

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

Appeal Nos. 423-424/ATVAT/22
Date of Judgment : 06/09/2022

M/s Universal Paper Product
2488, Naiwara Chawri Bazar,
New Delhi 110006.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

C.A. representing the Applicant : Sh. Sanjay Jain and ^{sh.}Kushagra
Agarwal. _h

Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. This common judgment is to dispose of the above captioned two appeals.
2. Appeals have been filed challenging order dated 15/06/2022 passed by Learned VATO - Learned OHA upholding levy of tax, interest and penalty u/s 32 & 33 of DVAT Act.
3. Vide impugned order objections filed by the dealer against default assessment of tax and interest framed on 05/11/2020 have been disposed of.

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4. Vide assessment dated 05/11/2020, Learned Assessing Authority found that more Input Tax Credit had been claimed than the corresponding Output Tax as shown by two selling dealers and as such the dealer-assessee claimed excess input tax credit in violation of provisions of clause (g) of sub-section (2) of Section 9 of DVAT Act.
5. While partly allowing the objections filed by the dealer, Learned OHA has rectified the demand of tax, interest on account of mismatch and penalty imposed u/s 86(10) of DVAT Act, as regards one of the selling dealers but at the same time observed that the dealer having failed to produce invoice, Ledger Account, Bank Statement in respect of mismatch of Rs. 10,51,438/- as regards Raj Dealers & Distributors, ITC to the tune of Rs. 52,572/- remained unverified.
6. Hence, these appeals.
7. Arguments heard. Files perused.
8. It may be mentioned here that in compliance with order u/s 76(4) of DVAT Act, dealer-appellant has furnished bank guarantee to the tune of Rs. 15,000/- with the department by way of pre-deposit requirement for entertainment of these appeals.
9. Learned CAs representing the dealer-appellant has submitted that Learned OHA failed to appreciate that this is not a case of mismatch in 2A and 2B and rather a case of some mistake. As



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per case of the dealer-appellant goods were purchased by the appellant in 4th Qtr of 2016-17 but somehow said purchase was shown in 3rd Qtr. and as such there was mismatch. Learned CA has further submitted that the dealer did not claim ITC in the 3rd Qtr. and rather claimed the same in the 4th Qtr.

10. Today, in the course of the arguments, Learned counsel for the Revenue has placed on record copy of verification report as regards Annexure 2A of the dealer-appellant, concerning 3rd Qtr. of 2016-2017 and pointed out that as per this document there was mis-match in 2A and 2B.
11. The contention raised by the learned counsel for the Revenue is that appellant submitted with the memorandum of appeal revised Annexure 2A for the 3rd quarter, but he has not submitted the original Annexure 2A for the same quarter for the reasons best known to the dealer. The contention is that in absence of the original, it cannot be said as to which data/figure was furnished by the dealer in Annexure 2A initially furnished.

In the given situation, when revised Annexure 2A is stated to have been submitted by the dealer, concerning 3rd quarter and its approval date is 13/12/2017 and present assessment was framed on 05/11/2020, it remains unexplained as to what was the figure furnished in the Annexure 2A initially presented for the said quarter.



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12. In the impugned order, there is no reference about filing of revised Annexure 2A during objections.

13. In the course of arguments, Sh. Kushagra Agarwal, CA for the appellant submits that at the time he represented the dealer-objector before Learned OHA even though initially, a bunch of papers containing revised 2A for the 3rd quarter of 2016-17, was presented but ultimately, it was taken back. The fact remains that the revised Annexure 2A for the 3rd quarter of 2016-2017 was not even before Learned OHA at the time of hearing objection petition.

In the given situation, it deem it a fit case, Learned OHA should find out as to what was the figure initially presented by the dealer-assessee as regards 3rd quarter, concerning the transaction with Raj Dealers & Distributors and as to whether the Assessing Authority had taken into consideration the revised Annexure 2A. In case the figure furnished in the revised return was somehow not taken into consideration by the Assessing Authority, Learned OHA would be in a position to appreciate this fact while looking into the legality and illegality of the assessment framed and then pass an appropriate order.

14. A perusal of record reveals that there is nothing in the assessment framed by Learned Assessing Authority or in the impugned order passed by Learned OHA if any notice was issued to the concerned selling dealer i.e. Raj Dealer &



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Distributors to join its representative in the proceedings so as to seek clarification regarding mis-match. In suchlike matter of mis-match, participation of selling dealer is generally required, particularly where the department is not satisfied with the claim put forth by the dealer as regards the mis-match. On behalf of the appellant, it is submitted that even at the time of hearing on objections, selling dealer was not called for participation.

15. On behalf of the appellant, it is submitted that only documents collected from the selling dealer were submitted before Learned OHA.
16. The dealer-objector could make specific submission before Learned OHA to call the selling dealer or allow the buying dealer to produce the selling dealer for clarification.

In the given situation, when Learned OHA was not satisfied with the objections put forth by the dealer-objector, participation of the selling dealer in the objections was also required so as to seek clarification as regards the mis-match. The fact remains that this is a case where there was no participation of the selling dealers in the proceedings before department or in the objections proceedings.



Result- ~

In view of above discussion, these appeals are disposed of and while setting aside the impugned orders passed by Learned OHA, the matter is remanded to Learned OHA for decision of

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the objections afresh, in accordance with law and having regard to the observations made above.

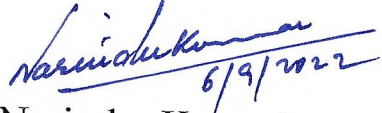
Of course, Learned OHA to provide reasonable opportunity of being heard to the dealer.

17. The dealer to appear before Learned OHA on 19/09/2022.

18. 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: 06/09/2022


(Narinder Kumar)
Member (Judicial)



Appeal no. 423-423/ATVAT/22/5474-81

Dated: 07/09/2022

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 Bar Association) | |
| (5) PS to Member (J) for uploading the judgement on the portal of DVAT/GST, Delhi-through EDP branch | |


REGISTRAR

