

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

Appeal No.: 438/ATVAT/22  
Date of Judgment: 21/11/2022

M/s Kapsons Worldwide  
C74A, Mayapuri Indl. Area,  
Phase-II, New Delhi-110064.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Sushil Verma.  
Counsel representing the Revenue : Sh. P. Tara.

**JUDGMENT**

1. Appeal has been filed challenging order dated 10/06/2022 passed by Learned OHA-Additional Commissioner, whereby objections filed by the dealer-assessee-objector u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) have been dismissed.
2. The matter pertains to tax period – Annual 2013-14.
3. Objections u/s 74(1) of DVAT Act were filed on 14/10/2019 challenging notice of default assessment of tax and interest framed u/s 32 of DVAT Act, whereby demand of Rs. 4,58,537/- by way of additional tax and Rs. 2,69,846/- by way of interest i.e. Rs. 7,28,383/- in total, was raised.

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4. Assessment was framed on 31/03/2018 by observing in the manner as:

“A notice u/s 59 (2) vide reference no.38661 dated 06-10-2017 was issued to M/s KAPSONS WORLDWIDE having TIN-07720320467 for production of records on 30-10-2017 for the 4th qtr., 2013-14. None appeared and no record was produced. The dealer has claimed total local purchase of Rs.8277677/- for the period 2013-14 and claimed input tax credit of Rs.458537/- but could not produce tax invoices, bank statement and other documents sought vide above mentioned notice to substantiate his claim. As, the dealer failed to produce the relevant records as sought vide above mentioned notice, the total input tax credit of Rs.458537/- claimed by the dealer on local purchases is hereby disallowed under section 9(8) of DVAT Act, 2004.”

5. Feeling aggrieved by the above said assessments, the dealer filed objections, and on rejection of the objections, dealer has come up in appeal.
6. With the memorandum of appeal, an application u/s 76(4) of DVAT Act was also filed, with prayer that appeal be entertained waiving requirement of deposit towards impugned demand, by way of pre-deposit. The appeal was entertained waiving condition of pre deposit.
7. Arguments heard. File perused.
8. It may be mentioned here that in this appeal, appellant-assessee has challenged notice of default assessment of tax and interest framed u/s 32 of DVAT Act. In other words, the other notice of default assessment of tax and interest framed under CST Act has

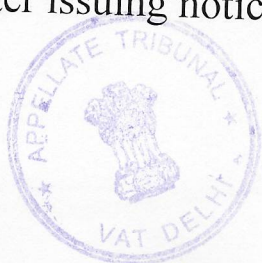




not been challenged. Learned counsel submits that the entire demand as per assessment under CST Act has been paid and that the assessment framed under CST Act was not under challenge even before learned OHA.

9. So far as, notice of default assessments of tax and interest framed under DVAT Act, is concerned, learned counsel for the appellant has submitted that no notice, said to have been issued by the Assessing Authority, was received by the dealer-assessee, and as such the dealer could not produced invoices.
10. Assessing Authority clearly mentioned in the default assessment u/s 32 of DVAT Act framed on 31/03/2018 that notice u/s 59(2) of DVAT Act was issued to the dealer vide reference number 38661 dated 06/10/2017, requiring the dealer to produce records on 30/10/2017, in respect of 4<sup>th</sup> quarter of the year 2013-14, Assessing Authority specifically recorded that neither anyone appeared before him nor produced any record on behalf of the assessee.
11. As per grounds of objection raised by the dealer-assessee before learned OHA in the objection proceedings u/s 74 of DVAT Act, it was alleged that no proper opportunity of being heard was provided to the assessee and that had it been provided assessee would have established the genuineness of transactions. In this regard, learned OHA observed that learned Assessing Authority had carried out assessments and created demands only after issuing notice u/s 59(2) of DVAT Act.

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No material was produced by the dealer-assessee before learned OHA to suggest non service of notice u/s 59(2) of DVAT Act before framing of the assessments. Therefore, it cannot be said that learned Assessing Authority framed assessment without notice u/s 59(2) of DVAT Act to the dealer.

12. The other reason recorded by learned Assessing Authority in the impugned assessment is that the dealer failed to produce any document.

Learned counsel for the appellant has submitted that certain documents were produced by the dealer before learned OHA.

From the impugned order passed by learned OHA, it is obvious that objector-assessee submitted there purchase summary, BRCs, DVAT-30, DVAT-31, DVAT-16, copies of mismatch 2A and 2B and bank statement for the year.

Learned counsel for the Revenue has pointed out that in order to claim ITC, dealer-assessee was required to produce copies of invoices in proof of factum of purchase of the goods but same were not submitted either before learned Assessing Authority or before the learned OHA, and that copies of invoices submitted before this Appellate Tribunal for the first time are required to be looked into by learned OHA and further that matter needs to be remanded to learned OHA for decision afresh in accordance with law.

13. In the course of arguments, learned counsel for the appellant does not dispute that in the impugned order there is no mention



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that copies of invoices were also submitted before learned OHA. Copies of invoices have been submitted before this Appellate Tribunal for the first time.

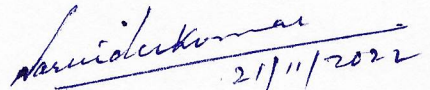
On the point of remand, in the course of arguments learned counsel for the appellant agrees that the matter needs to be remanded for decision afresh, by learned OHA, while taking into consideration the copies of the invoices and all the relevant factors.

14. In the given facts and circumstance, the appeal is disposed of, the impugned order passed by learned OHA while rejecting the objection, is hereby set aside and with the consent of both the sides, the matter is remanded to learned OHA for decision afresh, after taking into consideration the entire material and after affording reasonable opportunity of being heard to the dealer-appellant.
15. The dealer-appellant to appear before learned OHA on 08/12/2022.
16. File be consigned to 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: 21/11/2022



  
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Member (Judicial)