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

Appeal Nos: 35-36/ATVAT/19
Date of Decision: 24/02/2023

M/s. Rainbow Automotive,
3458/4, Nicholson Road,
Mori Gate, Delhi. .....Appellant

v.

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

Counsel representing the Appellant : Sh. Ravi Chandhok and Sh. S. Sangal.
Counsel representing the Revenue : Sh. C.M. Sharma

JUDGMENT

1. By way of present appeals, dealer-assessee has challenged order dated 11/06/19 passed by Learned Objection Hearing Authority (OHA) – Special Commissioner – II whereby the default Assessment of Tax & Interest and separate assessment of penalty framed by the Assessing Authority (AVATO – Ward – 39) have been upheld.
2. Assessing Authority framed assessment vide orders dated 12/01/18 and 15/01/18 passed under Section 9 of CST read with Sections 32 and 33 of DVAT Act.

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By way of default assessment, learned Assessing Authority directed the dealer to pay Rs. 32,27,708/- i.e. Rs. 20,73,231/- towards additional tax and Rs. 11,54,477/- towards interest.

3. The Assessing Authority also directed the dealer to pay Rs. 20,73,231/- by way of penalty, u/s. 86(10) of the Act read with Section 9(2) of CST Act.

4. Impugned assessments pertain to tax period - Annual 2013 and came to be framed due to the following reasons:

> "A notice u/s. 59(2) with reference No. 10393109 dated 01/12/2017 for reassessment of 2013-14 on the basis of non verification of C Forms by the concerned States Commercial Tax Departments has been served by hand by the VATI Ward 39 on 05/12/2017 for reassessment of 2013-14 for which no one appeared before the AA. To give the natural justice, again a notice dated 01/01/2018 was served to the dealer by hand by the VATI-Ward-39. In response to the notice Sh. Sudheer Sangal, Advocate, was present for hearing on 08/01/2018 without POA, and other documents.
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> On the request AR the documents in possession of AA were provided. The request for further adjournment of the case for 15 days on 11/01/2018 has not been accepted as the high amount of revenue is involved.
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> On the basis of letter No. 595 dated 15/11/17, letter No. 352 dated 16/11/17 from Commercial Tax Department, Kashipur, Uttarakhand, the dealer M/s. Deepanshu Enterprises (TIN 050079453378) is not a registered dealer and the C Forms (Sl. No.UK VAT C/2007/850776) of Rs. 3008072/- for second quarter 2013-14 and of Rs. 1595520/- (Sl. No. UK VAT/C/2007/851167) of third quarter 2013-14 have not been issued to the dealer, hence the Central Sale to M/s. Deepanshu Enterprises (TIN 050079453378) on statutory forms of amount of Rs. 2949089/- for second quarter 2013-14 and amount of Rs.1564235/- for fourth quarter is disallowed.

On the basis of reply from Commercial Tax Department, Khatima, Uttarakhand vide letter 381 dated 27/11/2017, the 'C' (Sl.No. UK VAT/C 2009 5648114) of amount Rs. 3599512/- of M/s. S.K.Agencies (Tin No. 05012413697) for 2nd quarter 2013-14 has not been verified and said forms has not been issued to M/s. S.K.Agencies (Tin No. 05012413697) hence, the Central sale statutory forms of amount of Rs.3528928/- is disallowed.

On the basis of letter No. 381 dated 22/12/2017 from Commercial Tax Department, Haridwar, Uttarakhand the statutory forms UKVAT / C 2009 1352787 & 1352786 of amount of Rs. 399482/- and Rs. 100760/- respectively have not been issued to M/s. Sai Traders (Tin No. 05009779274) and hence, the Central sale on statutory forms for 3rd quarter for 2013-14 of amount Rs.391649/- and for 4th quarter 2013-14 of Rs.98786/- is disallowed on the basis of reply from Dy. Excise and Taxation Commissioner, Sales Tax Gurugram (East) vide letter 1876 / E -6 dated 30/10/2017 the C Forms of M/s. Swaraj International (TIN 06821835520) for 3rd quarter 2013-14 of amount Rs.3924262/- (Sl.No. HR/13 C 02231096) and for 4th quarter 2013-14 of amount Rs.3277628/- (HR /13 C 02231095) are not getting verified and hence, the central sale of Rs. 3847317/- for 3rd quarter 2013-14 and of Rs. 3213361/- for 4th quarter 2013-14 against statutory forms is disallowed.

On the basis of letter No. 212/ISD/CT dated 24/11/2017 from office of Commercial Tax West Bengal, the statutory forms of M/s. Deepanshu Enterprises (TIN 19891337981) of Rs. 4199424/- (Sl.No. 18111411904456) is not verified. Hence the central sale of Rs. 4117081/- for 4th quarter 2013-14 on the basis of statutory forms is rejected. In view of the non – verification of C Forms the Central Sale against C Forms of these dealers is disallowed and the cases assessed accordingly with penalty.

The time for payment of tax and penalty is being reduced as per Section 35 (4)."

5. Feeling aggrieved by the said assessment, the dealer filed objections u/s. 74 of DVAT Act before learned OHA.

6. The objections came to be rejected by learned OHA while observing in the manner as:

> "It is undisputed that for claiming benefit of concessional rate of tax on the central sales made by a dealer, he is required to furnish valid statutory forms (i.e C Form) as per Section 8 of the CST Act read with Rule 12 of the Central Sales Tax (R & T) Rules, 1957. In the present case, most of the C Forms as furnished by the dealer/ objector are manual forms which could not be verified online on TINSYX. The respective Tax Authorities have specifically informed that the C Forms were either not issued by them or not verified by them. Therefore, this is not the case, where statutory forms were initially issued and subsequently declared invalid & obsolete by the Tax Authorities, but the said forms have never been issued by the said Tax Authorities. In view of the said - facts, benefit of concessional rate of tax cannot be given to the dealer/ objector in absence of valid C Forms and therefore, accordingly assessed by the Ld. AVATO. Further, the Ld. AVATO has rightly assessed the dealer with due interest.
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> As far as imposition of penalty u/s. 86(10) is concerned, it is relevant to note that as already stated in pre-paras, the dealer has claimed benefit of concessional rate of tax on the basis of C-Forms without having valid C Forms. The said Forms have never been issued by the respective Tax Authorities as informed by them and despite the said fact the dealer/ objector has furnished a return which is false, misleading and deceptive in material particulars, therefore, penalty has been imposed accordingly u/s. 86(10) of the DVAT Act.
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> Keeping in view of the above facts, documents produced before the undersigned, arguments and legal position, I am of the considered opinion that the Ld. AVATO (W-39), after affording sufficient opportunity of hearing, has rightly framed default assessment and issued detailed speaking notices of

default assessment order and penalty order dated 12/01/2018 & 15/01/2018 respectively u/s. 9 of the CST Act read with 32 & 33 of the DVAT Act. Therefore, the impugned default assessment notices are upheld and the two objections filed by the objector dealer are rejected / disallowed in above terms."

7. Hence, these two appeals by the dealer.

8. Arguments heard. File perused.

9. This is a case where reassessments have been made on the basis of reply / information received from Commercial Tax Departments of other States.

A perusal of reassessment order dated 12/1/2018 would reveal that Assessing Authority initially issued to the dealer, notice dated 1/12/2017 u/s 59(2) of DVAT Act for 5/12/2017. Said notice came to be issued on the basis of non verification of 'C' Forms by the concerned Commercial Tax Departments of other States. As observed by the Assessing Authority, none appeared on behalf of the dealer before him on 5/12/2017.

In the objections filed u/s 74 of DVAT Act, dealer-appellant-objector did not dispute/ deny receipt of the notice u/s 59(2) dated 1/12/2017.

The Assessing Authority issued another notice dated 1/1/2018. On behalf of the appellant, it has been submitted that when counsel for the dealer appeared before Assessing Authority on 8/1/2018, he made request for supply of copies of documents; that copies of documents were made available

to the Counsel on the next date; that on 11/1/2018 counsel submitted an application before the Assessing Authority seeking adjournment for a period of 15 days, but the Assessing Authority rejected said prayer and on the very next day issued impugned notices of default assessments.

10. As regards levy of tax, interest and penalty vide assessment dated 12/1/2018 and 15/1/2018, for the reasons recorded by the Assessing Authority as per information received from the Commercial Tax Departments of other States statutory forms i.e. C-forms in respect of certain quarters of 2013-14 pertaining to sale to M/s. Deepanshu Enterprises were found to have not been issued; similarly statutory forms relating to 3rd & 4th quarter of 2013-14 said to have been given by selling dealers- M/s. Sai Traders m/s Swaraj International were found to have not been issued by the said department to the said purchasing dealer. These certain forms of 2nd qr issued by m/s S.K. Agencies could not be verified. Accordingly, the concession as regards the said statutory forms was disallowed.

11. On behalf of the appellant, reliance has been placed on three decisions i.e. in **M/s Milk Food Ltd. v. Commissioner, VAT,** (2023) 059 VST 001; **M/s. Swastik Industrial Powerline Ltd. v. Commissioner Trade & Taxes, Delhi,** ST.APPL.25/2013 decided by our own Hon'ble High Court on 28/8/2015; and **State of Haryana v. Inalsa Ltd. and Another,** VST.1 2011 (11) B-458, decided by Hon'ble Punjab & Haryana High Court on 1/9/2010.

as regards onus to prove genuineness of such form

12. In Milk Food Ltd's case (supra), substantial question of law before the Hon'ble High Court was:

> "Whether the Tribunal was right in law in placing the burden upon the dealer to show that the forms issued by the registered purchasing dealers in ST-1 were genuine and in consequently upholding the assessment and the appellate orders refusing to allow deduction of the sales made by the appellant to them under section 4(2)(a)(v) of the Delhi Sales Tax Act, 1975?"

Therein, Hon'ble High Court took into consideration the following decisions:

1. **State of Madras v. Radio and Electricals Ltd.**, (1966) STC 222 (SC);
2. **Manufacturers Ltd. v. Sales Tax Officer,** (1970) 26 STC 310 (A11) [FB];
3. **Lal v. Commissioner of Sales Tax,** (1986) 62 STC 112 (SC);
4. **A.D.M. Stores v. Commissioner of Sales Tax,** (1966) 18 STC 305 (Punjab);
5. **Prince Plastics & Chemical Industries v. Commissioner of Sales Tax,** (2003) 131 STC 372 (Delhi).

Hon'ble High Court observed that in view of the judgments relied on, it stood established that it is not the burden of the selling dealer to show that the declarations in Form ST-1 submitted by the purchasing dealer were not spurious or were genuine or that the conditions subject to which the forms were issued to the purchasing dealer by the Sales Tax Department were complied with. This aspect has been dealt with elaborately in the judgments cited above, the bottom-line

being that the burden will shift to the selling dealer only if it is shown that the selling dealer and the purchasing dealer had acted in collusion and connived with each other in order to evade tax by obtaining spurious forms of declaration.

It was for the dealer to satisfy that its case is covered by the above said decisions and that at the time of the transaction, the dealer – appellant had relied upon the representations made to him by the purchasing dealer; that the dealer satisfied that the purchasing dealer was a registered dealer and the goods purchased were specified in its certificate.

Whether the re-assessments for 1st and 2nd Quarters were framed beyond period of limitation?

13. One of the arguments advanced on behalf of the dealer-appellant is that the assessments in respect of 1st & 2nd quarter of 2013-14 are barred by limitation.

The contention is that assessment or re-assessment u/s 32 of DVAT Act could not be made after expiry of 4 years from the date on which the dealer furnished returns i.e. 25/07/2013 (as regards 1st Quarter) and 29/10/2013 (as regards 2nd Quarter), and as such the assessment framed on 12/01/2018 in respect of these two quarters i.e. 1st and 2nd quarters are barred by limitation.

In support of this submission counsel for the appellant has relied on decision in **Samsung India Electronics Private Limited v. Govt. of NCT of Delhi & Ors.,** W.P.(C) No. 2865/2014, by our own Hon'ble High Court, on 07/04/2016.

On the other hand, counsel for Revenue has contended that the assessments for the tax period – 1st & 2nd Quarters of 2013-14 are within the prescribed period of limitation, having been framed on 12/01/2018, in view of provisions of Section 34(1) of DVAT Act.

As regards decision in Samsung India Electronics Private Ltd.'s case (supra), learned counsel for the Revenue has contended that case pertained to the assessment year 2009-2010 and as such the observations made in respect of period of limitation as per amended provisions of Section 34(1) of DVAT Act are obiter dicta, and do not come to the aid of the dealer-appellant.

14. It is to be seen if law provides a period of four years for framing of reassessment, as per provisions of Section 34(1) and as to whether decision in Samsung India Electronics Private Ltd.'s case (supra) comes to the aid of the dealer-appellant.

15. Counsel for appellant has submitted that Section 34 came to be amended w.e.f. 01/04/2013, and keeping in view the tax

period, to which this matter pertains i.e. 2013-14 (Annual), the amended provision of law does not apply.

16. Section 34 of DVAT Act reads as under:

> **"34 : Limitation on assessment and re-assessment.**
>
> (1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from-
>
> (a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of this Act; or
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> (b) the date on which the Commissioner made an assessment of tax for the tax period,
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> whichever is the earlier:
>
> PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.
>
> (2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person."

17. In Samsung India Electronics Private Limited's case (supra), by way of a writ petition, challenge was made to the 12 notices issued u/s 32 and 33 of DVAT Act respectively, i.e. default assessments of tax, interest and for assessment of penalty framed on 31/03/2014.

Those notices pertained to the tax period – April, 2009 to March, 2010.Therein, the question that arose before the Hon'ble High Court was as to whether the demands raised against the petitioner therein by means of impugned notices or assessments were barred by limitation.

In para 30 of the judgment, Hon'ble High Court observed that as per provisions 34 of DVAT Act, the maximum period for framing of assessment or re-assessment u/s 32 of DVAT Act, is four years from "the end of the year comprising of one or more tax period for which the person furnishes a return u/s 26 or 28 of the Act or the date on which the Commissioner makes an assessment of the tax for the tax period, whichever is earlier".

Therein, it was contended on behalf of the department that for all the tax period – from April 2009 to March 2010, the four years period was to come to an end only on 31/03/2013 and therefore, the department was still having time to complete the assessments in terms of Section 34(1)(b) of DVAT Act.

Hon'ble High Court did not find any merit in the above said contention, by observing that notices for re-opening of the assessment for the months comprising the assessment year 2009-10, ought to have been issued before the expiry of respective date as shown in the table available in para 33 of the judgement.

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Accordingly, it was held that except the notices re-opening assessments for February and March 2010, the reopening of assessments in respect of all other months i.e. from April, 2009 to January, 2010, was sought to be done after the expiry of four years period. As a result, all notices, except pertaining to the months of February and March 2010, were held to be barred by limitation.

Assessee-therein was filing monthly returns and as such Hon'ble High Court observed that limitation for the purpose of Section 34 of DVAT Act was to be reckoned from the date of filing of return by way of self- assessment.

Hon'ble High Court while referring to provisions of Section 32 of DVAT Act observed that the Commissioner will re-assess to the best of his judgement the amount of net tax due for the tax period, where dealer has furnished in-complete returns which do not satisfy the requirement of the Act or for any reasons the return filed is not satisfactory.

18. Present matters pertain to the tax period – Annual 2013. Before the amendment, which came into effect from 01/04/2013, Section 34 provided that no assessment or re-assessment u/s 32 of this Act shall be made by the Commissioner after the expiry of 4 years from the date on which the person furnished a return u/s 26 of sub-section (1) of Section 28 of DVAT Act.

Herein, as claimed by the appellant quarterly return for the 1st Qtr. was furnished on 25/07/2013 whereas quarterly return for the 2nd Qtr. was furnished 29/10/2013. As per contention on behalf of the appellant, assessment for the 1st Qtr. could be framed upto 24/07/2017 whereas assessment for the 2nd Qtr. could be framed upto 28/10/2017.

The assessment orders came to be framed by learned Assessing Authority on 12/01/2018.

With all respect and humility, it is may be mentioned that Section 34 prescribes period of limitation for framing of assessment or re-assessment u/s 32 of DVAT Act, and this provision does not pertain to self-assessment u/s 31 of DVAT Act. Therefore, there is no merit in the contention raised by counsel for the appellant that section 34 prescribes period of limitation even in case of self-assessment furnished u/s 31 of DVAT Act.

It is true that period of limitation for framing of re-assessment in this case in respect of 1st and 2nd Qtr. of 2013 was 4 years, and when calculated from the above said dates of furnishing of returns i.e. 25/07/2013 and 29/10/2013, re-assessment could be framed in respect of these 2 Quarters i.e. 1st and 2nd Qtr. by 24/07/2017 and 28/10/2017 respectively.

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Since re-assessment came to be framed in respect of these 2 Quarters on 12/01/2018, same can safely be said to have been framed beyond the prescribed period of limitation.

Keeping in view the nature of the allegation of concealment of facts levelled against the dealer, learned Assessing Authority required specific order from the Commissioner for extension of period upto 6 years, provided under the first proviso to Section 34(1) of DVAT Act. It is not case of the Revenue that Commissioner extended the period of limitation upto 6 years as regards the said 2 Quarters. There is nothing on behalf of the department to explain as to why no steps were taken for extension of the period of limitation upto 6 years as regards said 2 quarters. In absence of any such order regarding extension of period of limitation, first proviso to Section 34(1) of DVAT Act does not come to the aid of the Revenue.

As a result, the assessments pertaining to 1st and 2nd Qtr. of the year 2013-14 are held to be barred by limitation. Accordingly, these assessments pertaining to the 2 Quarters and the impugned order passed by Learned OHA, upholding the same, deserve to be set aside. It is ordered accordingly.

Challenge to the Manner in which the Assessing Authority conducted proceedings

19. Counsel for the appellant has submitted that the manner in which the Assessing Authority proceeded, makes the impugned assessments bad in law. It has been put forth that it was on 08/01/2018 that counsel for the dealer appeared before the Assessing Authority and requested for supply of copies of documents, whereupon on 09/01/2018 said copies were supplied to the Counsel, but on the next date i.e. 11/01/2018, Counsel submitted a request seeking more time to collect certain information/documents so as to enable the dealer to file reply.

Further, it has been submitted that the Assessing Authority rejected said request and on the very next day i.e. 12/01/2018 framed the impugned assessments.

Counsel for the appellant has also pointed out that on 11/01/2018 i.e. a day before framing of assessment Assessing Authority issued a letter to the dealer directing it to be present on the same day.

20. As per record, initially, Assessing Authority had issued notice on 1.12.2017 calling upon the dealer to appear on 5.12.2017. Said notice was issued under Section 59(2) of DVAT Act in connection with reassessment on the basis of non-verification of "C" Forms by concerned State Commissioner, Tax

Department. But as stands recorded in the default assessment of tax and interest, none appeared before the learned Assessing Authority on 5.12.2017.

Learned counsel for Appellant has submitted that no notice dated 1.12.2017 was ever served upon the dealer. This fact was to be proved by the dealer, as required under Section 78 of DVAT Act. However, except this simple submission, no material has been brought on record in proof thereof.

Admittedly, in the objections filed before Learned OHA, it was nowhere disputed by the dealer that notice dated 1.12.2017 under Section 59 of DVAT Act was received by the dealer. Therefore, the contention that no notice dated 1.12.2017 was issued to the dealer under Section 59(2) of the DVAT Act, cannot be sustained.

In the course of argument, counsel for appellant has admitted that on 5.12.2017 none on behalf of the dealer appeared before the Assessing Authority.

Record reveals that Assessing Authority issued another notice dated 01.01.2018 and it was thereupon that counsel for the dealer appeared before the Assessing Authority on 08.01.2018. On 09.01.2018, on request, copies of some documents were provided to the counsel for the dealer. Thereafter on 11.01.2018, counsel for dealer submitted an

application before the Assessing Authority seeking adjournment for about 15 days.

Learned Assessing Authority rejected this application vide order of same date i.e. 11.01.2018, while observing that huge amount of revenue was involved and dealer was in possession of the requisite papers and also that opportunity had been provided to the dealer as per request made on its behalf.

In the application, counsel for the dealer had sought adjournment on the ground that dealer was to file objections on the issue of re-assessment, but he was in the process of collecting information, which was to take some time.

A perusal of the application submitted on 10.01.2018 would reveal that counsel for the dealer did not specify therein as to what the type of information was to be collected, so that the Assessing Authority could consider granting another opportunity.

Learned Counsel for Revenue has rightly pointed out that in case any information was to be collected by the dealer or its counsel, requisite documents could be submitted even before the Learned OHA, but as stands recorded by the Learned OHA in the impugned order, AR - counsel for the objector sought several adjournments. It is not case of the Revenue that any document was produced by its counsel/AR before learned OHA, despite several adjournments sought. In the given

situation, there is no merit in the contention on behalf of the Appellant that reasonable opportunity was not granted to the dealer or that the Assessing Authority framed assessments in its absence.

As regards notice dated 11.01.2018, same appears to have been issued by learned Assessing Authority to the dealer, and served upon Sh. Parveen Kumar, Clerk of Sh. Sudhir Sangal, counsel for the dealer apprising the dealer about rejection of the request for adjournment contained in the application submitted on the same day.

In case the order of rejection of request for adjournment was to be passed on the same day i.e. 11.01.2018 Assessing Authority could pass-over the matter with specific direction that same shall taken up on the same day, after some wait. Assessing Authority should have specifically informed counsel for the dealer specifically that it was going to be taken up once again on the same day for decision on the application and further orders. However, from the hand written order available at the bottom of the application submitted by the counsel for the dealer on 11.01.2018, it does not transpire that counsel was personally apprised by Assessing Authority that the matter was going to be taken on the same day once again for hearing or that said order of rejection was passed in presence of counsel for the dealer. No argument has been advanced on

behalf of the dealer denying that factum of rejection of request for adjournment was communicated to the dealer by serving copy on the clerk of learned counsel/ Authoritized Representative of the dealer.

In view of the above discussion, and taking into consideration that Learned OHA afforded several opportunities to the dealer during objections, it cannot be said that the Learned Assessing Authority proceeded in haste to frame reassessment.

Issue of rejection of "C" Forms

21. As regards rejection of Central Sales in respect of all the 4 Quarters of 2013-14, counsel for the appellant has submitted that as per observations made by Assessing Authority while framing re-assessment, some of the 'C' Forms were found to have not been issued to the purchasing dealer and some of the 'C' Forms were found to have not been verified.

The contention raised by learned Counsel for the appellant is that before rejecting the Central Sales for the above said reasons, an inquiry was required to be conducted by the Assessing Authority by joining the purchasing dealers, but no such step was taken by the Assessing Authority.

Further, it has been submitted that since this is not a case where Assessing Authority found that the supplying dealer

i.e. the appellant and the purchasing dealer had colluded in any manner, the impugned assessments deserve to be set aside. In support of this contention, counsel for the appellant has placed reliance on the following three decisions:

i. **M/s Milk Food Ltd. v. Commissioner, VAT,** (2023) 059 VST 001;

ii. **M/s. Swastik Industrial Powerline Ltd. v. Commissioner Trade & Taxes, Delhi,** ST.APPL.25/2013 decided by our own Hon'ble High Court on 28/8/2015; and

iii. **State of Haryana v. Inalsa Ltd. and Another,** VST.I 2011(11) B 458, decided by Hon'ble Punjab & Haryana High Court on 1/9/2010.

22. In Swastik Industrial Powerline Ltd's case (supra), while relying on decision in M/s Radio and Electricals Ltd's case (supra), it was held that selling dealer has no duty to examine the correctness of Form ST-1 and further that a selling dealer would not be responsible for any misapplication of goods by the purchasing dealer or failure on the part of the purchasing dealer to maintain correct record.

Counsel for appellant has submitted that even though in M/s Radio and Electricals Limited's case (supra), the decision was rendered in the context of Central Sales Tax Act and the sales made by the purchasing dealer against declarations in Form "C", but the Hon'ble High Court, while deciding the matter titled as Swastik Industrial Powerline Ltd., observed that the

aforesaid ratio would be equally applicable to the sales made against ST-1 Form.

In Inalsa Ltd and Anr.'s case (supra), it was observed by the Tribunal that the forms being admittedly genuine, the assesse-dealer had no means to ascertain whether the dealer, who presented the genuine forms, was in fact registered dealer or not.

Therein, when the matter reached Hon'ble High Court, it was observed that the selling dealer has to satisfy himself that the purchasing dealer is genuine and further that, once the purchasing dealer furnished genuine declarations duly issued by the department, it cannot be held that selling dealer acted negligently or did not satisfy himself about the genuineness of the purchasing dealer. Accordingly, the deductions allowed by the Assessing Authority and as upheld by the Tribunal, could not be held to be illegal.

In Milk Food Ltd.'s case (supra), it was observed that no inquiry appeared to have been conducted by the Sales Tax Authority to prove that the forms were spurious and further that there was no evidence to show that the appellant was in any way connected with the alleged fraud committed by the purchasing dealer.

Therein "on the spot verification" said to have been carried out by Sales Tax Authorities did not appear to have unearthed

any material to show that there was any collusion or connivance between the appellant and the purchasing dealer.

Herein, as noticed above, learned Assessing Authority relied on the information furnished by Commercial Tax Department, Kashipur, Uttarakhand that M/s Deepanshu Enterprises was not a registered dealer and 'C' forms pertaining to 2nd quarter and 3rd quarter of the year 2013-14 had not been issued to the said dealer.

Learned Assessing Authority had also information from Commercial Tax Department, Khatima, Uttarakhand that 'C' forms pertaining to 2nd quarter of the year 2013-14 and stated to have been issued to M/s S. K. Agencies, had not been issued to the said dealer.

Learned Assessing Authority had also information from Commercial Tax Department, Haridwar, Uttarakhand that 'C' forms stated to have been issued to M/s Sai Traders, pertaining to 3rd and 4th quarter of the year 2013-14, had not been issued to the said dealer.

Learned Assessing Authority had also information from Deputy Excise and Taxation Commercial, Gurugram, (East) that 'C' forms stated to have been issued to M/s Swaraj International pertaining to 3rd and 4th quarter of the year 2013-14 could not be got verified.

Learned Assessing Authority had also information from the office of Commissioner, Commercial Tax, West Bengal, that statutory forms stated to have been issued to M/s Deepanshu Enterprises were not verified.

23. It may be mentioned here that dealer-appellant has not placed on record any material to suggest that M/s Deepanshu Enterprises was a registered dealer or that it had taken such and such steps for verification in this regard, before entering into transactions with the said dealer. As per decisions, cited above, it was for the dealer-appellant to verify, before entering into transaction, that it was a registered dealer.

24. As a result, non grant of exemption or benefit to the appellant-assessee on the basis of 'C' forms stated to have been issued to M/s Deepanshu Enterprises, which was not a registered dealer, deserves to be upheld.

25. As regards the remaining three dealers, namely, M/s S. K. Agencies, M/s Sai Traders, M/s Swaraj International, there is nothing in the impugned assessment or in the impugned order passed by learned OHA that anyone of them was not a registered dealer.

However, in such like matters, where the statutory forms are stated to have been issued by a dealer, who stood registered under the concerned taxation law in the respective State, for

proper verification, appropriate steps are required to be taken by the Assessing Authority.

Here, from the assessment order dated 12/01/2018, it does not transpire as to what steps were been taken up by the Assessing Authority for verification of statutory forms. Learned Assessing Authority should have joined the purchasing dealers, namely, M/s S. K. Agencies, M/s Sai Traders, M/s Swaraj International, in the inquiry so as to duly verify the factum of issuance or non issuance of said 'C' forms.

From the impugned assessments, it does not transpire that any of the said purchasing dealers was joined by the Assessing Authority by issuing any notice to them or calling upon them to participate in the proceedings.

Therefore, for want of proper and complete inquiry by the Assessing Authority in connection with due verification of 'C' forms purported to have been issued by M/s S. K. Agencies, M/s Sai Traders, M/s Swaraj International, the matter is required to be remanded to learned Assessing Authority and that too only in respect of 3rd and 4th quarter of the year 2013-14 (the assessment for the 1st and 2nd quarter of the said year having been set aside being beyond prescribed period of limitation).

Issue of incorrect valuation of Turnover

26. Another submission put forth by learned counsel for the appellant is that while framing assessment, Assessing Authority is to take into consideration the entire turnover furnished by the dealer, but, in this case, the Assessing Authority mentioned the 'turnover assessed' as Rs. 1,97,45,046/- as against the total Central Sales Turnover of Rs. 1,98,26,102/-. Further, it has been submitted that if turnover of Rs. 1,32,524/- (for which no 'C' Forms were furnished) is added, the total sale would have come to Rs. 1,99,58,626/-. Accordingly, the contention is that the assessment deserves to be set aside being not in accordance with law.

27. On the other hand, learned counsel for the Revenue has contended that in case any such ambiguity is there in the impugned assessments, in view of provisions of section 80 of DVAT Act, it cannot be said that the assessments deserve to be set aside, and rather the figures can be recalculated by the Assessing Authority to levy tax due on correct turnover.

28. Suffice it to say, in case of any such ambiguity in calculations, Assessing Authority may recalculate the figures so that tax due from the dealer, if any, is levied as per law. But, in the given situation, there is no merit in the contention that on this ground re-assessments in respect of 3rd and 4th quarter of the year 2013-14 deserve to be set aside.

Assessment of Penalty

29. For the reasons recorded above, in the given situation, the assessment of penalty framed u/s 86(10) of DVAT Act, concerning tax period- 1st and 2nd quarter of the year 2013-14 is set aside being barred by limitation.

30. As regards assessment of penalty, relating to the remaining two quarters i.e. 3rd and 4th quarter of the year 2013-14, in view of the forgoing discussion, and for the reasons recorded above, the same deserves to be set aside and matter needs to be remanded to learned Assessing Authority for fresh decision only in respect of 3rd and 4th quarter of the said year, if any assessment of penalty is required to be framed under the law.

Result

31. Consequently, both the appeals are disposed of and while setting aside the assessments for the tax period 1st and 2nd quarter of the year 2013-14, being barred by limitation, the matter in respect of 3rd and 4th quarter of the year 2013-14, is remanded to learned Assessing Authority for decision afresh/fresh assessments, in accordance with law, after conducting proper enquiry, keeping in view the observations made in the judgment, though of course, providing reasonable opportunity of being heard to the dealer-assessee.

APPELLATE TRIBUNAL VAT DELHI

32. Dealer is directed to appear before learned Assessing Authority on 24/03/2023.

33. 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:24/02/2023.

Narinder Kumar
24/2/2023
(Narinder Kumar)
Member (Judicial)