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

Appeal No.: 428/ATVAT/22
Date of Judgment: 09/09/2022

M/s Cool Bird Engineers.
Shop No. 21, Pitampura,
M. D Market, New Delhi-110088. .....Appellant

v.

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

Counsel representing the Appellant : Sh. M. K. Gandhi.
Counsel representing the Revenue : Sh. C. M. Sharma.

JUDGMENT

1. By way of present appeal, dealer-assessee-objector has challenged order dated 28/06/2022 passed by learned OHA-Additional Commissioner, Department of Trade & Taxes, Delhi.
2. Vide impugned order; learned OHA rejected the objections filed by the dealer thereby upholding assessment of penalty.
3. Assessment of penalty framed u/s 33 of DVAT Act on 02/07/2016 would reveal that learned Assessing Authority directed the dealer to pay Rs. 50,000/- due to violation of the provision of Section 86(14) of DVAT Act. The ground for imposition of penalty is that the dealer failed to submit DVAT 31 as requested vide notice dated 20/05/2016 and further that the

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dealer also failed to respond to the Show Cause Notice dated 14/06/2016.

4. Feeling aggrieved by the impugned assessment of penalty, the dealer filed objections u/s 74 of DVAT Act. Learned OHA disallowed the objections. Hence these appeals.

5. Record reveals that during hearing on objections, learned counsel for the dealer-objector submitted before learned OHA that no proper opportunity was afforded to the dealer before passing the impugned assessment of penalty and that as per circular 17/01/2014, SMS, Email alert are required to be sent by the Department to the dealer.

6. As regards circular 17/01/2014, learned OHA has observed that as per directions issued by the Commissioner, Trade & Taxes under Rule 62(1)(VI) of DVAT Rules w.e.f. 01/02/2014, notices, summons or orders by VAT Authorities shall be issued to the dealer by electric means by pasting the same on the web page of individual dealer and that such manner of service made shall be applicable to the service of the documents/notice/order for the purpose of Rule 62 of DVAT Rules.

7. Ultimately, learned OHA was of the considered opinion that impugned notice of penalty, in respect of tax period Annual 2015-16 was rightly framed in accordance with law.

8. Hence, this appeal.

9. Arguments heard. File perused.

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10. Learned counsel for the appellant has contended that impugned order passed by learned OHA is a non speaking and mechanically passed order.

    Learned counsel has also contended that no notice dated 25/07/2019 was ever issued.

    It has also been argued that no digitally signed notice was uploaded on the portal by the Department of DVAT portal and that the alleged notice is non-est, when no message by way of SMS was sent to the dealer.

11. Another contention raised by learned counsel for the appellant is that no notice dated 14/06/2016 was served upon the dealer as finds mention in the assessment of penalty, and further that in the record there is no noting in respect of previous notice dated 20/05/2016.

12. As noticed above, penalty has been imposed u/s 86(14) read with section 33 of DVAT Act. Matter pertains to tax period, Annual 2015. The reason for levy of penalty is that the dealer-appellant failed to submit DVAT 31 as requested vide notices dated 20/05/2016 and 14/06/2016, and further that in response to the second mention notice, the dealer did not appear.

13. As per history of notices u/s 59(2) of DVAT Act, today placed on record by learned counsel for the appellant, notice dated 20/05/2016 (for the period from 01/03/2016 to 31/03/2016) has been shown to be a notice in the column not meant for notices digitally signed and issued.

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14. As regards the other notice dated 14/06/2016, stated to have been issued to the dealer by way of show cause notice, nowhere in the objections filed before OHA, the objector denied service/receipt of the said notice from the department. In other words, dealer has admitted receipt of show cause notice dated 14/06/2016. However, admission of receipt of this notice does not adversely affect the case of the appellant, when it is found that Notice of assessment of penalty u/s 33, framed on 02/07/2016, does not bear signatures of any VATO.

    So far as the assessment of penalty framed on 02/07/2016 as concerned, learned counsel for the appellant has rightly pointed out that same does not bear signatures of the concerned Assessing Authority.

15. In **M/s. Bhumika Enterprises Vs. Commissioner, Value Added Tax**, (2015) 85 VST 367 (Del), our own Hon'ble High Court quashed all the notices/orders which were system generated notices u/s 59(2) of the Act, but, at the same time observed that it was open to the department to issue fresh notices/orders by taking steps in accordance with law, and further that the same should not be through system generated orders without human interface.

16. In **M/s. Swastik Polymers v. Commissioner of Trade & Taxes & Anr.,** W.P.(C) 4385/2017, ~~by~~ our own Hon'ble High Court on

19/05/2017, issued following directions to the Commissioner, DVAT:

> "6. Meanwhile, a direction is issued to the Commissioner, DVAT to issue, if not already issued, clear instructions to the VATOs and AVATOs that, as and when they sign any order and upload a digitally signed copy thereof on the system, there must be a noting on the file as to the date and time when it was so uploaded. Further, the software must facilitate online verification of the date and time of the order being digitally signed. If not already issued, a circular to the above effect should be issued and a copy thereof be placed before the Court by the next date of hearing.
>
> 7. Further the Commissioner must put in place a system by which simultaneous with the uploading of an order, an intimation will be sent to the registered dealer concerned by SMS and/or e-mail. The log of the conformation of dispatch of the SMS or e-mail should also be preserved by the Department."

17. Section 100A of DVAT Act reads as under:

> "**100A. Automation.**
>
> (1) The Government may, by notification in the official Gazette, provide that the provisions contained in the Information Technology Act, 2000 (21 of 2000), as amended from time to time, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attributation,

acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates as are specified in the said notification, shall, insofar as they may, as far as feasible, apply to the procedures under this Act.

(2) Where a notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then, the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by the Commissioner."

18. When the decisions in M/s. Bhumika Enterprises's case (supra) and M/s. Swastik Polymers' case (supra) are applied to the present case, it can safely be said that Notice of assessment of penalty being not digitally signed, has not been issued in accordance with law.

19. Undisputedly, after the decision in M/s. Bhumika Enterprises's case (supra), Special Commissioner (Policy), issued circular No. 24 of 2015-16, advising all the VATOs that concerned VATO should issue fresh notices in accordance with law; that they would take steps pursuant thereto which would also be in accordance with law, and that notices or orders should not be

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system generated notices or orders without human interface, in view of the decision in Bhumika Enterprises's case.

20. In the given situation, it was open to the department to issue fresh order by taking steps in accordance with law and as per decision in M/s. Bhumika Enterprises's case (supra). However, the department did not issue fresh order. Here, learned OHA did not remand the matter to learned Assessing Authority for passing of fresh order of assessment in compliance with the said decision and the directions issued as per the circular referred to above.

21. In view of the above discussion, when the assessment order under challenge is a system generated Notice of assessment of penalty and does not bear signatures of the concerned Assessing Authority, the assessment framed by learned Assessing Authority and the impugned order passed by learned OHA upholding the same, deserve to be set aside.

Conclusion

22. As a result, this appeal is allowed and the assessment framed by learned Assessing Authority and the impugned order passed by learned OHA upholding are hereby set aside.

23. 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 web-site.

Announced in open Court.

Date : 09/09/2022

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(Narinder Kumar)
Member (J)

Appeal no. 428/ATVAT/22/5482-89 Dated: 9/9/22

Copy to:-

(1) VATO (Ward-64)

(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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REGISTRAR