Ref. No.	PERIOD	TAX (in Rs.)	INTEREST (in Rs.)	PENALTY (in Rs.)
040239501011	May 08-09	631125/-	194525/-	631125/-
040240391011	June 08-09	818163/-	242087/-	818163/-
040242221011	Aug. 08-09	460299/-	124848/-	460299/-
040239461011	April 08-09	612813/-	196436/-	612813/-
040242261011	Sep. 08-09	768975/-	199091/-	768975/-
040242891011	Oct. 08-09	303510/-	74838/-	303510/-
040242991011	Nov. 08-09	408941/-	95793/-	408941/-
040243041011	Dec. 08-09	378770/-	84056/-	378770/-
040243081011	Jan. 08-09	259035/-	54291/-	259035/-
040243141011	Feb. 08-09	92944/-	18334/-	92944/-
0402432501011	Mar. 08-09	159393/-	29477/-	159393/-

3. As is available from record, audit of the business of the dealer – assessee was carried out by the department. On the basis of the audit, notices of default assessment of tax, interest and penalty were issued by the Assessing Authorityu/s 32 & 33 of DVAT Act.



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4. As per notice of default assessment, the dealer – assessee failed to furnish documents in proof of movement of goods, as a result of which the central sales, to which C-forms pertained, were treated as local sales and VAT @ 12.5% was levied.
For the same reasons, claim regarding input tax credit was rejected.
5. As noticed above, the objections filed by the dealer against the assessments of tax, interest and penalty were rejected. Hence, these appeals.
6. It may be mentioned here that vide order dated 1/10/2021 passed u/s 76(4) of DVAT Act, appellant was called upon to deposit 10% of the disputed demand towards tax and interest, by way of pre deposit. The dealer has complied with the said order.
7. Arguments heard. File perused.

Is it a case of two separate assessments-i.e. one under DVAT Act and the other under CST Act?

8. Learned counsel for the appellant has submitted that this is a case where two separate returns were being filed i.e. one under DVAT Act and the other under CST Act, but the Assessing Authority has levied tax & interest under DVAT Act, without



explaining in the order / assessment as to whom the local sales were made.

9. In the course of arguments, this Appellate Tribunal has enquired from learned counsel for the Appellant as to whether any assessment was separately made under Central Sales Tax Act (CST) in respect of the said tax periods. In reply, Learned counsel for the appellant has displayed ignorance on this aspect but at the same time submitted that self assessment might have been accepted by the Department.

In the given situation, learned counsel for the Revenue has rightly submitted that the dealer did not raise any such point before learned OHA and even failed to appear before Assessing Authority to apprise him about any assessment under CST Act. In the given situation, at this stage, no fault can be found with the framing of the default assessment under DVAT Act.

However, it is made clear that in case the dealer brings to the notice of Learned OHA about framing of any separate assessment under CST Act for the same tax period(s), in view of the powers under section 74 B of DVAT Act, learned OHA shall be at liberty to exercise such powers in accordance with law so that there remains no inconsistency or mistake, and the

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assessment is based on Best Judgment.

Non production of DVAT-50 by the Audit Team

10. Learned counsel for the appellant has submitted that this is a case where there is no mention in the order passed by Learned OHA that requirement of DVAT 50 was complied with while conducting audit at the office premises of the dealer.
11. On the other hand, learned counsel for the Revenue has rightly contended that this is not a case where the dealer ever asked the audit team to produce and show DVAT -50.
12. DVAT-50 pertains to appointment of officers who are authorized to carry out audit, investigation and enforcement function under DVAT Act and Rules. Rule-65 of DVAT Rules provides that form DVAT-50 is to be carried by the persons so authorized, when purporting to exercise any of the powers conferred under chapter X of the Act and produce the same if requested by the owner or occupier of the premises.

In the course of arguments, this Appellate Tribunal has enquired from learned counsel for the Appellant if there is any material to suggest that the dealer had ever asked the audit team to show him DVAT-50 for the purpose of audit and as to whether the dealer complained to senior officers of the ward that on demand



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DVAT-50 was not shown to him at the time of audit.

In reply, Learned counsel for the appellant has fairly submitted that no such step was taken by the dealer.

In absence of any request by the dealer for production of DVAT-50 at the time of audit or in absence of any complaint by him *neither there is merit in the content* that he was not shown DVAT-50 at the time of audit, *nor* adverse inference can be drawn against the Departmental. *At this stage*

Jurisdiction to frame assessments

13. Learned counsel for the appellant has contended that in this case assessment has been framed by VATO (Audit) without any jurisdiction and as such the assessments deserve to be set-aside. As submitted the dealer stood registered in ward-94 and as such a VATO of the concerned area of the jurisdiction was competent to frame default assessment, but Revenue has failed to prove any delegation of powers regarding framing of assessment to VATO (Audit). In support of this contention, learned counsel has relied on decision in **Capri Bathaid Private Limited & Ors. Commissioner of Trade & Taxes, WP(C) 8913/2014**, decided by our own Hon'ble High Court on 2/3/2016.



14. In Capri Bathaid's case (supra), one of the questions which arose before the Hon'ble High Court was

“whether the AVATO Enf-I who undertook the survey, search and seizure operation and later passed the default assessment orders of tax, interest and penalty, was duly empowered to do so in terms of the DVAT Act?”

15. It is not case of the dealer-appellant that audit was conducted and default assessment was also made by the same officer – VATO (Audit) i.e. by one and the same person. Onus to prove the factum of territorial jurisdiction was upon the dealer-appellant. Dealer – appellant has not brought on record any material to suggest that VATO (Audit) was not authorized to frame assessment pertain to the tax period 2008-09.

Admittedly, this point was not raised by the dealer before Learned OHA, after the dealer opted not to participate in the assessment proceedings.

16. At the relevant time, circular no. F.2(7)/DVAT/L&J/ 2005-06/1028-1035 dated 31/10/2005, issued by the Commissioner, Department of Trade & Taxes was in force. As per this circular all powers to assess, to re-assess the amount of net tax due for a tax period, u/s 32 of DVAT Act were delegated by the Commissioner to all officers appointed under sub-section (2) of



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section 66 of DVAT, 2004, not below the rank of Assistant Value Added Tax Officer.

17. In view of the above circular, there is no merit in the contention raised by learned counsel for the dealer – appellant that VATO (Audit) had no jurisdiction to frame assessment under section 32 of DVAT Act.

Contentions on merit

18. Learned counsel for the appellant has contended that the dealer – appellant could not produce relevant documents like GRs and other material in proof of movements of goods, so as to prove the factum of inter-State sales, transit sales, exports and any tax invoice.

As submitted by learned counsel for the appellant, the reason for non production of the above said record before Assessing Authority and before learned OHA was that the documents had got mixed with other record.

19. It may be mentioned here that today at the time of final arguments, on behalf of the appellant an application MA No.555/22 came to be filed seeking permission to place on record of additional documents/ evidence in the form of annexures A, B, C & D as proof of the factum of movement of



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goods, inter-State sales, transit sales, exports, in addition to two tax invoices in support of the claim of ITC.

Vide separate detailed order of even date the application has been allowed with costs of Rs. 1.00 lakh for the reasons recorded therein, including the submission on behalf of the appellant that the prayer be allowed even though subject to heavy costs.

20. A perusal of record would reveal that learned Assessing Authority clearly observed that the dealer had failed to produce relevant documents to prove movement of goods, inter-State sales and transit sales. It also failed to produce tax invoices in proof of ITC claim.

Learned OHA has also clearly observed in the impugned order that despite directions during hearing on objections to file copies of GRs, the dealer and his counsel Sh. Pradeep Verma, Advocate did not file any copy of GRs. During objections the counsel submitted before learned OHA copies of DVAT 30-31 only. As regards proof of movement of goods, Sh. Pradeep Verma, Advocate argued before learned OHA that VATO had neither given sufficient opportunity to produce GRs and tax invoices. Sh. Pradeep Verma, Advocate urged before learned OHA that tax invoices were available with the objector but the same could not be furnished at the time of audit as the said documents had



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got mixed in the office, in the course of audit and that the same were produced before VATO, but he refused to take the same on record.

21. Significant to note that there is nothing on record to suggest as to on which date any such documents like GR or tax invoice was sought to be produced before VATO and as to on which date the learned VATO refused to take the same on record. No such material was submitted even before learned OHA. Assessing Authority clearly observed about failure on the part of the dealer to produce requisite material or document in proof of factum of movement of goods.
22. However, the copies of documents today produced on record are relevant for framing of assessment by way of best judgment as regards assessments for the tax periods April 2008, May, 2008, June, 2008, August, 2008, Sept., 2008, Nov., 2008, December, 2008, Jan., 2009, Feb. 2009, & March, 2009.
23. In the given situation, learned counsel for the parties have rightly submitted that the matter deserves to be remanded to learned OHA for decision of the objections afresh, taking into consideration all the relevant documents submitted here in the form of Annexures-A, B, C & D.

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Result

24. In view of the above observations, findings and submissions made by learned counsel for the parties, the appeals are disposed of and matter is remanded to learned OHA for decision of the 22 objections i.e. 11 objections on the point of tax and interest and remaining 11 objections on the point of penalty, after providing reasonable opportunity of being heard to the dealer.
25. Dealer is hereby directed to appear before learned OHA on 22/9/2022.
26. File be consigned to the record room. Copy of the judgment 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 : 1/9/2022



Narinder Kumar
1/9/22
(Narinder Kumar)
Member (J)

Appeal No. 971-992/ATVAT/2017/5458-65

Dated: 02/09/2022

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

