

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

Appeals No. 165-166/ATVAT/16
Date of Judgement: 09/02/2023

M/s Rehau Polymers Pvt. Ltd.
B-II 63 Mohan Coperative Inds. Area,
Near Badarpur Metro Station,
New Delhi- 110009

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Proxy Counsel representing the Appellant : Sh. Umesh Sarwal.
Counsel representing the Revenue : Sh. P. Tara.

Judgment

1. Earlier the above captioned two appeals were dismissed vide judgment dated 08/01/2018 passed by this Appellate Tribunal.
2. Thereafter, on 08/02/2018, review application No. 09/ATVAT/2018 came to be filed by the dealer seeking review of the above said judgment dated 08/01/2018.
3. Arguments on the review application were heard on 13/04/2018 and order was reserved. Thereafter, vide order dated 29/08/2018, learned Member (Judicial) adjourned the review application to 03/10/2018 for arguments afresh. It was directed

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that learned Counsel for the parties be informed accordingly. It may be mentioned that the files never saw light of the day during the period from 03/10/2018 to 26/12/2022, as these appeal files were put up for the first time on 27/12/2022.

4. Registry reported that these files were found lying on the top of Almirah No. 9. As further reported by the office, this matter was not shown in the cause list dated 29/08/2018 and further that even though this matter finds mention in the cause list dated 03/10/2018, a cross was put simultaneously in the cause list. It was also reported that no order sheet of 03/10/2018 or of any date subsequent thereto is available in the file.

Registry also reported that even though one review application was filed, the concerned official assigned two numbers to the one review application.

5. Accordingly, Court notice was issued to Counsel for the parties for 04/01/2023. Thereupon, Sh. Umesh Sarwal, proxy counsel, appeared for the applicant and Sh. P. Tara, Advocate, appeared for the Revenue. At the request of Counsel for the Revenue that he was to check the record to find out if review application was ever disposed of, matter was adjourned. Thereafter, Counsel for Revenue submitted that he could not verify from the office if the review application was or was not disposed of. However, learned Counsel for the parties expressed their readiness to advance arguments on the review application. Accordingly,

26/12/22



arguments were advanced by learned counsel for the parties on the review application.

6. Vide detailed order dated 20/01/2023, review application was disposed of and both the Appeals No. 165-166/16 were restored to their original number for decision of a specific and only point as regards rate of tax in respect of subject goods, in view of Determination Order dated 22/12/2016 passed by the Commissioner u/s 84 of DVAT Act.
7. In this regard, Paras No. 9 and 10 of the order passed ~~asked~~ on the Review application are reproduced as under for ready reference:

“9. Counsel for the applicant has pointed out that rate of tax applicable to subject goods was applied as 12.5%, but as per the order passed by the Commissioner, u/s 84 of DVAT Act, in another matter of the dealer, the applicant-dealer was held liable to pay tax @5% on same goods.

He further submits that in the course of arguments on appeals, he had raised this very contention also which find mention in para 3 of the judgment dated 08/01/2018, but, while disposing of the appeals, this Appellate Tribunal did not decide this contention raised by him and decided only the other point that is of interest raised by him.

10. As per para 3 of the judgment dated 08/01/2018, issue regarding rate of tax was raised on the basis of order dated 22/12/2016 passed by the Commissioner u/s 84 of DVAT



Act. This contention was to be dealt with. Indisputably, this contention does not appear to have been dealt with while passing the judgment. Therefore, this application for review so as to decide the said contention i.e. as regards rate of tax, in view of subsequent order dated 22/12/2016, needs to be decided for complete and effective adjudication of the appeals.

Accordingly, while disposing of this application, both the Appeals Nos. 165-166/2016 are restored to their original number for the purpose of decision on the above said point i.e. as regards rate of tax in respect of subject goods, in view of Determination Order dated 22/12/2016 passed by the Commissioner u/s 84 of DVAT Act.”

8. It may be mentioned here that as regards non-putting up of the file by the staff from 03/10/2018 onwards, matter has been brought to the notice of Commissioner, Department of Trade & Taxes for disciplinary enquiry.
9. Arguments heard in the two appeals on the aforesaid limited point i.e. as regards rate of tax in respect of subject goods in view of the Determination Order dated 22/12/2016 passed by the Commissioner u/s 84 of DVAT Act.
10. Counsel for the appellant has contended that Assessing Authority *vide assessment dt. 22.2.2014* levied tax on the subject goods at the rate of 12.5%, but in view of the Determination Order dated 22/12/2016 passed by Commissioner, Department of Trade & Taxes on the



application of dealer – appellant, the subject goods were exigible to tax at the rate of 5%, and as such the impugned assessments framed by the Assessing Authority and the impugned order^{dt. 18.4.2016} passed by the Learned SOHA upholding the said assessments, deserve to be set aside.

11. On the other hand, learned counsel for the Revenue has contended that the Determination Order was passed by the Commissioner, Department of Trade & Taxes in respect of laminated plastic strip termed by the dealer as Edge Band, manufactured and sold by the dealer-assessee, but these appeals do not pertain to said item, and rather as per claim of the dealer – assessee put forth in the appeals, it is engaged in manufacturing and trading of PVC goods, and the kind of the PVC goods has not been specified anywhere, and as such the Determination Order does not come to the help of the appellant.
12. Learned counsel for the Revenue has rightly submitted that the Determination Order pertained to goods manufactured i.e. plastic strip called Edge Band and that PVC (Polyvinyl Chloride) is different from the plastic strip called Edge Band.
13. As per copy of the Determination Order, it was passed on 22/12/2016 on application dated 07/07/2016 filed by the dealer-assessee i.e. subsequent to the present assessments (which were framed on 22/02/2014) and even subsequent^{to} the passing of the impugned order^{by} learned SOHA (which were passed on



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18/04/2016). In view of provision of Section 84(3)(b) of DVAT Act, no application for the determination of a determinable question may be made after the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question occurred. This goes to show that the application for ~~determination~~ ^{was determination of} subsequently submitted ^{for} the following question, which pertained to different industrial output:

“Whether Laminated Plastic Strip manufactured and sold by the company is covered by Entry 84(166) of Schedule III of DVAT Act?”

14. As is available from para 5 of the Determination Order, the applicant claimed ^{herein} that it was engaged in manufacturing of “plastic strip called Edge Band,” being used by the furniture industry for different uses to protect furniture, doors, panels etc. In these memorandum of appeals, as per brief facts, dealer - company claims to be engaged in manufacturing and trading of “PVC goods.” Nowhere, it has been claimed by the dealer in the appeals that the company is engaged in manufacturing of Edge Band. Therefore, said Determination Order does not come to the aid of the dealer.

15. In the Determination Order, as per claim of the dealer, “PVC” is the major material used in the manufacturing of Edge Band. Therefore, as per case of the dealer itself, PVC is a material



whereas the plastic strip called Edge Band is the product/output.

Herein, the appellant has not claimed that it was engaged in manufacturing and trading of plastic strip ^{called} ~~or~~ Edge Band.

16. Even otherwise, entry at serial No. 84(165) of Schedule III of DVAT Act pertains to sub-heading 39.19 and entry at serial No. 84(166) pertains to sub-heading 39.20. Each entry pertains to different items. Same are reproduced hereunder for ready reference:

Sl. No.	Heading No.	Sub Heading No.	Description of goods
84.	165.	39.19	Self adhesive plates, sheets, film foil, tape, strip of plastic whether or not in rolls.
	166.	39.20	Other plates, sheets, film, foil and strip, of plastics, non-cellular, whether lacquered or metallised or laminated, supported or similarly combined with other materials or not.

17. Strip of plastic, and ~~industrial output~~, is covered by entry at serial No. 84(165)(39.19), whereas all other plates, (other than those which find mentioned in entry at serial No. 84(165), like sheets,



film, foil and strip of plastics, are covered by entry No. 84(166)(39.20).

18. When, herein, dealer has nowhere claimed that the assessments pertained to plastic strip - Edge Band, the Determination Order dated 22/12/2016 cannot be applied to these appeals. As a result, it cannot be said that the subject ^{i.e. Pvc - material used} goods/which were subjected to tax by the Assessing Authority were plastic strip called Edge Band. In other words, it cannot be said that the ^{i.e. Pvc - material} goods/to which the impugned assessments pertain were exigible to tax at the rate of 5% because of entry No. 84.
19. As regards the other points/ issues, same already stand decided by this Appellate Tribunal, vide previous judgment dated 08/01/2018, for the reasons recorded therein.
20. In view of the above discussion, both these appeals deserve to be dismissed. It is ordered accordingly.
21. 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 : 09/02/2023



Narinder Kumar
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(Narinder Kumar)
Member (J)