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

Appeal Nos. : 456-459/ATVAT/2022
Date of Judgment: 09/01/2023

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

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Rakesh Kumar Aggarwal with Sh. Mukesh Singla.

Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. By way of above captioned 4 appeals, dealer-assessee, a proprietorship concern, has challenged impugned order dated 20/09/2022 passed by learned First Appellate Authority- Special Commissioner. Appeals have been filed through proprietor.
2. The matter pertains to tax periods 4th Quarter of the year 2013-14 and 2nd Quarter of the year 2014-15.
3. Vide impugned order four objections filed u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) on behalf of the dealer came to be dismissed, thereby upholding two notices of assessment of penalty dated 28/08/2014 and 28/11/2014 issued by Assessing Authority.
4. Vide notice of assessment of penalty, framed u/s 33 of DVAT Act read with section 86(12) of DVAT Act, learned Assessing

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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.

Vide separate notice of assessment of penalty u/s 9(2) of Central Sales Tax Act (hereinafter referred to as 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 the aforesaid reason.

5. 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 year 2014-15, due to late deposit of tax.

For the same reason, 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.

6. Feeling aggrieved by the above four assessments, dealer-assessee filed objections u/s 74 of DVAT Act.

7. 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

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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 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."

8. Hence, these appeals.

9. It may be mentioned here that vide order dated 27/12/2022, all these four appeals have been entertained without any pre-deposit.

10. Vide common impugned order dated 20/09/2022, learned OHA has upheld the assessments levying penalties, dismissing the objections raised by the objector.

11. As noticed above, two assessments were framed on 28/08/2014 levying penalty under DVAT Act and under CST Act in respect of 4th Quarter of 2013-14.

The other two assessments were framed levying penalty on 28/11/2014, under DVAT and CST Act in respect of tax period 2nd Quarter of 2014-15.

The reason for levy of penalty was late deposit of tax.

As regards "details for levy of penalty," Assessing Authority mentioned in the assessments dated 28/08/2014 that the same were attached in the form of an Annexure.

On perusal of the assessments dated 28/08/2014, it is found that no Annexure is lying attached to the copies available on record.

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.

Counsel for the appellant has submitted that actually no such Annexure was supplied to the assessee with these assessments.

12. During pendency of the appeals, proprietor of the dealer filed 4 affidavits, one in respect of each appeal. The affidavit is 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.

On behalf of the Revenue, nothing to the contrary has been brought on record to suggest that Annexures were there with the assessments uploaded on the portal of the Department of Trade & Taxes. This goes to show that none of the Annexures was either uploaded on the portal of the department or even otherwise supplied to the assessee-dealer.

13. The question arises as to whether in the given situation, the impugned assessments are sustainable or valid in the eye of law or not?

Learned counsel for the Revenue has referred to provisions of Section 80 of DVAT Act which provides that where assessment is in substance and effect in conformity with or according to the intent and purposes of this Act, no assessment made in pursuance of the provision of this Act shall be invalid due to any

mistake, defect or omission in said assessment. The contention is that the dealer-assessee knew that it had filed tax late and as such non-uploading of Annexures on the portal of the department by mistake defect or omission does not make the assessments invalid.

14. No doubt, section 80 provides that where assessment is in substance and effect in conformity with or according to the intent and purposes of this Act, no assessment made in pursuance of the provision of this Act shall be invalid due to any mistake, defect or omission in said assessment. But this is a case where the significant or material facts like number of days by which the tax was deposited late and the method applied for calculation of penalties do not find mention in the assessments. Learned counsel for the Revenue admits that the number of the days by which the tax was deposited late and the method applied for calculation of penalties were to be specified in assessments or in the Annexures to the assessments.

But, learned Counsel for the Revenue submits that this is a case where dealer itself knew as to after how much delay it had deposited tax and as such, non supply of Annexures to the assessments, to the dealer or their non uploading cannot be said to have caused any prejudice to the assessee.

15. Even if the dealer-assessee knew about commission of the offence i.e. late payment of tax, the initial burden to prove

commission of such an offence is always on the Revenue and here, the Revenue having not communicated to the dealer-assessee, in the form of assessments orders, which were without material particulars and requisite Annexures, it cannot be said that the assessments are valid in the eye of law.

For the same reasons, the assessments cannot be said to be in conformity with or according to the intent and purpose of DVAT Act and CST Act.

At the same time for the above reasons, it cannot be said to be a case of mistake or defect or omission not leading to the invalidity of the assessments framed.

16. As noticed above, the assessments pertain to the period 2013-14 and 2014-15. These were in respect of 4th quarter of 2013-14 and 2nd quarter of 2014-15 respectively under both the Acts i.e. DVAT Act and CST Act.

These were framed on 28/08/2014 and 28/11/2014. But learned OHA disposed of the objections vide order dated 20/09/2022 i.e. when the period prescribed for reassessments was over. Had this objection been noticed at the earliest, learned OHA could utilise the opportunity to remand the matter to learned Assessing Authority for fresh assessment, after removing the deficiency in the impugned assessments. But the fact remains that the objections came to be disposed of after about eight years.

17. No other argument has been advanced on behalf of the appellant.

18. In view of the above discussion, because of material deficiency in the assessments framed which are not covered by the provision of section 80 of DVAT Act, the impugned assessments of penalty framed by learned Assessing Authority and the impugned order passed by learned OHA, deserve to be set aside. Consequently, the appeals are allowed and as a result, the impugned assessments of penalty and the impugned order are set aside.

19. 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: 09/01/2023.

9/1/2023

(Narinder Kumar)
Member (Judicial)