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

Appeal No. - 449-450/ATVAT/22
Date of Judgment: 29/12/2022

M/s Goldman Hosiery,
3867, Mandir Wali Gali, Pahari Dhiraj
Delhi-110006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Rahul Gupta.
Counsel representing the Revenue : Sh. M. L. Garg.

JUDGMENT

1. The above captioned two appeals came to be presented on 02/12/2022 challenging order dated 07/10/2022, passed by learned Special Commissioner-Objection Hearing Authority (hereinafter referred to as OHA), whereby two objections filed by the dealer-assessee u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) were disposed of.

2. The objections were filed as the dealer felt dissatisfied with the assessments of penalty framed on 19/08/2015, u/s 33 of DVAT Act and another assessment of penalty, of same date framed

Narinder Kumar
29/12/2022

under Central Sales Tax Act (hereinafter referred to as CST Act) by the learned Assessing Authority. Both the assessments pertain to tax period- 1st quarter of 2014-15.

3. A penalty of Rs. 40,500/- under each Act was levied upon the dealer-assessee due to the reason that it failed to furnish return on or before the due date.

4. While disposing of objections filed u/s 74 of DVAT Act, learned OHA reduced the quantum of penalty of Rs. 20,000/- under each Act.

5. Still feeling dissatisfied with the demand of reduced amount of penalty, the dealer has preferred the above captioned two appeals.

6. Vide order dated 12/12/2022, dealer-appellant was directed to deposit, by way of pre-deposit, a sum of Rs. 4,000/- in respect of each appeal for the purpose of entertaining of the appeals.

7. Case of the dealer-appellant is that the impugned assessments of penalty do not contain name of the Assessing Officer and at the same time, the assessments have not been digitally signed.

   Further, it has been submitted that the impugned assessment orders are system generated which shows non application of mind by the Assessing Authority, and as such the impugned order and the impugned assessments deserve to be set aside.

In support of this submission, counsel for the appellant has placed reliance on following decisions:

Kilasho Devi Burman and Ors. V. Commissioner of Income Tax, West Bengal, Calcutta, AIR 1996 SC 3114;

Bhumika Enterprises v. Commissioner Value Added Tax & Anr., W.P. (C) 7515/2015 decided by our own Hon'ble High Court on 28/08/2015;

M/s Srei Equipment Finance Ltd. v. Commissioner of Value Added Tax & Anr. , VAT Appeal 2/2017, decided by our own Hon'ble High Court on 17/01/2017;

Swastik Polymers v. Commissioner of Trade & Taxes & Anr., W.P.(C) 4385/2017, decided by our own Hon'ble High Court on 19/05/2017 ;

M/s Choudhry Plastic Works v. Commissioner of Trade & Taxes, Appeal No. 395-396/22 decided on 17/06/2022 by this Appellate Tribunal.

8. As per case of the Revenue, returns came to be filed by the dealer 81 days after the due date.

On behalf of the appellant, it has been submitted that return could not be filed on or before the due date as mother of the Proprietor of the dealer was unwell and almost every week she had to be taken to doctor for treatment.

Herein, as noticed above, assessments of penalties came to be imposed due to the reason that dealer-assesee filed returns pertaining to tax period- 1st quarter of 2014-15 late. There was

29/12

delay of 81 days in filing of returns under each Act i.e. DVAT Act and CST Act.

As regards the ground/objection raised by the counsel for the appellant in these appeals that the assessment orders/notices neither contain the name of the Assessing Authority nor bear signatures/digital signatures, learned counsel for the Revenue has submitted that no such ground was raised by the appellant-objector at the time, it challenged the two assessments of penalties before learned OHA, and as such, the said ground/objection cannot be raised before this Appellate Tribunal for the first time.

9. Admittedly, no such objection/ground was raised by the objector in the objections u/s 76 of DVAT Act or during hearing on the objections.

In reply to the query by this Appellate Tribunal as to why no such objection was raised before the OHA, counsel for the appellant submitted that the counsel earlier engaged by the dealer, for the reason best known to him, did not raise any objection, but even then this being a legal ground can be raised before this Appellate Tribunal.

There is no doubt that the ground being raised before this Appellate Tribunal for the first time is in the form of legal objection. It is well settled that a legal objection can be raised before this Appellate Tribunal even for the first time. Reference in this regard may be made to decision in **Yeswant Deorao**

Deshmukh v. Walchand Ramchand Kothari, AIR 1951 SC 16,

10. As is available from the impugned assessments, same were framed on 19/08/2015 levying penalty due to violation of provisions of DVAT Act and CST Act. None of the assessments bear name of the Assessing Authority. These also do not bear signatures or digital signatures of the Assessing Authority.

The contention raised by learned counsel for the Revenue is that the decision in Bhumika Enterprises's case (supra) is of 28/08/2015 whereas in the impugned notices of assessments of penalty are of previous date i.e. 19/08/2015, and as such, said decision is not applicable to the facts of this case.

On the other hand, learned counsel for the appellant has referred to provisions of Section 100A of DVAT Act to submit that vide notification dated 16/11/2005, this section was inserted in DVAT Act, and as such the provisions relating to digital signatures were to apply to the procedures under the Act.

11. In Bhumika Enterprises' case (supra), Hon'ble High Court referred to the observations already made i.e prior to 28/08/2015 (the date of decision in Bhumika Enterprise's case), which were to the effect that notices u/s 59(2) of DVAT Act as well as default assessment notices, which were "system generated" and had not infact been "human generated" by the concerned VATOs, violated the principles of natural justice. In Bhumika Enterprise's case, Hon'ble High Court clearly observed that

both kind of notices i.e. u/s 59(2) and the notices of default assessment, which were system generated, had to go.

12. A perusal of copy of Circular No. 24 of 2015-16 issued vide Notification No. F.3(577)/Policy/VAT/2015/697-702 dated 10/09/2015 by Special Commissioner (Policy), would reveal that all notices u/s 59(2) of DVAT Act issued on 19/06/2015, which were "system generated", were quashed and the concerned VATOs were directed to issue fresh notices in accordance with law. It was further directed vide said circular that all the concerned VATOs would take steps so that the notices/orders were not system generated notices or orders without human interface. Said circular came to be issued in view of direction issued in Bhumika Enterprises' case (supra).

13. The fact remains that when Hon'ble High Court had already observed that system generated notices of default assessments had to go, same being in violation of principle of natural justice, all VATOs - Assessing Authorities were required to withdraw the notices of both kinds and issue fresh.

Here, A perusal of the impugned assessments would reveal that same cannot be termed to be "system generated", the reason being that the due date of filing of the returns does not appear to have been generated by the system; the period of delay in filing of the returns also appears to have not been generated by the system. Even the amount of penalty cannot be said to have been generated by the system. Rather, it appears that these particulars

29/12

have been typed. Even the date by which the amount of penalty was required to be deposited, appears to have been typed and not generated by system. Significant to note that the assessments bear Reference numbers with date. Therefore, the assessments are held to be not the ones generated by system.

14. Learned counsel for the Revenue has submitted that due to the mistake, defect or omission/pointed out as regards name of VATO as on behalf of the appellant, said assessments cannot be said to be invalid, in view of provisions of section 80 of DVAT Act,.

Section 80 of DVAT Act reads as under :-

> "(1) No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.
> (2) The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.
> (3) No assessment made under this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act."

29/1

15. It is true that section 80 of DVAT Act saves assessment etc. from being declared invalid or being deemed to be invalid merely by reason of any mistake, defect or omission, when such assessment is in substance and effect in conformity with or according to the intent and purposes of DVAT Act or any earlier law.

Where the default assessment of penalty framed on computer is displayed on the portal of the Department, the same being without digital signatures, the question of authenticity of the assessment would certainly arise and lead to the invalidity of the assessment, as is in the present case.

16. In the given situation, even though learned OHA was competent to issue directions to learned Assessing Authority to frame assessment of penalty afresh and for issuance of valid default assessments bearing signatures or digital signatures in terms of decision in Bhumika Enterprise's case (supra), but no such direction was issued by the learned OHA for the purpose of compliance with the decision by the Hon'ble High Court. Therefore, the impugned common order passed by learned OHA also deserves to be set aside.

17. As regards non mentioning of name of the Assessing Authority, it may be observed here that where an assessment does not disclose name of the concerned officer-Assessing Authority, but depicts the number of the ward of the VATO, and said dealer

files or is able to file objections against the same before the competent OHA, even on the basis of number of ward of the concerned VATO as available in the assessment, no prejudice can be said to have been caused to such a dealer-assessee, and in such a situation, the notice of assessment cannot be termed to be an invalid notice.

However, a case where default assessment of penalty does not bear name of the concerned Assessing Authority and due to this defect, mistake or omission, the dealer-assessee is unable to file objections before learned OHA within the prescribed period of limitation, the same may be a good ground for seeking condonation of delay in filing of appeal, but it would not be a ground of invalidity of such an assessment simply because name of the Assessing Authority does not find mention. It is so held even as regards the present matters.

18. As regards decision in Kilasho Devi Burman and Ors.'s case (supra) cited by learned counsel for the appellant, same does not come to the aid of the appellant as the same is distinguishable on facts.

Present case is the one where impugned notices of default assessments / assessment orders have not been digitally signed. But, the case, cited above, was a case where the record did not contain at all any signed assessment order.

29/1

19. In view of the above discussion, when the assessments of penalty under challenge do not bear/digital signatures of the concerned Assessing Authority, the same deserve to be set aside due to the reason that authenticity of such default assessment can safely be said to have arisen and led to invalidity.

20. As a result, both these appeals are allowed and the assessments framed by learned Assessing Authority and the impugned order passed by learned OHA upholding the said assessments are hereby set aside only on the ground that the assessments do not bear signatures or digital signatures of the Assessing Authority and are invalid.

21. File be consigned to the record room. Copy of the judgment be placed in the record of the connected appeal. One 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 : 29/12/2022

Narinder Kumar
29.12.2022

(Narinder Kumar)
Member (J)