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

Appeal Nos.: 436-443/ATVAT/13
Date of Judgment : 07/10/2022

M/s V.B. Enterprises,
219, Syndicate House,
3, Old Rohtak Road, Inderlok,
Delhi 35.

.....Appellant

v.

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

Counsel representing the ~~Applicant~~ Appellant : Sh. M. L. Garg.
Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. Appellant is a proprietorship concern and feeling aggrieved by order dated 17/01/2013 passed by Learned Additional Commissioner-IV & IX – Learned OHA, whereby the objections filed by the said dealer-objector have been rejected.

2. Objections were filed before the Learned OHA challenging default assessments dated 24/02/2011 framed by Learned Assessing Authority raising the following demands:

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Periods	Disputed Amount			Total Rs.	Obi. U/s
	Tax	Interest	Penalty		
1st qtr. -2008-09	106776/-	40590/-	-	147366/-	32
2nd qtr. -2008-09	103699/-	35584/-	-	139283/-	32
3rd qtr. -2008-09	107252/-	32837/-	-	140089/-	32
4th qtr. -2008-09	117197/-	31547/-	-	148744/-	32
1st qtr. -2008-09	-	-	206776/-	206776/-	33
2nd qtr. -2008-09	-	-	203699/-	203699/-	33
3rd qtr. -2008-09	-	-	207252/-	207252/-	33
4th qtr. -2008-09	-	-	217197/-	217197/-	33

3. The above-said assessments came to be framed after audit and test check of records such as DVAT-30/31, cash book, ledger, sale/purchase vouchers, audited balance sheet for 2008-09 and other related documents.

In the default assessment, Assessing Authority observed in the manner as:

> "That the firm is making central sale against C form amounting to Rs. 106020/- but dealer failed to provide the proof of movements of goods at the time of visit or till date. The dealer in his statement dt. 24-12-2010 under took to produce the GR/RR and other documents on or before 30-12-2010. No one appeared on 30-12-2010 so a Show Cause Notice dt. 07-01-2011 was issued to the dealer to produce the documents mentioned in his statement on 18-01-2011. On 18-01-2011, Sh. Rakesh Kumar, Asst. To the firm's advocate appeared and submitted some documents but again failed to produce the

copy of GRs/RRs and under took to produce the same on 19-01-2011 but failed to submit till date. Even the dealer in his statement dated 24.12.2010 has stated that the delivery of goods in respect of goods sold against "C" forms is made to the purchasers in Delhi itself and the purchaser themselves arrange the transport to carry the goods outside Delhi and so the central sale of the firm is not supported by any GR/RR. And since the dealer failed to submit any proof of movement of goods out of Delhi in respect of sale against 'C' form hence sale shown against 'C' form amounting to Rs. 106020/- is rejected and treated as local sale and is taxed @ 12.5%. However the benefit of CST paid is allowed. Interest @ 15% is charged on tax deficiency."

4. It may be mentioned here that initially vide order dated 06/05/2016, appeals were allowed to be entertained subject to deposit of 20% of the tax and interest and 10% of the penalty, but subsequently vide order dated 31/08/2022, prayer of the dealer-appellant for modification on the quantum of amount of pre-deposit, was allowed and the assessee was permitted to deposit only 10% of the demand of tax and interest. Compliance has been made with the order dated 31/08/2022.

5. Arguments heard. File perused.

6. The first ground on which demand of tax and interest has been raised by Learned Assessing Authority and upheld vide impugned order by Learned OHA, is that the dealer-assessee failed to provide documents in proof of movement of goods as regards Central Sales against "C" Forms.

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In the course of arguments, Learned Counsel for the appellant has referred to para 4 of the impugned order passed by Learned OHA where it stands recorded that Counsel representing the objector had submitted GRs before Learned OHA.

Learned Counsel for the Revenue does not dispute said fact recorded in para 4.

When GRs are stated to have been furnished by the objector before Learned OHA, even if the assessee had earlier failed to produce the same before Learned Assessing Authority, the documents so produced were required to be perused and taken into consideration while disposing of the objections. In case Learned OHA was not satisfied with the GRs so produced during objections, he was required to put forth reasons for their rejection. In para 5 of the impugned order, Learned OHA has nowhere specifically recorded any finding rejecting the GRs or the claim of the dealer-objector regarding movement of goods as regards Central Sales against "C" Forms.

In the given situation, it can safely be inferred that Learned OHA accepted the GRs while disposing of the objections.

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Result

The result is that so far as Learned OHA has upheld the default assessment of tax, interest and penalty (as regards tax deficiency on this account i.e. so far as Central Sales against "C" Forms are concerned), the impugned order deserves to be set aside. It is ordered accordingly.

Is it a case of loss of Revenue to the Department by giving discount equivalent to the value of old VAT against sale of new batteries?

7. Learned Assessing Authority, while framing default assessments observed that on purchase of old batteries from customers, the dealer-assessee deducted the purchase price thereof, from the sale price of new batteries sold to the said customer, and then paid VAT and that in this manner, the dealer caused Revenue loss to the department.

Another allegation levelled against dealer-assessee is that as per bills mentioned in the annexures, the dealer-assessee was found to have charged VAT on full value of new batteries sold but deposited VAT with the department after reducing the value of old batteries, by creating forged invoices.

Further, as observed by Assessing Authority, many such invoices having same numbers were noticed in which VAT

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charged by the dealer-assessee was more than the tax paid by the dealer-assessee as per DVAT 31.

8. Learned counsel for the appellant has contended that there is a practice in the market to give discount to such a customer of the value of the old battery and to adjust the same against the sale price of the new battery sold to the same customer and then charge VAT at the sale price so calculated. The contention is that in view of this practice and the provisions of Section 2 (zd) and 2 (zm), the default assessments of tax, interest and penalty uphold by Learned OHA deserve to be set aside.

9. On the other hand, learned counsel for the Revenue has contended that in view of the definition of "Sale Price", as available in section 2(zd), the amount of tax, if any, for which the dealer is liable u/s 3 of DVAT Act, is required to be included in the amount paid or payable as valuable consideration for any sale, whereas any sum allowed as discount which goes to reduce the sale price according to practice, normally prevailing in trade, is to be excluded.

Further, it is a submission of learned counsel that sale price is to be calculated firstly including the amount of tax to the valuable consideration of sale and thereafter reducing the sum of discount allowed.

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On the other hand, Learned counsel for the appellant has contended that firstly the sum of discount is to be reduced from the sale price and then the tax is to be calculated for being included to the valuable consideration of sale.

10. Section 2(zd) specifically provides for deduction of the sum allowed as discount according to the practice normally prevailing in trade. This deduction pertains to trade discount and not to cash discount.

In case of cash discount, like the present one, sale price is to be calculated after deduction of discount from the valuable consideration of sale.

It is not case of the Revenue that any of the invoices considered by the Assessing Authority pertained to trade discount and not to prompt payments as cash discount. Therefore, Learned Assessing Authority fell in framing assessment while observing that the dealer caused loss of Revenue to the department by paying VAT after reducing the purchase price of old battery.

11. As regards invoices having same numbers, counsel for the appellant is having copy of Annexures which find mention in the assessments and in para 2 of the impugned order.

Submission of learned counsel for the appellant is that whenever a customer purchases new battery, an invoice is

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issued, but as soon as the customer is apprised of any such scheme regarding discount of the value of old batteries against sale price of new battery, the customer may opt for the said scheme, and in such a case the dealer issues fresh invoice bearing the same number, using the computer/system, and as such nothing wrong can be said to have been done by dealer-appellant by doing so.

12. In the course of arguments, when enquired, if the dealer submitted any such reply before the Assessing Authority, learned counsel for the appellant has not been able to give any specific reply except that in the assessments it stands recorded that certain documents were furnished by the dealer. No document has been brought to the notice of the Appellate Tribunal in proof of the said submission to justify issuance of modified invoices, bearing the same invoice number, as and when a customer subsequently opted to avail of any such scheme after the issuance of one invoice. No document/scheme has also been placed on record.

In absence of any such material, there is merit in the contention of learned counsel for the Revenue that invoices having same invoice number were found by the Assessing Authority, to have been used by the dealer-appellant.

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Charging VAT at full value of new battery but depositing less VAT by the appellant

13. While framing assessments, learned Assessing Authority found that bills were issued by the dealer-appellant charging VAT at full value of new batteries but depositing VAT at a lesser rate i.e. after reducing the value of old batteries, by forging invoices as shown in the annexure as find mention in para 2 of the impugned order.

In addition to the above observations, Assessing Authority found as under:

> "In one set he has shown salvage value of old battery/invertor and has charged tax after reducing the salvage value of old battery/invertor from sale amount and another set of invoices with the same number, the dealer has shown the sale value after reducing the salvage value of old battery/invertor without actually mentioning this fact in this invoice."

14. As noticed above, on the query by this Appellate Tribunal if any dealer filed any reply before Learned Assessing Authority to the show cause notice, learned counsel for the appellant has not been able to give any specific reply except that in the assessments it stands recorded that certain documents were furnished by the dealer.

No document has been brought to the notice of the Appellate Tribunal to rebut the allegations levelled by the Assessing Authority.

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In absence of any such material, there is merit in the contention of learned counsel for the Revenue that Learned Assessing Authority has rightly framed assessment on these aspects. It is ordered accordingly.

15. While framing assessments, learned Assessing Authority has observed that the dealer was found maintaining invoices for different amounts but bearing same number and as such the books of accounts of the Dealer-Assessee could not be relied. With this observation, learned Assessing Authority rejected the books of accounts and enhanced the rate of tax from 12.5% to 25% in each quarter of the year 2008-09.

Learned Counsel for the appellant has contended that even if the Assessing Authority recorded the above-said finding, it was not a ground for rejection of all the account books of the Dealer-Assessee. Further, it has been submitted that learned Assessing Authority could enhance tax in respect of the turnover covered in the invoices having same invoice number and not in respect of the entire turnover of each quarter.

16. As discussed above, the claim of the appellant challenging the observation of learned Assessing Authority that dealer was maintaining invoices for different amounts with same invoice number, has been rejected for the reasons given above.

But, it is significant to note that learned Assessing Authority came across suchlike specific invoices, and annexed the lists in the form of Annexures to the assessments. Since no other invoice of different amount having same invoice number was noticed by learned Assessing Authority, it would have been just and proper to enhance rate of interest in respect of the specific invoices mentioned in the list/annexure(s), instead of rejecting the entire books of accounts.

Had it been a case of printing of invoice books from outside, then it would have been a different matter. Here, as pointed by learned Counsel for the appellant, invoices were computer generated and not got printed from outside.

Despite opportunity, dealer appears to have filed any reply to the show cause notice issued by Learned Assessing Authority to explain preparation of more than one invoice bearing same number and different amount.

Nothing has been brought on record by the appellant to justify issuance of more than one invoice bearing same number and different amount.

In view of all this, the assessment framed by learned Assessing Authority enhancing the rate of tax from 12.5% to 25% is upheld only in respect of the specific invoices which

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find mention in the annexure(s), i.e. the invoices bearing same number but having different amounts.

Due to the above said reasons, the assessments framed by learned Assessing Authority on this aspect need recalculation and modification. It is ordered accordingly.

Learned Assessing Authority to do the needful to give effect to the decision by this Appellate Tribunal in this regard not only in respect of tax and interest but also in respect of quantum of penalty levied on this ground.

Penalty

17. Learned Assessing Authority imposed penalty under 2 heads i.e. u/s 86(15) of DVAT Act and 86(10) of DVAT Act.

Section 86(15) reads as under:

> "Where a person who is required to prepare records and accounts under this Act, prepares records and accounts in a manner that is false, misleading or deceptive, the person shall be liable to pay, by way of penalty, a sum of one lakh rupees or the amount of tax deficiency, if any, whichever is greater."

Section 86(10) reads as under:

> "Any person who-
>
> (a) Furnishes a return under this Act which is false, misleading or deceptive in a material particular or deceptive in a material Particular; or

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(b) omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular,

shall be liable to pay, by way of penalty, an amount equal to the amount of tax credit so claimed or ten thousand rupees, whichever is the greater."

For the reasons given above, when the Appellate Tribunal has upheld the assessment of tax and interest to the extent indicated above and this is a case of tax deficiency, the assessment framed by learned Assessing Authority levying penalty u/s 86(10) of DVAT Act deserves to be upheld only to the extent indicated above. Learned Assessing Authority to take steps for recalculation of quantum of penalty in view of this decision.

18. So far as levy of penalty u/s 86(15) of DVAT Act is concerned, as noticed above the dealer-assessee was found to have not been maintaining books of accounts as required under the provisions of DVAT Act and the Rules framed there under. Even though, this Appellate Tribunal has held that it would have been just and proper not to rely on the part of the record / part of the books of accounts as discussed above, instead of rejection of whole books of accounts, there is no merit in the contention raised by learned counsel for the appellant that the dealer-assessee was properly maintaining books of accounts. The basis of the assessment regarding levy of penalty u/s 86(15) of DVAT Act is upheld. Learned

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Assessing Authority to recalculate the amount having regard to the provision of Section 86(15) of DVAT Act.

Conclusion

19. In view of the above findings, these appeals are partly allowed in the manner indicated above.

20. 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: 07/10/2022

Narinder Kumar 7/10/2022

(Narinder Kumar)
Member (Judicial)

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