

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

Appeal Nos. : 383-384/ATVAT/22

Date of Judgment : 21/02/2023

M/s. Bajrang Agro Products  
Office No. 305, B-09, ITL Twin Towers,  
Netaji Subhash Place, Pitampura,  
New Delhi-110034.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. A. K. Rai and  
Sh. Manoj Jain.  
Counsel representing the Revenue : Sh. M. L. Garg.

**JUDGMENT**

1. The above captioned two appeals came to be presented on 28/03/2022.
2. The matter pertains to tax period-2<sup>nd</sup> Qtr. of the year 2015-16.
3. The dealer-assessee-appellant is engaged in the business of resale of Kirana Goods, Herbal Products and Spices, having registration under Delhi Value Added Tax (hereinafter referred to as "DVAT Act") and Central Sales Tax Act (in short "CST").

Demand of tax, interest and penalty was raised by learned Assessing Authority-VATO (Ward-64) as two commodities i.e. Haldi and Amchoor were found stored in a godown known as



*Narinder Kumar*  
21/2/2023



Bajrang Cold Storage,<sup>at-</sup>/Kundli, Sonapat (Haryana). These were declared as "undeclared Central Sales" and accordingly, assessment was framed in respect of the two items, and demand of tax and interest was raised.

The disputed demand towards tax and interest under CST Act, is of Rs. 6,84,968/- under CST Act. Vide separate assessment u/s 9(2) of CST Act read with u/s 86(10) of DVAT Act, learned Assessing Authority levied penalty of Rs. 6,61,849/-.

4. It may be mentioned here that the learned Assessing Authority initiated proceedings on receipt of letter no. 6635-41, dated 03/11/2015, from Assistant Commissioner (Ward-28).

Vide said letter, the Assistant Commissioner had communicated to the learned VATO (Ward-64) that when Enforcement Team conducted survey at the said storage, the dealer-assessee was found to have stored items at its Cold Storage, in Kundli, Sonapat (Haryana).

Consequent upon receipt of this communication, learned Assessing Authority issued notice u/s 59(2) of DVAT Act to the dealer-assessee.

Authorised Representative of the dealer appeared and pleaded that the items i.e. 30000 kgs of Haldi and 58497 kgs of Amchoor were stored at the aforesaid Cold Storage<sup>at</sup> in Kundli due to insufficient space in Delhi.



21/2/23



5. Feeling dissatisfied with the above said assessments, the dealer filed objections u/s 74 of DVAT Act before learned OHA-Joint Commissioner.

Vide common order dated 25/02/2022, learned OHA dismissed the objections and upheld the demands raised by the learned Assessing Authority vide above said assessments dated 14/01/2016.

6. While dismissing the objections, learned OHA observed in the manner as:

“The Assessing Authority while passing the impugned notice of default notices of default assessment of tax, interest and penalty has assumed the rates of Haldi @ Rs. 100 per Kg. and Amchoor @ Rs. 175 per Kg. is purely based on the facts & considering the requisite purchase bills and other documents as filed by the Objector Dealer before the Assessing Authority in order to substantiate its claim.

Moreover, goods of the dealer registered in Delhi are lying outside Delhi and also submits that in Delhi there is not sufficient space to store the goods. There is little storage space in Delhi is unjustified statement.

The undersigned is of the considered view in the interest of law and justice, that the impugned notice of default assessment of tax and interest under the CST Act dated 14.01.2016 for the second period 2015-2016 is hereby upheld and accordingly, objection no.151253 and 151251 dt 02.03.2016 are dismissed in aforesaid terms.”

7. It may be mentioned here that vide order dated 08/12/2022 on application u/s 76(4) of DVAT Act, dealer-assessee was

21/2





directed to deposit Rs. 40,000/- by way of pre-deposit. Said order has been complied with, as reported by the office.

8. Arguments heard. File perused.
9. Counsel for the dealer – appellant has contended that the impugned assessments have been framed against law, in having assumed the rates of the two items, ignoring the actual rates which find mention in the invoices made available to the Revenue Authorities, and as such impugned assessments and the impugned order passed by learned OHA deserve to be set aside on this ground.
10. Admittedly, before framing of assessments, notice u/s 59(2) of DVAT Act was issued by learned Assessing Authority to the dealer-assessee.

Before learned Assessing Authority, it was the case of the assessee-appellant that the said items i.e. 30,000 kgs of Haldi and 58,497 kgs of Amchoor were stored at the Cold Storage in the area of Kundli, which is in Haryana, as there was inadequate space in Delhi to store the said items. Said claim of the assessee-appellant was rejected by the Revenue Authorities.

11. Revenue does not dispute factum of purchase of the above said quantity of each item i.e. Haldi and Amchoor by the assessee-appellant. The factum of storage of the said items in the Cold Storage, outside Delhi, came to the notice of the Revenue





Authorities only when Enforcement Team detected the same on survey conducted in August, 2015.

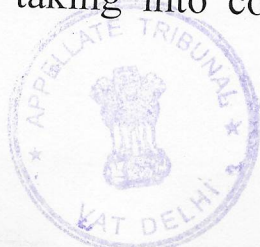
12. In support of his argument that Assessing Authority assumed rates of the 2 items i.e. Haldi and Amchoor, without any basis, learned Counsel has relied on invoices at Page No. 39, 41, 43 and 46 of the appeal filed.

In the above mentioned invoices, last invoice depicts rate of Black Amchoor as Rs.15.25 paisa per unit. Counsel for the appellant submits that per unit means per kilogram.

As per the other three invoices, referred to above, the rate of turmeric finds mentioned as Rs. 5,800/- per quintal i.e. Rs. 58/- per kg.

In the course of arguments, learned Counsel for the Revenue has not disputed that in the assessments, learned Assessing Authority has not described the source on the basis of which he assumed the rates of the 2 items as Rs. 100/- per kg and Rs. 175/- per kg.

Even otherwise, when the 4 invoices were made available by the dealer-assessee, learned Assessing Authority should have considered the same and in case of rejection of the rates mentioned therein, given reasons. But, in the impugned assessments, learned Assessing Authority appears to have not been taking into consideration these invoices, what to say of





their rejection on one or the other ground. Therefore, there is merit in the contention raised by learned counsel for the appellant that learned Assessing Authority assumed rate of Turmeric as Rs. 100/- per kg and rate of Amchoor as Rs. 175/- per kg, without any basis or adequate reasons.

Similarly, learned OHA upheld the said rates assumed by learned Assessing Authority, without providing any justification or reasons.

In the given situation, the matter needs to be remanded to learned OHA for decision afresh, only on the point of rates of the said 2 items i.e. Turmeric (Haldi) and Amchoor, while conducting inquiry on this point and taking into consideration the above said invoices which were made available by the dealer, and while affording an opportunity of being heard to the dealer – objector.

13. In the course of arguments, when this Appellate Tribunal has expressed to learned counsel for the parties that the matter needs to be remanded to learned OHA for the aforesaid reasons, learned counsel for the appellant has no objection to the remand of the matter to learned OHA on the aforesaid point i.e. the point of rates of the said 2 items i.e. Turmeric (Haldi) and Amchoor, while conducting an inquiry on this point, and taking into consideration the aforesaid invoices, of course while affording an opportunity of being heard to the dealer – objector.





Even counsel for the Revenue has no objection to the remand of the matter for decision afresh on the aforesaid point.

14. As a result, the appeals are disposed of, and only on the point of rates of the said 2 items i.e. Turmeric (Haldi) and Amchoor, while setting aside the impugned order passed by learned OHA, matter is remanded to learned OHA for decision afresh, while conducting an inquiry on this point, and taking into consideration the aforesaid invoices, of course while affording an opportunity of being heard to the dealer – objector.

It is made clear that learned OHA shall also afford reasonable opportunity of being heard to the dealer, as regards assessment of penalty, if any.

15. Dealer is directed to appear before learned OHA on 15/03/2023.
16. File be consigned to the record room. Copy of the judgment be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 21/02/2023



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(Narinder Kumar)  
Member (J)