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

Appeal No.: 439/ATVAT/22
Date of Judgment: 02/12/2022

M/s Konica Minolta Business Solutions India Pvt. Ltd.
1304, 13th Floor, Mohandev building,
13, Tolstoy Marg, Connaught Place,
New Delhi - 110001.

.........Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.......Respondent

Counsel representing the Appellant : Sh. Atul Gupta with Ms. Neha Choudhary.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. On 18/03/2020, Learned Assessing Authority – VATO (Ward 208) issued notice of default assessment of tax and interest, u/s 32 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), thereby raising a demand of Rs. 1,63,38,294/- by way of additional tax and of Rs. 95,74,688/- towards interest.
2. Feeling aggrieved by the default assessment, the dealer-appellant-company filed objections u/s 74 of DVAT Act.
3. Vide impugned order dated 10/08/2022, objections filed by the dealer-appellant have been ~~accepted~~ disposed of by learned OHA-Special Commissioner-III, with the direction to the Assessing Authority that he shall issue fresh assessment notices in terms of decision

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dated 25/05/2022 passed by this Appellate Tribunal in Appeal No. 64/2018, and re-calculate tax and interest as per findings/directions given by this Appellate Tribunal.

4. Feeling aggrieved by the impugned order passed by learned OHA, appellant has filed this appeal.

5. It may be mentioned here that vide order dated 31/10/2022, the appeal was entertained without calling upon the dealer-appellant to deposit any amount by way of pre-deposit.

6. Arguments heard. File perused.

7. While dealing with the point of furnishing of DVAT-41 by the dealer, learned OHA has observed that neither diary clerk nor the Reader to learned OHA brought the notice in Form DVAT-41 to his knowledge before 28/07/2022 when he heard about the said notice from a Legal Assistant. On this aspect, learned OHA has further observed as under before proceeding to decide the objections on merits:

> "Noting the fact that certain officials in the Personal Branch have been grossly negligent in this matter, a detailed note was submitted to the Commissioner, Trade & Taxes vide no. 59/SCTT-III dated 01.08.2022, recommending disciplinary action against the Diary Clerk as well as the then Reader to OHA.
>
> It was further recommended that both these officials should be placed under suspension pending disciplinary proceedings. I may further mention that while the Junior Assistant who was working as a Diary Clerk has been suspended by the Commissioner, Trade & Taxes vide order dated 03.08.2022, a communication has been addressed to Directorate of Social Welfare (Controlling Officer of the then Reader to OHA) vide letter dated 03.08.2022 to place

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the said Reader under suspension pending disciplinary proceeding."

8. In the course of arguments~~, on merits,~~ learned Counsel for the appellant has not assailed the above said observations and findings recorded by learned OHA as regards Form DVAT-41. In other words, learned Counsel for the appellant has not challenged the impugned order on the ground that the same was passed after expiry of 15 days period from the date of receipt of notice in the form of Form DVAT-41.

9. On merits, learned Counsel for the appellant has pointed out that while dealing with the objections on merits, learned OHA did not decide one of the objections challenging assessment whereby excess sale of Rs. 1,30,04,338/- was treated as local sale and subjected to tax @ 12.5% along with interest.

The only submission of learned Counsel for the appellant is that matter be remanded to learned OHA for decision of the said objection to the framing of assessment while treating excess sale of Rs. 1,30,04,338/- was treated as local sale and subjected to tax @ 12.5% along with interest.

Learned Counsel for the Revenue has no objection to the remand of the matter to learned OHA for decision of the objection to the framing of assessment while treating excess sale of Rs. 1,30,04,338/- was treated as local sale and subjected to tax @ 12.5% along with interest.

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Since while passing the impugned order learned OHA has not decided the objection pertaining to excess sale of Rs. 1,30,04,338/- treated as local sale and subjected to tax @ 12.5% along with interest.

In the given situation, as consented to by learned Counsel for the parties, this appeal is disposed of and the matter is remanded to learned OHA for decision afresh, in accordance with law, as regards the only objection pertaining to excess sale of Rs. 1,30,04,338/- treated as local sale and subjected to tax @ 12.5% along with interest. Of course, learned OHA shall provide opportunity of being heard to dealer-objector.

10. Dealer-objector to appear before learned OHA on 27/12/2022.

11. 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 : 02/12/2022

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(Narinder Kumar)
Member (Judicial)

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