

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

Appeal Nos. : 515-522/ATVAT/2015

Date of Judgment: 28/12/2022

M/s. Shyamlee Chandel,
Shop No. 29, Hudson Lane,
Kingsway Camp,
New Delhi-110009.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Manoj Kumar.
Counsel representing the Revenue : Sh. M. L. Garg.

JUDGMENT

1. All the above captioned 8 appeals came to be filed in March, 2016 challenging impugned order dated 10/03/2016 passed by learned Special Objection Hearing Authority (SOHA). The impugned order disposed of objections filed by the dealer u/s 74 of Delhi Value Added Tax Act.

The appeals pertain to the tax period 2013-14.

By way of objections, dealer had challenged assessments dated 15/06/2015 framed by learned Assessing Authority u/s 32 and



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33 of DVAT Act. On the basis of said default assessments, following demands were raised:

Tax Period 2013-14	Tax	Interest	Penalty
1 st	2,18,836	62,413	2,18,836
2 nd	8,59,825	2,21,624	8,95,825
3 rd	3,73,653	78,313	3,73,653
4 th	1,83,755	31,716	1,83,755

It may be mentioned here that initially assessments were framed by learned Assessing Authority vide order dated 01/03/2014, but the same were reviewed and that is how, the above said default assessments dated 15/06/2015 were framed.

2. Feeling aggrieved by the above assessment, dealer challenged the same before learned SOHA. As a result of the disposal of objections by learned SOHA, following demands were upheld:

Tax Period 2013-14	Tax	Interest	Penalty
1 st	1,00,823	-	1,00,823
2 nd	8,89,880	3,15,603	8,89,880
3 rd	3,73,653	1,18,545	3,73,653
4 th	1,83,755	51,502	1,83,755

3. Still feeling dissatisfied aggrieved, dealer-appellant filed these 8 appeals.
4. Vide order dated 22/02/2017 passed on application u/s 76(4) of DVAT Act, appeals were entertained subject to deposit of

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amount by way of pre-deposit. Accordingly, the appeals were adjourned for compliance.

Vide order dated 04/05/2017 an application filed by the dealer-appellant on 28/03/2017, with prayer for rectification of error/mistake in the order regarding pre-deposit, was disposed of, but no next date of hearing was given to the parties.

It may be mentioned here that after the order dated 04/05/2017 these appeal files were never put up or listed. None of the Counsel ever pointed out non-listing of the appeals.

It was on 29/11/2022 that the Registry found these files lying on the top of one of the almirahs of the Registry. Thereupon, notices were issued to the parties. Sh. Manoj Kumar, Counsel for the appellant appeared on 29/11/2022 and sought adjournment to seek instructions from the dealer as to whether the order u/s 76(4) of DVAT Act was complied with, and if so to file compliance report.

First quarter of 2013

5. Case of the Department-Revenue is that mismatch was noticed in the revised 2A-2B data furnished by the dealer-assessee. That is why, assessments were framed u/s 32 of DVAT Act. During objections filed u/s 74 of DVAT Act, as per 2B of the selling dealers M/s. Gwalior Distilleries' Pvt. Ltd., data available in 2B matched with 2A only to the tune of Rs.

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1,20,595/-. In this manner, still there was mismatch of Rs. 1,00,823/-. Therefore, learned OHA upheld demand of Rs 1,00,823/- with interest of Rs. 39,611/- as regards first quarter of 2013.

Separate assessment regarding levy of penalty came to be passed u/s 33 of DVAT Act on the ground of violation of the provision of section 86(10) of DVAT Act.

Second quarter of 2013

6. Case of the Department-Revenue is that mismatch was noticed in the revised 2A-2B data furnished by the dealer-assessee. That is why, assessments were framed u/s 32 of DVAT Act. During objections filed u/s 74 of DVAT Act, as per 2B of the selling dealers M/s. Fratelli Wines Pvt. Ltd., data available in 2B matched with 2A only to the tune of Rs. 5,946/-. In this manner, still there was mismatch of Rs. 8,89,880/-. Therefore, learned OHA upheld demand of Rs 8,89,880/- with interest of Rs. 3,15,603/- as regards second quarter of 2013.

Separate assessment regarding levy of penalty came to be passed u/s 33 of DVAT Act on the ground of violation of the provision of section 86(10) of DVAT Act.

Third quarter of 2013

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7. Case of the Department-Revenue is that mismatch was noticed in the revised 2A-2B data furnished by the dealer-assessee. That is why, assessments were framed u/s 32 of DVAT Act. During objections filed u/s 74 of DVAT Act, as per 2B of the selling dealers, none of them had given any output tax in favour of the objector. Accordingly, learned OHA observed that no relief could be given for the mismatch. As a result, the demand raised by the learned Assessing Authority was upheld, as regards third quarter of 2013.

Separate assessment regarding levy of penalty came to be passed u/s 33 of DVAT Act on the ground of violation of the provision of section 86(10) of DVAT Act.

Fourth quarter of 2013

8. Case of the Department-Revenue is that mismatch was noticed in the revised 2A-2B data furnished by the dealer-assessee. That is why, assessments were framed u/s 32 of DVAT Act. During objections filed u/s 74 of DVAT Act, as per 2B of the selling dealers, none of them had given any output tax in favour of the objector. Accordingly, learned OHA observed ^{that} no relief could be given for the mismatch. As a result, the demand raised by the learned Assessing Authority was upheld, as regards fourth quarter of 2013.





Separate assessment regarding levy of penalty came to be passed u/s 33 of DVAT Act on the ground of violation of the provision of section 86(10) of DVAT Act.

9. Hence, these appeals.

10. Arguments heard. File perused.

11. As is available from the facts, these are cases of mismatch as noticed by the department and learned SOHA, in respect of all the four quarters, resulting in levy of tax, interest and penalties.

12. As is available from the impugned orders, in respect of 1st and 2nd quarter of 2013-14, learned SOHA allowed relief to the dealer-assessee keeping in view that the data furnished by the two selling dealers named therein i.e. M/s Gwalior Distilleries P. Ltd. and M/s Fratelli Wines P. Ltd., matched with the output.

However, the impugned orders passed by learned SOHA do not describe the nature or reason of the mismatch and as to whether it was a case of mismatch because of any fault on the part of the dealer-assessee or on account of any fault on the part of the selling dealer.

13. In absence of details regarding the existing mismatches, it is difficult to make out as to how learned SOHA arrived at the conclusion and in passing of the impugned orders.


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14. The Revenue Authorities must join selling dealers, in case of mismatch appearing on the part of ~~the~~ ^(s) selling dealer. In the impugned order, there is no mention that ^{any} selling dealer was joined or associated in the proceedings while dealing with the point of mismatch.

In the given situation, the matters need to be remanded to learned SOHA for decision afresh after providing opportunity of being heard to the dealer and also by associating selling dealer(s), if required, having regard to the facts and circumstances/nature of ^{in each case} mismatch. For the purpose of associating the selling dealer(s) in the proceedings, learned SOHA may issue notice to the concerned selling dealer(s) or even call upon the dealer-appellant-assessee to ask the selling dealer(s) to appear/ participate in the proceedings with requisite record or to ask the selling dealer(s) for production of relevant record.

For the aforesaid reasons, the impugned orders passed by learned SOHA to the extent dealer-appellant is feeling aggrieved, are set aside and while disposing of the appeals, the matters are remanded to learned SOHA for decision afresh keeping in view the above said observations ^{after providing opportunity of hearing to the assessee.}

15. Dealer-assessee-appellant to appear before learned Special Objection Hearing Authority on 11/01/2023.

16. File, be consigned to the record room. One copy of judgment be placed in the record of the connected appeal files. 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: 28/12/2022

Narinder Kumar
28/12/2022

(Narinder Kumar)
Member (Judicial)

