

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

M.A. Nos. 641-644/2022
In Appeal Nos. : 456-459/ATVAT/2022
Date of Order: 27/12/2022

M/s. Advance Computers
DIESL, Khasra No. 903 & 910,
Rice Mill Compound, Village Rithala
Delhi- 110037.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Applicant : Sh. Rakesh Kumar Aggarwal with
Sh. Mukesh Singla.
Counsel representing the Revenue : Sh. S. B. Jain.

Order on Stay Applications u/s 76(4) of DVAT Act

1. On 12/12/2022, dealer-assessee, a proprietorship concern, through its proprietor, has challenged impugned order dated 20/09/2022 passed by learned First Appellate Authority- Special Commissioner.
2. The matter pertains to tax period 4th quarter 2013-14 and 2nd quarter 2014-15.

Narinder Kumar
27/12/2022



Page 1 of 9

M.A. Nos. 641-644/2022
In Appeal Nos. : 456-459/ATVAT/2022

3. By way of the impugned order, four objections filed on behalf of the dealer came to be dismissed, thereby upholding two notices of levy of penalty dated 28/08/2014 and 28/11/2014.
4. Vide notice of assessment of penalty, framed u/s 33 of DVAT Act read with section 86(12) of DVAT Act, learned Assessing Authority levied penalty of Rs. 7,40,331/- due to the reason that the dealer deposited tax after the prescribed date, as regards 4th quarter of 2013-14.
5. Vide Separate notice of assessment of penalty u/s 9(2) of CST Act read with section 86(12) of DVAT Act, learned Assessing Authority imposed penalty of Rs. 1,57,238/-, as regards 4th quarter- 2013-14, due to late deposit of tax.
6. Vide separate assessment dated 28/11/2014, learned Assessing Authority imposed penalty of Rs. 42,733/- read with section 86(12) of DVAT Act, for the tax period – 2nd quarter of the ~~y~~ year 2014-15.
7. Still vide another assessment of same date, learned Assessing Authority levied penalty of Rs. 22,665/-, u/s 9(2) of CST Act read with section 86(12) of DVAT Act, for the tax period – 2nd quarter of the year 2014-15.
8. Feeling aggrieved by the above four assessments, dealer-assessee filed objections u/s 74 of DVAT Act.
9. Learned OHA has dismissed the objections, while observing as under-



"10. In view of above law position, it is very much clear that if a dealer deposits the due tax after the due date as mentioned under sub-section (4) of Section 3 of the DVAT Act is also a tax deficiency. Even according to the Objector Dealer that the original demands towards tax and interest raised by the Assessing Authority have been reduced to Nil and there is no pending demand towards tax and interest but in view of above provision the Objector Dealer is still liable to pay the penalty amount due to the fact that the tax deficiency had already arisen at that point of time when the Objector Dealer itself failed to discharge the tax obligations within the prescribed time period as mentioned above. Therefore, in view of the same, the Assessing Authority has committed no error in imposing the penalties under Section 86(12) on account of tax deficiency and contention of the Objector Dealer that there is no demand pending against him is not sustainable and untenable in the eyes of law, and thus, rejected accordingly.

11. Further, the Counsel has also assailed the impugned Notices of Tax, Interest and Penalty on the ground that no opportunity of hearing was afforded/ provided before imposing tax, interest and penalty. As far as issuance of prior notice is concerned, there is no express provision under the DVAT Act for issuance of prior notice before framing assessment. For the said proposition, it is relevant to note the decision of Hon'ble High Court in the matter of Sales Tax Bar Association (Regd.) vs. GNCTD, WP(C) No.4236/ 2012. The Hon'ble Court in its decision in Sales Tax Bar Association (Supra) has noted that even if during the proceedings before the VATO, being a unilateral proceeding, no prior notice has been provided, the said defect, if any, can be cured by providing sufficient opportunity during objections proceedings being a bilateral proceedings. In view of the above judgment of Hon'ble High Court it is noted that even considering that no hearing had been provided to the objector-dealer before issuing impugned notice, sufficient opportunity of being heard has been provided to him while disposing the present objections. Therefore, the principles of natural justice stands fulfilled in the instant case, and the contention of the Objector Dealer that no opportunity of being



2/27/12

heard was given before framing the assessment is not tenable and thus, rejected accordingly.

12. In view of the aforesaid facts and circumstances of the case and also considering the documents/records submitted by the Objector Dealer and also from the contentions raised by the counsel and law position thereof, the undersigned is of the considered view that the Assessing Authority was completely justified in levying the penalty under Section 86(12) on account of tax deficiency which has been rightly imposed in accordance with the said provisions as discussed above. Thus, the impugned Default Notices of Penalty both dated 28/08/2014 & 28/11/2014 are hereby upheld and the aforesaid Objections are dismissed accordingly.”

10. Hence, these appeals.

11. Proprietor of the applicant has filed 4 affidavits, one respect of each appeal, to the effect that it did not receive any Annexure, as finds mention in the assessment orders of penalty, and that even concerned Authority has informed that no such Annexure was attached to the assessment orders.

12. While arguing on the application u/s 76(4) of DVAT Act, counsel for the appellant-applicant has submitted that neither any opportunity of being heard was given by the Assessing Authority before imposing penalty nor any reason was given while imposing penalty. In support of this submission, learned counsel has referred to decision in **Rajesh Kumar and others v. DCIT and others**, Appeal (C) No. 4633 of 2006 decided by Hon'ble Apex Court on 01/11/2006 and case titled as **Bansal Dye Chem Pvt. Ltd. v. Commissioner Value Added Tax,**

2/2
20/12



Delhi & Anr., St. Appl. No. 29/2015 decided by our own Hon'ble High Court on 24/09/2015.

Another submission on behalf of the appellant-applicant is that this is a case of no tax deficiency as the excess input tax over output law was available with the department and tax had been deposited inadvertently in respect of the months of June, August and September of 03/09/2014, 25/09/2014 and 03/09/2014 respectively.

It has also been submitted that vide order dated 21/09/2022, a sum of Rs. 6,27,803/- was adjusted by the department in respect of 3rd quarter of 2016, to submit that this was a case of no deficiency as regards the 2nd quarter of 2014-15.

13. As noticed above, vide common impugned order dated 20/09/2022, learned OHA has upheld the notices/assessments levying penalties, dismissing the objections raised by the objector.
14. Vide two assessments, penalties were imposed on 28/08/2014, under DVAT Act and under CST Act in respect of 4th Quarter of 2013-14.

Similarly, two separate assessments were framed regarding levy of penalty on 28/11/2014, under DVAT and CST Act in respect of tax period 2nd Quarter of 2014-15.



The reason given by the Assessing Authority for levy of penalty vide assessments dated 28/08/2014 is late deposit of tax. As regards details, Assessing Authority mentioned in these assessments dated 28/08/2014 that the same were attached in the form of Annexure.

However, no Annexure is lying attached to the copies made available by the appellant. It has been submitted on behalf of the appellant that actually no such Annexure was supplied to the assessee with the assessments of penalty framed on 28/08/2014. Applicant has filed affidavit in support of this submission. Therefore, one of the issues to be addressed at the time of final arguments would be as to whether the impugned assessments dated 28/08/2014 as regards 4th Quarter of 2013 would be sustainable or not, when Annexures are stated to have been supplied to the assessee but the assessee disputes their supply.

As regards the other two assessments dated 28/11/2014, in respect of 2nd Quarter of 2014-15, reasons do not find mention therein. Therein, only the words "as per Annexure" find mention after the space given for the reasons.

Applicant has filed affidavit that no Annexure was supplied by the department. Therefore, one of the issues to be addressed at the time of final arguments would be as to whether the impugned assessments dated 28/11/2014 as regards 2nd Quarter



of 2014-15 would be sustainable or not, when reasons are stated to have been annexed to the assessments but the assessee disputes their supply.

15. As regards the contention that no opportunity was granted by the Assessing Authority before levy of penalties, on behalf of the Revenue reference has been made to decision in **Sales Tax Bar Association (Regd.) vs. GNCTD**, WP(C) No.4236/2012 by our own Hon'ble High Court.

As regards decision in Rajesh Kumar and others case (supra) cited by Counsel for the applicant, same pertains to assessment under Income Tax Act. No provision under DVAT Act or CST Act has been pointed out on behalf of the applicant which provides for providing of opportunity of being heard to the assessee before levy of penalty. Furthermore, it is another question to be addressed by the applicant at the time of final arguments as to how this ground/objection has any merit when opportunity of being heard has already been afforded by learned OHA while hearing objections u/s 74 of DVAT Act, in view of decision in Sales Tax Bar Association's case (supra).

16. As regards the point of "tax deficiency", applicant has alleged in the application that as per order dated 21/09/2022, there was a deduction of Rs. 6,27,803/- towards Tax, Interest and Penalty, as per information available on the system. Further, it has been



alleged that applicant has filed a claim for refund of Rs. 6,02,599/- with interest to the tune of Rs. 1,29,970/-. As further alleged, learned VATO has agreed that interest granted to the applicant vide refund order dated 21/09/2022 was short by Rs. 2,40,251/-.

17. As per copy of adjustment order available on the file, following amount appears to have been adjusted by the department against the following demands:

ID	Demand Amount	Adjustment Amount	Pending Amount
150082387574	1,16,085	1,16,085	0
150082608622	21,819	21,819	0
150083450433	53,692	53,692	0
150083456484	2,46,891	2,46,891	0
150083456500	1,49,803	1,49,803	0
150083456511	7,541	7,541	0
150083456519	14,702	14,702	0
250013024903	17,270	17,270	0

18. Furthermore, as per another document submitted by the applicant, refund was claimed by the applicant.

However, this document pertains to 3rd Quarter of 2016 and refund order came to be passed on 21/09/2022.

19. In view of the above discussion, when Annexures allegedly did not form part of the assessments supply to the dealer – assessee, this is a case where the appeals deserve to be entertained

27/11/22



without calling upon the dealer to deposit any amount by way of pre-deposit. It is ordered accordingly. The applications are disposed of.

20. Copy of the order 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: 27/12/2022.

Narinder Kumar
27/12/2022
(Narinder Kumar)
Member (Judicial)

