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

Appeal No. 40/ATVAT/23
Date of Judgment: 22/02/2023

M/s. A.R. Hind Laser Point Ltd,
Shop No, 8, 43 Veer Savakar Block,
Shakarpur, Delhi-110097

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi .....Respondent

Counsel representing the Appellant : Sh. Sanjeev Saxena.
Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. On 02.05.2017, dealer/assessee/applicant presented the above captioned appeal in Form DVAT 38A challenging order dated 21.02.2017 passed by learned Additional Commissioner/ Objection Hearing Authority (hereinafter referred to as Ld. OHA).
2. It may be mentioned here that the appeal was not registered by the staff in May 2017. Same has been registered by the Registry today.
3. Vide impugned order, Ld. OHA disposed of objections filed by dealer under Section 74(1) of DVAT Act. Said objections were filed challenging assessment of penalty framed by the

Narinder Kumar
22/2/2023

Assessing Authority on 29.09.2016 under Section 33 read with Section 86(14) of DVAT Act.

4. Penalty was levied due to the reason that dealer failed to furnish requisite record sought to be produced vide notice u/s 59(2) of DVAT Act.

5. Arguments heard. File perused.

6. Counsel for the appellant has today submitted copy of notice purported to have been issued by the department on 26/08/2016 requiring production of Sale Register Form DVAT-31 for month of May, 2016. The contention is that there was no communication from the department to the dealer for submission of Form DVAT 31 for May 2016, as dealer – applicant did not know that any such notice had been uploaded. Another contention is that the notice does not bear signature of AVATO. Consequently, counsel for appellant has urged that the appeal deserves to be allowed. In support of his contention, counsel for appellant has relied on certain decisions.

7. The above said submission put forth before learned OHA, on behalf of the dealer that there was no communication from the department to the dealer for submission of Form DVAT 31 for May 2016, as dealer – applicant did not know that any such notice had been uploaded, was rejected. While rejecting objections, learned OHA observed that notice was served on the dealer by pasting the same on DVAT login.ID of the dealer, but the dealer failed to submit the requisite document.

22/2

8. In **Bhumika Enterprises v. Commissioner Value Added Tax & Anr.**, W.P. (C) 7515/2015, decided by our own Hon'ble High Court on 28/08/2015, Hon'ble High Court referred to the observations already made i.e. prior to 28/08/2015 (the date of decision in Bhumika Enterprise's case), which were to the effect that notices u/s 59(2) of DVAT Act as well as default assessment notices, which were "system generated" and had not infact been "human generated" by the concerned VATOs, violated the principles of natural justice. Therein, it was further observed that both kind of notices i.e. u/s 59(2) and the notices of default assessment, which were system generated, had to go. Following are the other decisions cited by counsel for the appellant on the same point:

   i. **M/s Goldman Hosiery v. Commissioner of Trade & Taxes** decided this Appellate Tribunal on 29/12/2022;
   ii. **M/s Cool Bird Engineers v. Commissioner of Trade & Taxes** decided this Appellate Tribunal on 09/09/2022.

9. In view of the above decision, Circular No. 24 of 2015-16 was issued vide Notification No. F.3(577)/Policy/VAT/2015/697-702 dated 10/09/2015 by Special Commissioner (Policy), and thereby the concerned VATOs were directed to issue fresh notices in accordance with law and that all concerned VATOs would take steps so that the notices/orders were not system generated notices or orders without human interface.

10. Here, a perusal of the impugned notice would reveal that same cannot be termed to be "system generated", the reason being that the name of the dealer, the record requisitioned from it and the tax period were typed. Significant to note that the assessments bears Reference numbers with date. Therefore, it cannot be said that the said notice was a system generated notice.

11. It is true that notice u/s 59(2) of DVAT Act does not bear signatures or digital signatures. Where such a notice is displayed on the portal of the Department, the same being without digital signatures, question of authenticity of the notice would certainly arise and lead to the invalidity of the said notice, as is in the present case.

12. In view of the above discussion, when the notice u/ 59(2) of DVAT Act does not bear signatures or digital signatures of the concerned Assessing Authority, no such penalty could be imposed for want of a valid notice. Therefore, the assessment of penalty deserves to be set aside.

In the given situation, even though learned OHA was competent to issue directions to learned Assessing Authority for issuance of a valid and fresh notice bearing signatures or digital signatures in terms of decision in Bhumika Enterprise's case (supra), no such direction was issued by the learned OHA for the purpose of compliance with the said decision by the

Hon'ble High Court. Therefore, the impugned order passed by learned OHA also deserves to be set aside on said ground.

12. In the course of arguments, counsel for appellant also referred to decision by this Appellate Tribunal in **M/s A.K. Woollen Industries v. Commissioner of Trade & Taxes, Delhi**, reported as (2013) 51 DSTC 136 (Delhi) to contend that therein penalty imposed u/s 86(14) of DVAT Act for non-compliance with notice u/s 59(2) of DVAT Act was set aside and that for the same reasons the levy of penalty in this case also deserves to be set aside.

Therein, Appellate Tribunal was of the view that the impugned order suffered from lack of jurisdiction due to the reason that jurisdiction could not be exercised u/s 59(2) of the Act in absence of Rules, same having not been framed by then.

On the other hand, learned counsel for the Revenue has rightly pointed out that in ST.APPL. 65/2014, preferred by the department against the above said decision, Hon'ble High Court clearly observed that the above said observations made by this Appellate Tribunal were not correct. Therefore, decision in A.K. Woollen Industries' case by this Appellate Tribunal, which was not approved of, should not have been relied or cited in the course of arguments.

13. As a result, this appeal is allowed and the assessments framed by learned Assessing Authority imposing penalty and the

22/2

impugned order passed by learned OHA upholding the said assessment, are hereby set aside only on the ground that the notice u/s 59(2) of DVAT Act does not bear signatures or digital signatures of the Assessing Authority and is invalid in the eye of law.

14. File be consigned to the record room. Copy of the judgment be sent 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 : 22/02/2023

22/2/2023

(Narinder Kumar)
Member (J)