

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

Appeal No : 396/ATVAT/2017

Date of Decision : 13/02/2023

M/s Delhi State Indl. & Infrastructure
Development Corporation Limited,
A-3/4, State Emporia Building,
Baba Kharak Singh Marg.
Con. Circus, New Delhi.

.....Appellant

v

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Sudhir Sangal with Sh.
Rohit Tanwar, Section Officer of
appellant, with Ms. Usha, CA of
Appellant.

Counsel representing the Revenue : Sh. C.M. Sharma

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v

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..... Respondent

Narinder Kumar
13/2/2023



Counsel representing the Appellant : Sh. Sudhir Sangal with Sh. Rohit Tanwar, Section Officer of appellant, with Ms. Usha, CA of Appellant.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. The appellant, a government undertaking of NCT of Delhi, is engaged in the business of conducting sale of liquor and goods. The company has also an Exhibition Division.
2. This common judgment is to dispose of the above captioned two appeals filed by the dealer - Appellant Corporation.
3. Both the appeals have been filed challenging the impugned order dated 12/12/2017 passed by learned OHA whereby notices of default assessment of tax, interest and penalty for the year 2009-10, framed by the Assessing Authority, have been partly upheld, while allowing the objections filed by the dealer to an extent.
4. As per case of the appellant, the accounts of the appellant – undertaking are audited by statutory auditors and also by Comptroller Auditor General of Accounts of India.

As regards tax period 2009-10, its account books were subjected to default assessment. At that time, Assessing

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Authority found that the appellant – corporation had concealed turnover relating to works contract executed during the said period i.e. 2009-10.

5. Vide notice of default assessment of tax and interest u/s 32 DVAT Act, Assessing Authority directed the Appellant Corporation to deposit a sum of Rs. 31,78,63,055/- i.e. Rs. 16,82,79,085/- by way of additional tax and Rs. 14,95,83,970/- towards interest.

Vide notice of assessment of penalty u/s 33 of DVAT Act issued on 31/3/2016, the Assessing Authority imposed penalty of Rs. 51,99,82,110/-.

6. In the notice of default assessment u/s 32 of DVAT Act, the Assessing Authority observed in the manner as:

“Since, the limitation period of four years for assessment has lapsed, the provisions under section 34(1) of the DVAT Act, 2004 was invoked for carrying out an assessment of the dealer for the period 2009-10.

“Subsequently, a notice under Section 59(2) was issued on 17.03.2016 for furnishing detail information with regard to works contract turnover for the period under assessment.

In response, the dealer, through their authorized representatives, submitted only copies of their audited balance sheet. No other relevant information has been submitted, despite sufficient opportunities given to them.

On examination of the submitted audited Balance Sheet, it has been noticed that the dealer undertook deposit and project

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works for a consideration sum amounting to Rs. 1,79,49,76,906/- during the period under assessment. The DSIIDC received full contract value/consideration from the government department/ government and further entered into contracts with the sub-contractors.

Here, the principal is the contractee /government department for whom the civil works are executed by the DSIIDC and the DSIIDC itself is the main contractor. Therefore, the turnover of the DSIIDC under the "Deposit & Project Works" are liable to be tax under the works contracts.

Perusal of the return filed by the dealer shows that no turnover under the works contract had been shown/revealed by the dealer, thereby concealing their taxable liabilities. Though, the dealer had deducted TDS from their sub-contractors under Section 36A of the DVAT Act, they had failed to report their turnover over the years for the Deposit and Project Works executed.

Deduction of 25% of the turnover/deposit works is allowed under rule 5(iii) of the DVAT Rules, 2005 towards labour, services and other like charges since the dealer has not provided the details/books of accounts and are not ascertainable from its audited balance sheet under the provisions of rule 3(2) of the Delhi VAT Rules, 2005.

Further, the dealer has also not provided the details of declared goods under the provisions of section 4(1) (d) of the DVAT Act, 2004. Hence, the whole of taxable amount is tax @ 12.5%.

The assessment of the works contract turnover during the period is as under:

- (a) Turnover on Deposit & Project Works: 1794976906
- (b) Labour & Service charges (25% deduction): 448744227



- (c) Net Turnover: 1346232679
- (d) Declared goods turnover: Nil
- (e) Non-declared goods turnover: 1346232679
- (f) Taxable turnover: 1346232679
- (g) Tax @ 12.5% VAT) 168279085 + Interest”.

7. Feeling aggrieved by the above notices of assessment of penalty, Appellant - Corporation filed objections.

Vide order dated 12/12/2017, learned OHA - Shri Rajesh Goyal, Addl. Commissioner, VAT, disposed of the objections filed by the Appellant Corporation, accepting one of the objections but rejecting the other objections, and thereby partly upheld the levy of tax, interest and penalty by the Assessing Authority, and directed the objector – dealer to deposit tax, interest and penalty within 15 days.

8. It may be mentioned here that the learned OHA set-aside the assessment made by the Assessing Authority, as regards a sum of Rs. 6,01,77,452/- i.e. the expenses incurred by the dealer – objector on renovation of the office of Appellant Corporation, while observing that the said amount was not liable to be taxed under DVAT Act as works contract, as rightly submitted on behalf of the dealer – objector.

While upholding the penalty, learned OHA observed that he was upholding the notice of assessment of penalty considering all the facts and circumstances and also taking into



consideration that huge amount of tax deficiency had arisen, due to non disclosure of works contract turnover by the objector – dealer.

9. Feeling dissatisfied with the order dated 12/12/2017 passed by learned OHA, Appellant Corporation filed present appeals in the year 2017.
10. As per impugned order one of the preliminary objections raised on behalf of the dealer was that the notices of default assessment of tax, interest and penalty were passed after expiry of the period prescribed u/s 34 of DVAT Act, without taking approval of the competent authority for extension of the period for assessment.

While dealing with this objection, learned OHA observed that it was evident from the facts on record that it was a case of concealment, omission and failure on the part of the dealer to correctly report the required information of turnover and purchase in its returns.

The learned OHA also referred to order no. F.6(7)/DVAT/L&J/ 2013-14/748 dated 12/11/2013, vide which the Commissioner delegated all the powers u/s 34 of DVAT Act to all officers appointed under sub-section (2) of section 66 of DVAT Act, not below the rank of Joint



Commissioner concerned. Learned OHA went on to observe that the Assessing Authority had obtained necessary permission from the competent authority for extension of prescribed period of four years to six years, and the said permission was also placed on record.

11. While dealing with other grounds, taken in the objection by the dealer – objector, learned OHA observed that according to the Assessing Authority, it was evident from the balance sheet and other records produced before him that during the year 2009-10 total project works undertaken by the dealer were to the tune of Rs. 1,79,49,76,906/- and deduction on account of labour, services etc. was allowed, but there being nothing on record regarding incorporation of declared goods in the said projects, remaining turnover was subjected to tax @ 12.5% with interest, in addition to penalty u/s 86(12) read with section 33 of DVAT Act.

Accordingly, learned OHA was of the view that deduction @ 25% by the Assessing Authority could not be faulted.

12. Hence, these appeals.
13. It may be mentioned here that today when the appeals have been taken up for further arguments, learned counsel for the dealer-appellant has submitted that some documents which are

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available at page 33 to 42 in the Index of Papers dated 07/05/2019 and pertain to tax period 2009-10, were not produced by the dealer before learned OHA and that for the first time said documents, prepared on the basis of books of accounts of the dealer were submitted before this Tribunal with the said Index of Papers dated 07/05/2019.

Learned counsel for the appellant has further submitted that in the interest of justice, the matter may be remanded to learned OHA for decision afresh, while taking into consideration the above said documents available from page 33 to 42 of the said Index of Papers.

In view of the above submissions put forth by learned counsel for the dealer-appellant, learned counsel for the Revenue has no objection to the allowing of the said prayer of learned counsel for the appellant i.e. for remand of the matter to learned OHA for consideration of the above said documents submitted before this Tribunal for the first time, with this Index of Papers dated 07/05/2019.

Learned counsel for the appellant has further submitted that in view of the above said prayer on behalf of the dealer for remand to learned OHA and no objection on behalf of the Revenue for decision afresh taking into consideration this set of papers and books of accounts, he does not press any other

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ground taken up in the written submissions or argued before this Appellate Tribunal.

The above submissions have been made by learned Counsel for the appellant in presence of Sh. Rohit Tanwar, Section Officer from the dealer-appellant, with Ms. Usha, CA of the Appellant.

14. Section 76(5) of DVAT Act provides that in the proceedings before this Appellate Tribunal, the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reason. Sub-rule (2) of Rule 57C of DVAT Rules, 2005 provides that the Appellate Tribunal shall not, for the first time receive in evidence on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred.

It is true that admittedly, the dealer-appellant did not produce the above said documents before learned OHA and no prior permission was sought by the dealer-appellant to produce the same before this Appellate Tribunal, but taking into consideration that these copies appear to have been submitted with the index of papers dated 07/05/2019, which are relevant

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for the purpose of framing of assessments for the tax period 2009-2010, and are stated to have been prepared from the books of accounts maintained by the dealer, an undertaking of Government of NCT, the matter deserves to be remanded to learned OHA for decision afresh taking into consideration the said documents and the books of accounts on the basis of which the same have been prepared.

As a result, the impugned default assessment of tax and interest and the assessment of penalty pertaining to tax period 2009-2010 are set aside and these appeals are disposed of, while remanding the matters to learned OHA for framing of assessments afresh taking into consideration the said documents marked as Mark C-1 (collectively) and the relevant books of accounts i.e. the basis of the said documents have been prepared, and while providing an opportunity of being heard to dealer of the appellant regarding the said documents and the books of accounts.

15. Dealer is directed to appear before learned OHA on 27/02/2023.



16. File be consigned to the record room. Copy of the judgment be supplied to both the parties as per rules. One copy be placed in the connected appeal file No. 397/17. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 13/02/2023



Narinder Kumar
13/2/2023
(Narinder Kumar)

Member (J)