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

Appeal Nos. : 368-382/ATVAT/2022
Date of Judgment : 28/10/2022

M/s. Oswal Industrial Enterprise Pvt. Ltd.
(formerly known as Oswal Retail Pvt. Ltd.),
305, Ansal Bhawan, 16, K.G. Marg,
New Delhi-110001. .....Appellant

v.

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

Counsel representing the Appellant : Sh. Gaurav Gupta.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. This common judgment is to dispose of the above captioned 15 appeals filed by the dealer-assessee.

2. The matter pertains to tax period from April-2008 to March-2009.

3. The dealer was earlier registered under the name and style Oswal Retail Pvt. Ltd., vide TIN No. 07840280049.

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4. By way of present appeals, dealer-assessee-objector has challenged order dated 31/12/2021 passed by learned OHA - Special Commissioner.

5. By way of common impugned order, learned OHA disposed of seventeen (17) objections filed by the dealer.

Five objections were filed to challenge notices of default assessment of tax and interest framed u/s 32 of DVAT Act, whereas 12 objections were filed against notices of assessment of penalty u/s 33 of DVAT Act. All the assessments were framed on 29/06/2011.

6. The additional demand of tax, interest and penalty, as per table available in the impugned order reads as under:

S. No.	Tax Period	Impugned Notices Ref. No.	Disputed Amount of Tax & Interest [In Rs.]	Disputed Amount of Penalty [In Rs.]
1	April-2008	04031378112/575	-	10,000
2	May-2008	040313431112/575 & 040313801112/575	49,803	38,492
3	June-2008	040313861112/575	-	10,000
4	July-208	040313931112/575	-	10,000

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5	August-2008	040314021112/575	-	10,000
6	Sep-2008	040313541112/575 & 040314061112/575	27,995	29,987
7	Oct-2008	040314111112/575	-	10,000
8	Nov-2008	040313601112/575 & 040314171112/575	4,862	20,000
9	Dec-2008	040313691112/575 & 040314241112/575	5,828	20,000
10	Jan-2009	040314271112/575	-	10,000
11	Feb-2009	040314311112/575	-	10,000
12	March-2009	040313751112/575 & 040314361112/575	8,69,538	6,65,408

7. In brief, learned Assessing Authority framed assessments for the following tax periods with the following reasons:

Assessment for Tax period - May 2008-09

"On scrutiny of invoices, returns, DVAT-31 and related records it has been observed that the dealer filed return for this month on 28/06/2008 and revised return on 11/07/2008, wherein stock transfer sale of Rs. 712310/- was shown. Further the dealer has also filed revised return on 28/02/2011, wherein no stock transfer sale was shown. Since the dealer has manipulated the records and filed revised return on 28/02/2011, after the finalization & deposit of the Audit

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Report of the company for year 2008-09 and after initiation of the Audit proceedings vide DVAT-37 notice dt. 28/01/2011, thereby violating the provisions of section 28 of DVAT Act-2004. Therefore the revised return filed on 28/02/2011 is disallowed and sale of Rs. 712310/- is taxed @4% alongwith interest.

Further, it has been noticed that the dealer has deposited tax/VAT for Rs. 58522/- on 16/06/2009 on sale of Asset made in month of May 2008. Therefore applicable interest is charged for delayed payment of Tax.

The dealer is hereby directed to pay tax of an amount of Rs. 49803/- ..."

Assessment for Tax period -November 2008-09

"It has been noticed that the dealer has made sale of item-16 KWVG for Rs. 95844/ taxable @4% vide bill no 1705 dt. 04/11/2018 and bill no 1810 dt 137330/- @4%, whereas the dealer has sold the sale item i.e. 16 KWVG vide bill no 1780 dt. 26/11/08 for Rs. 16799/- and 1801 dt 28/11/08 for Rs. 71542/- as tax free. Therefore the total amount for Rs. 88341/- as sale of 16 KWVG is taxed @ 4%, being taxable item and differential VAT for Rs. 3533/- is recovered along with interest.

The dealer is hereby directed to pay tax of an amount of Rs. 4862/-..."

Assessment for Tax period -December 2008-09

"It has been noticed that the dealer has made sale of item-16 KWVG for Rs. 95844/ taxable @4% vide bill no 1705 dt. 04/11/2018 and bill no 1810 dt 137330/- @4%, whereas the dealer has sold the sale item i.e. 16 KWVG vide bill no 1897 dt. 26/12/08 for Rs. 86455/- and 1898 dt 26/12/08 for Rs. 20412/- as tax free. Therefore the total amount for Rs. 106867/- as sale of 16 KWVG is taxed @ 4%, being taxable item and differential VAT for Rs. 4274/- is recovered along with interest.

The dealer is hereby directed to pay tax of an amount of Rs. 5828/-..."

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Assessment of penalty for Tax period -April 2008-2009

"It has been noticed that the returns filed by the Co. in the year 2008-09 are signed by Sh. Rajesh Kumar Gupta, C.A of the Co. who is not authorized signatory of the Co. as per record/ copy of R.C and the return is not sign by the Ram Niwas Kaushik and Sh. Gurpreet Singh, Authorised Signatory of the Co. thereby violating the provisions of section 29 of DVAT Act, 2004 wherein it was mentioned that 'any return signed by a person who is not authorized under this section shall be treated as if no return has been furnished ' and the Co. has also failed to provide any satisfactory explanation in this regard. Therefore, it is treated as non-filing of returns and penalty u/s 86(9) of DVAT Act, 2004 is imposed for not furnishing of returns.

Now, therefore the dealer is hereby directed to pay penalty of an amount of rupees 10,000/-…."

8. Similarly, separate assessments of penalty were framed for the tax period from May 2008 to March 2009. It may be mentioned here that penalties u/s 86(10) of DVAT Act were also imposed for the tax period – May 2008, November 2008, and December 2008 Sep. 2008, and March, 2009.

9. Feeling aggrieved by the assessments, dealer filed objections u/s 74 of DVAT Act.

10. Vide impugned order, learned OHA has-

(a) dismissed all the objections pertaining to penalty and relating to April-2008 to March-2009, thereby upholding levy of penalty only to the extent of Rs. 10,000/- u/s 86(9);

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(b) dismissed all the objections as regards default assessment of tax, interest and penalty, relating to the months of May-2008, November-2008 & December-2008;

(c) allowed all the objections against notice of default assessment of tax and interest, relating to the month of September-2008 and also against the assessment of penalty, relating to the said month [except penalty of Rs. 10,000/- u/s 86(9) of DVAT Act];

(d) partly allowed the objections against notice of default assessment of tax and interest, relating to the month of March-2009 and also against the assessment of penalty, relating to the said month [except penalty of Rs. 10,000/- u/s 86(9) of DVAT Act], and accordingly, remanded the matter to learned Assessing Authority, due to reasons recorded in para 17 and 18 of the impugned order.

Para Nos. 17 and 18 read as under:

17. "While framing default assessment, Ld. Assessing Authority has recorded that from the Trading Account of the objector it was noticed that objector had returned stock amounting to Rs.1,63,85,184/- to M/s Triumph International but could not produce any invoices, proof of movement of goods or any other documentary evidence in support of said stock return. He has further recorded that objector had made purchases from Vardhman Polytex being tax free goods and returned the same to M/s Triumph International and also, invoices show that objector had made purchases of taxable goods from M/s Triumph International. Perusal of the objection in DVAT Form-38 shows that objector has admitted an amount of Rs.2,901/- out of the disputed amount. Therefore, additional demand to the

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extent of Rs.2,901/- is hereby upheld. Ld. Counsel has submitted that objector received goods from its consignor namely, M/s Triumph International (Chennai) against F-Forms and due to heavy loss & closure of business, said goods were returned to the consignor. Further, the stock return was for value of Rs.1,47,37,238/- however, Assessing Authority took figure of Rs.1,63,85,184/- which includes stock return from the Gurgaon branch of the objector also. Ld. Counsel has also submitted that objector is in possession of all the relevant records to support his claim/submission.

18. It is observed that above issue is primarily a factual one rather a legal one. As also recorded by the Ld. Assessing Authority that objector failed to produce relevant record before him, therefore, in the interest of justice it would be appropriate to give an opportunity to the objector to produce relevant records before the Assessing Authority who shall pass a speaking order afresh after considering the relevant records on the above issue for the month of March-2009."

11. Feeling aggrieved by the impugned order passed by learned OHA, dealer-assessee filed only 15 appeals.

12. It may be mentioned here that vide order on applications u/s 76(4) of DVAT Act, appeals were entertained subject to deposit Rs. 25,000 in total, as against the disputed demand, by way of pre deposit. Accordingly, appellant deposited by way of pre-deposit Rs. 25,000/- of the disputed demand of tax, interest and penalty.

13. Arguments heard. File perused.

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Default assessment of tax, interest and penalty in respect of tax period May, 2008-09.

14. As regards these assessments, Learned OHA has observed that second proviso to section 28 of DVAT Act could not be made applicable with retrospective effect.

15. On behalf of the appellant, it has been submitted that while filing return on 28/6/2008 stock transfer sale was inadvertently shown, whereas actually it was not a case of stock transfer sale and rather it was a case of inward transfer from a unit of the company – dealer at Ludhiana to Delhi and that this fact transpired only after audit by the department and led to filing of revised return on 28/2/2011. The submission is that in this situation, in view of circular issued by VATO (Policy) in the year 2006, and second proviso of section 28 of DVAT Act, the revised return could be legally filed by the appellant. ~~In the end,~~ On behalf of the appellant it has also been contended that Section 28 being a beneficial provision, the revised return should not have been rejected from being taken into consideration.

16. Learned Counsel for the Revenue has referred to the documents submitted by the dealer-appellant and pointed out that original return was furnished on 25/06/2008 and revised returns were filed by the dealer twice, firstly on 28/06/2008 and then 28/02/2011, but

no explanatory note was furnished by the dealer with any of the revised returns as to why the same were being furnished.

Learned Counsel for the Revenue has submitted that no doubt audit regarding the books of accounts of the dealer-appellant was conducted by the Revenue Authorities, but even prior thereto the books of accounts were required to be got subjected to audit by the company – dealer up to 30/09/2009. The contention is that mistake, if any, must have come to the notice of the appellant on audit of its books of accounts by its Auditor/Chartered Accountant, and as such it is not correct to submit on behalf of the appellant that the mistake came to its notice only consequent upon audit conducted by the Revenue Department.

17. As regards the submission made on behalf of the appellant that the provisions of Section 28 being beneficial provision, the revised return should not have been rejected, Learned Counsel for the Revenue has contended that revised return was filed on 28/02/2011 i.e. even prior to the amendment of Section 28 of the Act amendment of the year 2012 in Section 28 of DVAT Act, and as such the amended provisions of Section 28 do not come to the aid of the appellant.

Learned counsel for Revenue has referred to all the three returns and submitted that in the last mentioned revised return, a different

amount was shown in the column R.11.3, which falsifies the case of the dealer that it was a case of clerical error or mistake.

18. The issue involved in these appeals pertaining to tax period - May, 2008-09 is as to what led the dealer – applicant to file the revised return.

19. Sub-rule (1) of Rule 29 DVAT Rules, 2005 provides that a person who furnishes a revised return for correction of some errors that has been detected, shall do so by furnishing Form DVAT-16 along with an explanatory note specifying the mistake or error because of which it has become necessary to furnish a revised return.

20. In the course of arguments, on query, Learned Counsel for the appellant clearly admitted that he has no information, if any, explanatory note was furnished by the dealer-appellant with any of the revised returns. This submission has been made when a person from the office of dealer-appellant is present in Court.

21. In absence of any explanatory note specifying the mistake or error which made it necessary to furnish revised returns, it cannot be said as to what exactly led the dealer to furnish revised return.

22. As regards applicability of Section 28(2) of DVAT Act, it provides that where a dealer discovers a mistake or error in the return furnished under the Act and the dealer has, as a result of the

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mistake or error paid more tax than was due under this Act, objections are required to be filed.

In the course of arguments, when attention of Learned Counsel for the appellant has been drawn to the said provision, Learned Counsel for the appellant has admitted that this is not a case where the dealer paid more tax than was due, and as such the said provision does not come into application, so far as tax period – March 2008 is concerned.

23. It has been submitted on behalf of the appellant that as per circular dated 31/5/2006 issued by VATO (Policy-I) revised return under Rule 29 of DVAT Act-2004 could be filed in case of clerical error or omission, which had no effect / change in the tax already deposited by the dealer.

As regards Circular No. 4 of 2006-07, issued by VATO (Policy-I), dealers were allowed to file revised returns under rule 29 of the Delhi Value Added Tax Rules, 2005 to enable them to rectify any sort of mistake, errors or omissions which occurred in original return.

As per directions contained in the said circular, such returns as and when filed by any dealer should always be in the prescribed period and duly supported by detailed explanatory note enclosed

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therewith which shall be subjected to proper scrutiny by the concerned VATO/AVATO before relying thereupon.

24. As already noticed above, there is nothing to suggest that any explanatory note, what to say of detailed one, as required under Circular No. 4 of 2006-07, was enclosed with the revised return(s). Concerned VATO/AVATO is required to properly scrutinize said explanatory note as well as the return, before proceeding further. Here, in absence of detailed explanatory note, it can safely be said that concerned VATO/AVATO which was prevented VATO/AVATO from scrutinizing the revised return and as to the cause of submission of revised returns. No explanation has been furnished on behalf of the appellant for non-submission of detailed explanatory note.

Learned OHA observed in the impugned order that the objector-appellant revised return in violation of Section 28 of DVAT Act.

Having regard to Circular No. 4 of 2006-07 issued on 31/05/2006, dealer-appellant could file revised return and in the opinion of this Appellate Tribunal, revised return should have been allowed to be taken into consideration for proper scrutiny, as provided under Rule 29 of DVAT Rules, so as to enable the dealer to rectify any kind of mistake, as pointed out by the objector in the objections. At the same time, assessee-appellant ought to have been allowed to

furnish detailed explanatory note, even though the dealer failed to furnish the same, for one or the other, and for this failure the Revenue Authorities could burden the dealer with costs, so that the returns could be scrutinized properly and thoroughly as regards claim of mistake, error or omission as alleged in the objections.

25. On query during arguments on point of remand for fresh assessment, Learned Counsel for Revenue submitted that dealer has filed only a copy of invoice, which by itself in not a convincing document in support of claim.

26. Learned OHA has affirmed rejection of return on legal ground. In other words, Learned OHA has not considered the return on merits.

~~26~~ 27. In the given facts and circumstances, I deem it a fit case to allow the dealer-appellant to furnish detailed explanatory note to the concerned VATO, in support of revised return already submitted on 28/02/2011, on the very first date before Assessing Authority to put forth cause for furnishing of revised return for tax period – May 2008.

Consequently, these Appeal Nos. 368/22 and 372/22 pertaining to tax period – May 2008 are disposed of and while setting aside the impugned assessments and the impugned order, as regards levy of tax, interest and penalty imposed u/s 86(10) of DVAT Act with

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direction to Assessing Authority for fresh assessment, after providing to dealer an opportunity ~~to dealer~~ of being heard.

Default assessments of tax and interest u/s 32 & 33, relating to tax period Nov. & Dec., 2008

27. The contention on behalf of the appellant is that in view of the certificate, the transactions which took place vide bills No. 1780, 1801, 1897 & 1898, were tax free transactions / sales. Learned counsel for the appellant has referred to certificate dated 17/8/2011 issued by Textile Engineer of the dealer of Vardhman Polytex Ltd., to point out that the certificate is to the effect that (16 KWVG) is 100% cotton yarn, whereas "16 KWVGLYCRA" is a commodity in which percentage of spun yarn of cotton is 94.46% and further that of lycra is 5.54%.

28. On the other hand, learned counsel for the Revenue has submitted that in the concerned invoices which find mentioned in the default assessment of tax and interest, it was nowhere specified that the items sold were cotton and silk yarn in hank and cone, and as such the assessment has been correctly framed and upheld in the objections.

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Learned OHA has observed that except the abovementioned certificate, no document was filed to substantiate the said case of the dealer and further that these two items do not find mention in entry No. 10 of Schedule-I of DVAT Act.

Therefore the question arises as to whether the above said two items were or were not exigible to tax in view of entry No. 10 of Schedule-I of the Act.

29. As already noticed above, learned Assessing Authority has levied tax as regards turnover of Rs. 16799/- on sale of 16 KWVG vide bill No. 1780 dated 26/11/2008 and turnover of Rs. 71542/- on sale of 16KWVG vide bill No. 1801 dated 28/11/2008, the reason being that vide other two Bills No. 1705 dated 04/11/2008 and No. 1810, the dealer-appellant had sold the same item-goods charging tax @4%.

Learned OHA has observed in the impugned order that rate of tax are governed by the entries which appear in the Schedules available under DVAT Act, but no item as "16KWVG" and "16 KWVG Lycra" finds mention in any of the Schedules. As regards "16 KWVG Lycra", learned OHA observed that same is not 100% cotton yarn and as such no exempted under Schedule-I.

30. It was for the dealer to bring on record convincing material to suggest that the items were covered by any entry under Schedule-I,

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so that it could seek exemption as per entry available under the Schedule.

In support of its claim to seek exemption under Schedule-I, the dealer-appellant has placed reliance on certificate dated 17/08/2011 issued by Textile Engineer of Vardhman Polytex Ltd. As per the certificate (16 KWVG) is 100% cotton yarn, whereas, "16 KWVG Lycra" is a commodity in which percentage of spun yarn of cotton is 94.46% and that of lycra is 5.54%.

Learned counsel for the Revenue has rightly contended that this certificate dated 17/08/2011 issued by the Textile Engineer of the dealer is a self supporting document and further that in the Invoices Nos. 1780 and 1801 there is no mention regarding the percentage of cotton yarn or spun yarn of cotton and that of Lycra, as regards the two items 16 KWVG and 16 KWVG Lycra, respectively.

In absence of any cogent and convincing evidence as regards percentage of cotton yarn in the first mentioned item i.e. 16 KWVG and in absence of percentage of spun yarn of cotton and that of Lycra as regards the second mentioned item i.e. 16 KWVG Lycra, it cannot be said that the said items were covered by any entry of Schedule-I of DVAT Act. Consequently, there is no merit

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in the contention raised by the learned counsel for the appellant raised in this regard.

As a result
~~Consequently~~, the assessments of tax and interest framed by Learned Assessing Authority regarding these two items deserve to be upheld. It is ordered accordingly.

Penalty u/s 86(9) of DVAT Act

31. As regards penalty u/s 86(9) of DVAT Act, learned counsel for the appellant has contended that the revised return was filed by a competent person authorized by the Board of Directors, in view of provisions of section 29 of DVAT Act.

It is submitted on behalf of the appellant that the person presenting the revised return was covered by the definition of "Principal Officer" as defined u/s 2 (35) of Income Tax Act-1961, and as such the same can be said to have been duly signed and verified by authorized dealer.

32. On the other hand, learned counsel for the Revenue has submitted that at the time of registration of the company – dealer, name of the said signatory to the revised return, was not submitted to the department and as such filing of the return under the signatures of the said person cannot be said to be a case of due and proper signing and verifying of the return by the authorized signatory of

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the dealer. In this regard, reference has been made to DVAT Form 04D and DVAT 07D.

33. Section 29(1)(c) of DVAT Act requires that every return under Chapter V of DVAT Act in the case of a company or local authority, shall be signed and verified by the principal officer thereof. As per Explanation 1 available under section 29, for the purposes of this section the expression "principal officer" shall have the meaning assigned to it under sub-section (35) of section 2 of the Income Tax Act, 1961.

As per Explanation 2 of the same section, for the purposes of this Act, any return signed by a person who is not authorized under this section shall be treated as if no return has been furnished.

34. Section 2(35) of IT Act, 1961 defines "principal officer" as under:

> "principal officer" used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means-
>
> (a) the secretary, treasurer, manager or agent of the authority, **company**, association or body, or
>
> (b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof.

35. Section 86(9) of DVAT Act provides imposition of penalties where a person required to furnish return under Chapter 5 or to

comply with a requirement in a notification issued under section 70 of this Act, violates the requirement of law for furnishing of a return, the said person is liable to pay penalty.

Clause (iii) of Rule 1 of Rule 27 of DVAT Rules, 2005 provides that every return under the Act shall be signed and verified by the person or authority mentioned in section 29 and in the manner specified in that Form.

36. In **Commissioner of Income-Tax v. Rudra Bilas Kisan Sahkari Chini Mills**, (2006) 280 ITR 249, has been relied on by Counsel for the appellant in support of his contention that the returns were filed by the "Principal Officer" of the appellant-company and as such assessments of penalties framed by Learned Assessing Authority u/s 86(9) of DVAT Act and reduced by Learned OHA, deserve to be set aside.

37. Rudra Bilas Kisan Sahkari Chini Mills's case (supra), pertained to a matter where return signed by Accounts Executive of the said society – assessee was held by the Income Tax Appellate Tribunal to be a valid return. As per case of the respondent society, the concerned Principal Officer was transferred as per transfer orders received on the last day of June 1979 i.e. the date of filing of return under IT Act. The said Principal Officer was busy on outdoor duty as well on that very day. Therefore, the return was filed by the

Accounts Executive of the respondent society, who was in charged as per normal practice existing with the mill society during the relevant period. Therein, the Accounts Executive of the respondent society had no authorisation – oral or in writing, to sign the return, but the said authorisation was inferred by implication.

38. Form DVAT-04 (Part-D) is meant for furnishing of particulars of each authorised signatories. Form DVAT-07 (Part-A) is meant for making of amendment(s) in particulars subject to registration under DVAT Act, 2004. Column No. 12 pertains to number of authorised signatories and Column No. 14 pertains to name of authorised signatories. While submitting Form DVAT-07, Form DVAT-04 (Part-D) is also required to be completed.

39. On perusal of Section 86(9) it transpires that it does not provide for levy of penalty where a return is filed in violation of provisions of Section 29(1). Simply, on this ground, the penalties levied u/s 86(9) and challenged by the appellant deserved to be set aside. Consequently, these penalties u/s 86(9) and the impugned order passed by Learned OHA, even though reducing the quantum, are hereby set aside.

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Penalty u/s 86(10) – Tax period - May 2008, November 2008 and December 2008

40. So far as levy of penalty u/s 86(10) of DVAT Act, for the tax period(s) May 2008, November 2008 and December 2008 is concerned, as noticed above, the appeal pertaining to assessment of tax and interest for the tax period May 2008, has been disposed of while setting aside the said assessment of tax and interest in the manner indicated above. Consequently, the assessment of penalty under Section 86(10) of DVAT Act is also set aside.

41. As regards imposition of penalty u/s 86(10) for the months of November and December 2008, as noticed above, the assessments of tax and interest framed by learned Assessing Authority and upheld vide impugned order passed by Learned OHA, have been approved and upheld by this Appellate Tribunal.

It is true that levy of penalty is not automatic. In **Cement Marketing Company v. CST**, (1980) 1 SCC 71, Hon'ble Apex Court has observed that a return cannot be said to be false unless there is an element of deliberateness in it. Further, it was observed that where an assessee does not include a particular item in the taxable turnover, under a bonafide belief that he is not liable to include the said item in the taxable turnover, it would not be right to condemn the return as a false return.

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42. In **Afcons Infrastructure v. Commissioner of Trade & Taxes**, Appeal No. 577-587/12, decided by this Appellate Tribunal on 12/03/2020, it was observed that where an appellant shows reasonable cause for the defaults identified in the assessment, the penalty deserves to be set aside.

43. Here, in case the appellant had any doubt regarding levy of tax in respect of two items, it could seek determination of a question by the Commissioner. However, it is not case of the appellant that any such question was raised for determination by the Commissioner. Even otherwise, when the dealer itself charged tax @ 4% on sale of same item vide other Bill No. 1705 and 1810, it cannot be said to be a case of any doubt.

In other words, as regards the subsequent sales, the dealer-appellant cannot be said to be justified in claiming that the said item was not exigible to tax or that same could be sold without charging any tax. Therefore, the penalty levied by the Assessing Authority as regards tax period - November and December 2008, u/s 86(10) is upheld.

Conclusion

44. In view of the above findings, Appeal No. 368/22 challenging tax and interest and Appeal No. 372/22 challenging levy of penalty u/s 86(10) are disposed of with directions contained in Para No.s 25

& 26 of this judgment. Dealer to appear before Learned Assessing Authority on 15/11/2022.

As a result of the above findings, **Appeal Nos. 369/22 and 370/22** challenging levy of tax and interest for the tax period November 2008 and December 2008 respectively, and **Appeal Nos. 378/22 and 379/22** challenging penalties u/s 86(10) of DVAT Act for the same tax period – November and December 2008, are dismissed.

On the basis of above findings, all **Appeal Nos. 371/22 to 382/22** challenging penalties u/s 86(9) of DVAT Act are allowed, while setting aside the imposition of penalties by the learned Assessing Authority, as well as the impugned order vide which the penalties were upheld.

45. 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 : 28/10/2022

Narinder Kumar 28/10/2022

(Narinder Kumar)
Member (Judicial)

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