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

Appeal Nos.: 385-388/ATVAT/22
Date of Judgment: 03/03/2023

M/s. Shivalaya Construction Co. P. Ltd.,
Flat No. 310, Jaina Apartment,
Sector – 13, Rohini,
Delhi-110085. .....Appellant

v.

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

Counsel representing the Appellant	:	Sh. Ravi Chandhok with Sh. P. C. Aggarwal.
Counsel representing the Revenue	:	Sh. P.Tara.

JUDGMENT

1. This common judgment is to dispose of the above captioned four appeals bearing No. 385-388/ATVAT/22 as the same arise out of common order passed by Learned Objection-Heading-Authority (OHA) relating to tax and interest.

2. Appellant-dealer-assessee is engaged in civil works contract and registered under DVAT Act. As per case of the dealer, it opted for Composition Scheme declared vide Notification dated

28/02/2013; that the dealer opted to pay 3% tax of the entire turnover relating to work contract and that the Composition Scheme fell under Scheme 'A' of the said notification.

Learned Assessing Authority framed assessments observing that the dealer – appellant committed breach of the terms and conditions of the Composition Scheme, as in the returns and 2A and 2B for the 2nd, 3rd and 4th quarter of 2013-14, the dealer reflected interpurchases from interstate dealers to the tune of Rs. 36,74,822/-, Rs. 10,01,146/- & Rs. 96,88,959/- respectively, whereas under the said Composition Scheme, purchases from inter-state dealers were not permissible.

3. It may be mentioned here that for the same tax periods, initially assessments were made on 31/03/2018. The subsequent assessments came to be framed on 29/07/19, consequent upon remand of the matter in terms of order dated 01/08/2018 earlier passed by Learned OHA. Remand order was passed considering the submission of the dealer-objector that Assessing Authority had not given to the dealer-assessee any opportunity of being heard, and that entire record was not taken into consideration.

4. It may be mentioned here that subsequent to the remand of the matter by learned OHA, Authorised Representative of the dealer appeared before Learned Assessing Authority and put forth the ground that it was due to mistake that local purchases

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made by the branches located outside Delhi were shown in column 2A of the returns, meant for central purchases.

As already mentioned above, vide assessment framed on 29/07/2019, Learned Assessing Authority observed that the dealer had failed to comply with the conditions specified in the Composition Scheme and as such it was not eligible for benefits under the said scheme.

Consequently, demands of Rs. 2,06,93,532/- for the 1st quarter, Rs. 2,55,82,882/- for the 2nd Quarter, Rs. 2,14,66,320/- for the 3rd Quarter and Rs. 1,79,41,324/- for the 4th quarter were raised treating the dealer as a normal dealer and in this way the tax already deposited by it was forfeited.

Still benefit of tax credit was granted to the dealer to the tune of Rs. 7, 21, 044/- for the 1st quarter, benefit of Rs. 12,59,746/- for the 2nd Quarter, benefit of Rs. 11,04,514/- for the 3rd Quarter as per 2B issued by the selling dealers .

5. Dealer filed objections under section 74 of DVAT Act challenging assessments dated 29/07/2019 framed u/s. 32 of DVAT Act relating to each of the four quarters of 2013-14.

6. Vide order dated 29/12/2021, learned OHA rejected the objections. Dealer is feeling aggrieved by the said order dated 29/12/2021.

7. Hence, these appeals.

8. Arguments heard. File perused.

Period of Limitation for framing of Assessments, and for framing of Re-assessments on remand

9. Learned counsel has submitted that here the Assessing Authority having framed re-assessment on 29/07/2019, same are beyond the prescribed period of limitation, when a period of 4 years is calculated u/s 34(1) of DVAT Act.

In support of this submission, learned Counsel has relied upon following decisions :

i. **K.R. Anand v. Commissioner of Central Goods and Services Tax**, W.P. (C) 2047/2021 decided on 16/2/2021 by our own Hon'ble High Court of Delhi.

ii. **Samsung India Electronics (P) Ltd. vs. Govt. of NCT of Delhi &Ors.**, W.P. (C) 2685/2014 decided on 7/4/2016 by our own Hon'ble High Court of Delhi.

iii. **M/s. Deepali Designs & Exhibits (P) Ltd. vs. Commissioner of Trade & Taxes, Delhi**, Appeal No. 686-687/ATVAT/13-14 dated 5/10/2018 decided by this Appellate Tribunal.

iv. **M/s Ases Security (P) Ltd. vs. Commissioner of Trade & Taxes, Delhi**, Appeal No. 196/ATVAT/20-21 dated 6/10/2021 decided by this Appellate Tribunal.

v. **Sales Tax Bar Association (Regd.) v. Govt. of NCT of Delhi**, W.P.(C) No. 4236/2012.

vi. **Shaila Enterprises v. Commissioner of Value Added Tax**, W.P.(C) 5478/2016.

10. On behalf of the appellant, it has been submitted that four returns, in respect of each quarter of the tax period 2013-14 were furnished by the dealer on the following dates :

i. 1st quarter 13/8/2013
ii. 2nd quarter 22/11/2013
iii. 3rd quarter 7/2/2014
iv. 4th quarter 9/5/2014

Further, the submission is that in view of provisions of section 34(1) of DVAT Act, assessments could be framed in respect of said quarters by the following dates:

1st quarter	:	by 12/8/2017;
2nd quarter	:	by 21/11/2017;
3rd quarter	:	by 6/2/2018 and
4th quarter	:	by 8/5/2018.

11. Counsel for the appellant has argued that where original assessment was barred by limitation, proceedings subsequent thereto cannot sustain. The contention is that here the assessments initially framed as regards 1st, 2nd and 3rd Quarters were barred by limitation. In support of this contention, reliance has been placed on decision in **Art Yarn India v. CT&T**, (2014) 52 DSTC J-316.

12. Firstly, this contention that the initial assessment for the said three quarters were time barred is without any merit having regard to the amendment of Section 34 of DVAT Act w.e.f. 01/04/2013. Secondly, no argument was advanced before learned OHA, who remanded the matter for re-assessment, that the initial assessments for the first three quarters were barred by limitation.

13. In Art Yarn India's case (supra), appellant filed quarterly returns relating to the year 2006-07 and vide common order default assessment was framed on 11/05/2011 i.e. beyond the period of four years, but no reason as visualised by proviso to Section 34 of DVAT Act was mentioned in the default notice dated 11/05/2011. Accordingly, the default assessment was held to be time barred and quashed.

Therein, on behalf of the Revenue following contention was raised:

> "The Ld. Counsel for the Revenue argued that appellant now cannot challenge the default assessment order dated 11.05.2011 because he filed objections against it before the Ld. OHA who remanded the matter back to the Assessing Authority to give fresh opportunity to the appellant to present the C-forms for fresh assessment, in compliance of which appellant appeared before the Ld. Assessing Authority and he presented C-forms before him and fresh assessment dated 03.10.2013 was reframed and now in these circumstances the appellant cannot challenge the original notice of default assessment of tax and interest dated 11.05.2011 on the ground that it is time barred."

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Therein, in support of above contentions, counsel for the Revenue relied on following two decisions:

1. **Nirmala L. Mehta v. A Balasubramaniam, Commissioner of Income Tax & Ors.**, 2004 ITCR 1;
2. **Commissioner of Income Tax, Delhi v. Escorts Farms Pvt. Ltd.**, 1989 ITR 280.

It was further contended therein on behalf of the Revenue that there cannot be estoppel against the statute and that the effect of holding the assessment as time barred would have been that further proceedings pursuant to the assessment order would be infructuous.

In that matter, while placing reliance on decision in ITD-ITD CEM JV's case (supra), this Appellate Tribunal observed that when extended period of six years is invoked by Assessing Officer, the twin conditions provided in proviso to Section 34(1), have to be complied with; that the Commissioner or Assessing Authority must record reasons in writing to believe, firstly, that the tax has not been paid, and, secondly, that concealment, omission or failure to disclose for material particulars by the assessee was/were the reasons for non-payment of tax.

The decision in Art Yarn's case is distinguishable on facts and as such does not come to the aid of the appellant.

14. It may be mentioned here that as per record, the reassessments were challenged by the dealer-objector before learned OHA on the following grounds:

(i) that the same were abinito, illegal, unjust and arbitrary;

(ii) that no notice was issued to the dealer as regular dealer;

(iii) that the status of the dealer – applicant continues to be a composition dealer;

(iv) that the Assessing Authority failed to follow directions of the Special Commissioner as contained in the order of remand.

As per impugned order passed by Learned OHA one of the contentions raised there on behalf of the objector – assessee was that OHA does not enjoy powers under the DVAT Act to extend the period of limitation u/s 34(1) of the DVAT Act for the purposes of fresh assessment.

But, here, in the course of arguments in these appeals, it has been clearly submitted by counsel for the appellant that the dealer does not claim that OHA has no powers under DVAT Act to remand the matter for re-assessment.

15. In reply, learned counsel for the Revenue has contended that in these matters pertaining to assessment year 2013-14, as per amendment in Section 34(1), which came into force w.e.f. 1/4/2013, limitation of four years has been prescribed for

making of reassessment u/s 32 of the Act; that said period is to be calculated *from the end of the year comprising of one or more tax periods for which the person furnishes a return u/s 26 or 28 of this Act or from the date on which the Commissioner makes an assessment of tax for the tax period, whichever is earlier.*

As regards decisions in Samsung India's case (supra) and K.R. Anand's case (supra), cited on behalf of the appellant, learned counsel for the Revenue has submitted that same pertain to the period prior to the said amendment in section 34 of the Act, and as such do not come to the aid of the appellant. As regards other decisions, the contention on behalf of Revenue is that the impugned re-assessment having been framed within a year from the disposal of the objections is well within limitation. As regards decision in Shaila's case (supra), contention on behalf of the Revenue is that, was a case where no re-assessment was framed after remand by learned OHA and as such said decision did not come to the help of the appellant in this matter where the Assessing Authority framed re-assessment within time.

16. It may be mentioned here that dealer-applicant filed VAT No. 23/22 before the Hon'ble High Court challenging the order u/s 76(4) of DVAT Act passed by this Appellate Tribunal. In the decision, Hon'ble High Court observed that "the respondent/Revenue has an arguable defence, as to whether the

period of limitation prescribed under Section 34 of the Act would be applicable where remand is ordered by OHA. Hon'ble Court further observed that the matter needs deliberation and cogitation.

17. As already mentioned above, the learned OHA who had remanded the matter while accepting the submission raised on behalf of the dealer itself that it required reasonable opportunity of being heard. At this stage, amended provisions of section 34 of DVAT Act needs to be reproduced for ready reference.

18. Section 34 of DVAT Act in force w.e.f. 1/4/2013 reads as under:

> "(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
>
> (b) the date on which the Commissioner made an assessment of tax for the tax period. 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."

19. Before amendment vide notification No. F.14(4)/LA-2013/ cons2law/11, dated 28/3/2013, read with section No. 3(17) Fin. (Rev.-1)/2012-13/dsvi/263; dated 30/3/2013, - enforced w.e.f. 1/4/2013, section 34 read as under :

"(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 date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period. 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."

20. Having regard to the amendment in the provisions of section 34 of DVAT Act w.e.f. 1.4.2013, assessments initially framed calculating the prescribed period from the end of the year were

framed well within the prescribed period of limitation. Remand order came to be passed appreciating the claim and plea put forth by the dealer regarding no grant of opportunity. Therefore, it was a fit case for reassessment.

21. Herein, as noticed above, on behalf of the appellant, it has been claimed that all the impugned re-assessments as regards all the four quarters are barred by limitation in view of the decisions cited above.

22. Earlier when the assessments initially framed were challenged before learned OHA, while disposing of the objections, learned OHA remanded the matter to the Assessing Authority so as to provide opportunity of being heard to the dealer *and that too taking into consideration, claim of the dealer itself that the dealer was assessed exparte without giving any opportunity to the assessee of being heard.*

The matter was so remanded when learned OHA was of the considered view that the objector-dealer deserved an opportunity of being heard in the interest of justice, so that correct facts were placed on record.

Admittedly, this is not a case where before learned OHA, who remanded the matter for re-assessment, it was argued that the initial assessments were barred by limitation in view of provisions of Section 34 of DVAT Act.

The dealer accepted the remand order firstly by not filing any appeal, then by having participated in the proceedings conducted by learned Assessing Authority on remand of the matter, and also by putting forth a new ground that it was due to mistake that local purchases made by the branches located outside Delhi were shown in column 2A meant for central purchases of the returns.

Remand order was passed on 01/08/2018. During hearing on objections, no submission appears to have been put forth on behalf of the dealer before Learned OHA not to remand the matter to learned Assessing Authority.

From a reading of Section 34 of DVAT Act, it appears that this provision does not specifically provide any period of limitation where assessment or reassessment is to be made by the Assessing Authority on remand of the matter by Learned OHA.

Recently, on 09/02/2023, our own Hon'ble High Court has decided W.P. (C) 771/2023 titled as **M/s Jutla & Co. v. Commissioner of VAT & Anr**. Therein, Hon'ble Court has relied on decision by Hon'ble Supreme Court in **Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CST Cinod Secretariat,** Madras, (1992) 3 SCC 1.

In Shree Chamundi Mopeds Ltd.'s case (supra), Hon'ble Apex Court observed that where an order under challenge is set aside,

it would result in the restoration of the position that existed on the date the order was quashed.

In my view, in such like situation, where Learned OHA affords another opportunity to the dealer to present its case or claim before or of being heard by the Learned Assessing Authority, and that too keeping in view the specific plea taken in this regard by the dealer, and in the interest of justice, the period which is spent in objection proceedings needs to be excluded for calculating the period prescribed for assessment or re-assessment by the Assessing Authority.

In M/s Jutla & Co.'s case (supra), in view of previous decision by our own Hon'ble High Court in Shaila Enterprises' case (supra), Hon'ble High Court has clearly observed that where the matter is remanded to the Assessing Authority/reassessment, the limitation as prescribed under section 34(2) of the DVAT Act would be applicable.

Therein, reliance has been placed on previous decision by our own Hon'ble High Court in **Combined Traders v. Commissioner of Trade & Taxes,** (2019) 262 DLT 651.

23. Shaila Enterprises's case (supra) was a case having peculiar facts and circumstances where counsel for the dealer-petitioner himself submitted that assuming, without admitting that power to remand exists with an OHA, in any event the Assessing

Officer was required to pass an order within a maximum period of one year after the date of passing of the OHA.

Hon'ble High Court found in the said case that neither fresh assessment was passed nor an order of refund was passed within one year of the date of the order of the OHA. Accordingly, Hon'ble High Court found that the time within which the matter regarding assessment could have been reopened had long being crossed in respect of the month of January 2008.

Shaila Enterprises's case (supra) is a significant decision by our own Hon'ble High Court on the aforesaid point particularly in a case based on almost same facts, where during hearing on objections the dealer claimed that Assessing Authority had not given sufficient authority to submit relevant documents, and keeping in view the said submission of the objector, learned OHA deemed it appropriate that in the interest of natural justice another opportunity was afforded to the objector.

Here, it is not a case where no reassessment was framed by Assessing Authority on remand of the matter. Rather, the Assessing Authority framed reassessment.

Counsel for the appellant repeatedly argued to bind this Appellate Tribunal by its previous two decisions on this point. In this regard, it may be mentioned that every subsequent decision by Hon'ble High Courts and Hon'ble Supreme Court

on a particular point ~~provides~~ adds to one's wisdom and in this way, one cannot be asked to stick to views already expressed on such point or not to become wiser, having regards to the binding decisions. Even otherwise, where decisions by this Appellate Tribunal are distinguishable on facts, it cannot be argued that same are still binding.

24. Here, the re-assessment were framed on 29/07/2019 after learned OHA remanded the matter vide order dated 01/08/2018. Decision in M/s Jutla & Co.'s case (supra) by the Hon'ble High Court is binding. As a result, the latest decision on the point of limitation as prescribed under section 34(2) of the DVAT Act would be applicable to the facts of the present case.

25. Decision in K.R. Anand's case (supra), cited on behalf of the appellant, pertained to the tax period 2010-11 and decision in Samsung India's case (supra) pertained to the tax period from April, 2009 to March, 2010. Decision in M/s. Deepali Designs & Exhibits case (supra), by this Appellate Tribunal pertained to tax period 2009-10 and 2010-11 i.e. prior to the amendment in the provisions of section 34 of the Act. Similarly decision in M/s. Ases Security (P) Ltd.'s case (supra), by this Appellate Tribunal, pertained to 4th quarter of 2012-13 i.e. again prior to the amendment in section 34.

26. In K.R. Anand case (supra), petitioner had earlier approached Hon'ble Court by way of W.P.(C.) 4904/2015 under Article

226 and 227 of the Constitution of India challenging the vires of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004, the notice of default assessment of tax and interest dated 28th March, 2015 as well as notice of assessment of penalty dated 28th March, 2015 for the year 2010-11.

Vide judgment dated 26th October 2017, said petition was allowed in favour of the petitioner therein, along with other batch of matters, holding, inter alia, as under:

> "The present petition has been disposed of by a common judgment passed today in W.P. (C) 6093/217 and batch. Consequently, the notices for default assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') and default assessment of penalty under the Section 33 of the DVAT Act, dated 28th March 2015, are set aside. A copy of the said judgment is placed below."

Aggrieved by the order in the lead case (being W.P.(C.) 6093/2017) titled as **M/s On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi & Ors.,** the respondents therein filed a Special Leave Petition before the Supreme Court bearing SLP (C.) No. 36750/2017 titled as **Commissioner of Trade and Taxes v. Arise India Ltd.,** which was dismissed on 10th January, 2018, while granting liberty to the respondents in the following terms:

> "On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and here are some of the cases of the cases where the purchase transactions are not bonafide like the present case and those cases ought to have been remitted back to the competent authority.

Learned Additional solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for."

In terms of the aforesaid liberty granted to it, the petitioner filed a civil miscellaneous application being CM Appl. 27370/2018 in W.P.(C.) 4904/2015 before Hon'ble High Court. Although initially notice was issued on the said application, however after hearing both the sides, the application was subsequently dismissed vide order dated 17th January, 2020, granting liberty to the Applicant to issue a show cause notice in accordance with law. The relevant portion of said order reads as under:

"1. Counsel for the Applicant seeks leave to withdraw this application with liberty to issue a further show cause notice in accordance with law and to pursue further proceedings consistent with the law laid down by this Court in its judgment dated 26th October, 2017 in W.P.(C) No. 6093/2017 (On Quest Merchandising India Pvt. Ltd. v. Govt. of NCT of Delhi) which has been affirmed by the Supreme Court in its order dated 10th January, 2018.

2. The application is dismissed as withdrawn with liberty as prayed/or."

In terms of the aforesaid liberty, the respondents passed the order dated 15th January, 2021 which was titled as "Notice of default assessment of tax and interest under Section 32", which was challenged in the writ petition.

In K.R. Anand case (supra), the contention raised on behalf of the petitioner was that the impugned order dated 15/01/2021, i.e. notice of default assessment of tax and interest u/s 32 of DVAT Act was issued /framed by ignoring the mandate of section 34 of DVAT Act.

Hon'ble High Court observed that in terms of section 34, the assessment had to be completed within a period of 4 years; that the impugned order relating to the year 2010-11 could be passed up to 31/03/2015, but the said limitation expired, and as such it was barred by limitation.

In para 13 of the decision, Hon'ble High Court dealt with the contention raised on behalf of the respondent that the impugned order was within limitation in terms of sub-section (2) of section 34, and observed that in the given facts and circumstances sub-section (2) of section 34 was entirely inapplicable as therein the impugned order had not been passed in consequence of, or to give effect to, any decision of the Hon'ble High Court requiring re-assessment of the assessee.

As regards order dated 17/01/2020 passed by the Hon'ble High Court on the miscellaneous application, in its decision dated

16/02/2021 Hon'ble High Court observed that the period of limitation could not have been extended contrary to the statute as the Hon'ble High Court vide said order dated 17/01/2020 only permitted the respondents to take recourse to further proceedings consistent with the extant laws and the law laid down by the Hon'ble Court in **Commissioner of Trade and Taxes v. Arise India Ltd.**, SLP(C). No. 36750/2017, decided by Hon'ble Apex Court on 10/01/2018.

Hon'ble High Court went on to observe that the liberty could not be construed to mean that the limitation period was extended beyond statutory confines.

27. In K. R. Anand's case (supra), Hon'ble High Court observed that while disposing of miscellaneous application, Hon'ble Court could not have extended the period of limitation and respondents were to take recourse in accordance with law.

That was not a case of remand by OHA on the basis of any submission on behalf of assessee.

Even if in K.R. Anand's case (supra) before the Hon'ble High Court and the two previous decisions by this Appellate Tribunal, the view taken was that provisions of section 34(2) of the Act do not extend the period of limitation on remand by OHA, after hearing both the sides on merits, and considering all the established facts and circumstances, I find that this is a case where the dealer wants to eat the cake and have it too. Having

regard to the claim of the objector on the ground that opportunity was not granted to him by the Assessing Authority, and consequent remand order passed by Learned OHA, it does not lie in the mouth of the dealer to say that reassessment was still required to be framed within four years period as provided under section 34(1).

28. As regards ASES's case (supra) decided by the Appellate Tribunal, therein, the dealer – appellant was stated to have claimed refund but failed to furnish documents in support of the claim of refund as required u/s 9(1) of DVAT Act.

In that matter, Learned counsel representing the Revenue had contended that opportunity was granted by the learned OHA vide order dated 17/7/2017, on the request of the dealer that no opportunity of being heard was provided to the dealer by the Assessing Authority in framing notice of default assessment dated 28/12/2016.

In view of recent decision in M/s Jutla & Co.'s case (supra), placing reliance on decision in Shaila Enterprises' case (supra), Hon'ble High Court has clearly observed that where the matter is remanded to the Assessing Authority/reassessment, the limitation as prescribed under section 34(2) of the DVAT Act would be applicable. Therefore, ASES's case (supra) does not help the appellant.

29. Decision in **M/s SREI Equipment Finance Ltd. v. Commissioner**, VAT Appeal No. 2 of 2017, by our own

Hon'ble High Court, cited by counsel for the appellant is distinguishable on facts.

That case was a case of non-service of notice and not a case where opportunity of being heard was claimed to have not been provided, and order of assessment was framed on system generated pre-determined order. That was neither a case of passing of fresh assessment after remand of matter by OHA nor a case where the dealer had itself sought opportunity of being heard.

30. While referring to decision in **Sales Tax Bar Association v. Government of NCT of Delhi and Ors**, W.P(C) No. 4236/2012, decided by our own Hon'ble High Court on 07/12/2012, counsel for appellant has submitted that as per scheme of DVAT Act, firstly, the assessee has been allowed to put forth a unilateral assessment, then the Assessing Officer has been empowered to frame a unilateral assessment and, ultimately, there is a provision for a bilateral assessment after opportunity of hearing is granted. Therein, with these observations, it was observed by the Hon'ble High Court that with such a statutory scheme, it cannot not be said that the post-decisional- hearing will be a farcical or a sham.

31. As already noticed above, recently, in M/s Jutla & Co.'s case (supra), placing reliance on decision in Shaila Enterprises' case

(supra), Hon'ble High Court has clearly observed that where the matter is remanded to the Assessing Authority/reassessment, the limitation as prescribed under section 34(2) of the DVAT Act would be applicable.

Herein, keeping in view the period of limitation provided in section 34 (2) of DVAT Act and applying the decision in M/s Jutla & Co.'s case (supra), the reassessment was required to be framed by the Assessing Authority within 1 year from 01/08/2018. Calculating in this manner period of 1 year from 01/08/2018, re-assessment in respect of all the four quarters of the year 2013-14 having been framed on 29/07/2019 can safely be said to have been framed within the prescribed period of limitation.

Claim regarding mistake on the part of Accountant in furnishing returns

32. It has also been contended by counsel for the appellant that as regards quarter 1st of the year 2013-14, inadvertently, local purchases were shown in the column meant for Inter-state purchases; that in the return pertaining to quarter 2nd, purchases made from local dealers were inadvertently shown as Inter-state purchases and at the same time purchases made by other branches of the dealer were shown as Inter-state purchases made by the dealer; that in the return pertaining to

quarter 3rd and 4th purchases made by other branches of the dealer were shown as Inter-state purchases made by the dealer.

In this regard, learned OHA observed in para 12 in the manner as:

> "12. During the hearing proceedings and so also during remand back proceedings C.A stated that was due to mistake that local purchases, made by branches dealer located outside Delhi, were filled in Central purchase column 2A. In view of facts & legal position, there are no merits in the contentions of the objector dealer as the peculiar facts & circumstances of the present matter necessitated the remittance by the OHA."

33. On the other hand, learned counsel for the Revenue has pointed out that the appellant has nowhere alleged as to when this mistake came to the notice of the dealer.

34. Learned counsel for the Revenue has rightly contended that appellant has nowhere alleged as to when the above said facts of depicting local purchases in the column meant for inter purchases or the purchases made from local dealers having been shown as inter-state purchases and the fact of purchases made by other units of the dealer having been shown as inter-state purchases made by the dealer, came to its notice.

35. As and when such facts come to the notice of a dealer, it is required to take immediate steps for rectification of returns. As rightly pointed out by the learned counsel for the Revenue, and indisputably, no step was taken by the dealer – appellant for rectification of returns. There is no explanation as to what prevented the appellant – assessee from filing of objections for the purpose of rectification of returns.

36. Learned counsel for the Revenue has rightly pointed out that when the Assessing Authority had observed about non-production of original bills in proof of the above said facts, dealer-assessee could easily secure/collect requisite record from its branches for its submission before the Revenue Authorities. However, no submission, in this regard, has been put forth on behalf of the appellant, to explain as to why no such step was taken by the dealer.

37. It may be mentioned here that when the appeals were pending for remaining arguments, on 17/01/2023 on behalf of the appellant, an application came to be submitted before this Appellate Tribunal seeking permission to place on record affidavit of the Proprietor of Build Scaff, from whom certain purchases are said to have been made by the Haryana unit of the dealer under two invoices i.e. dated 19/07/2013 and 07/08/2013. Vide separate order of even date, said application has been dismissed for the reasons recorded therein.

38. In the given circumstances, learned counsel for the Revenue has rightly contended that learned Assessing Authority was justified in arriving at the conclusion and in framing of re-assessments even as regards the sales stated to have been made by M/s Build Scaff, vide the above referred to bills.

Terms & Conditions of Composition Scheme

39. As regards composition scheme, counsel for appellant has submitted that even if it is assumed that the appellant made inter-State purchases, the same would lead to payment of tax @ 6% and would not affect the entitlement of the appellant to pay tax under the Notification dated 28/02/2013, under which dealers could opt for scheme A or scheme B and thereby pay tax either @ 3% or @ 6%; and that making of inter-state purchases did not bar the appellant from payment of tax under the composition scheme.

40. On behalf of the appellant, it has also been argued that this is a case where it cannot be said that the dealer-assessee violated any of the general conditions of the Composition Scheme.

It has been further contended that in case of any violation of the composition scheme, the Department of Trade & Taxes could order for forfeiture only to the extent of 50%, but herein, the Assessing Authority has forfeited the entire amount i.e. to the

extent of 100%, and as such the impugned assessments deserve to be set aside.

41. On the other hand, learned counsel for the Revenue has submitted that no fault can be found with the re-assessments framed by learned Assessing Authority, when it is a case of violation of the general conditions of the composition scheme, the appellant having made inter-state purchases, which it could not do, as per the scheme opted by the appellant.

42. When the dealer claims mistake on the part of the Accountant, in this regard, in view of the above discussion and for want of any evidence submitted to the Revenue Authorities and the returns having not been rectified, it cannot be said that the Revenue Authorities went wrong in holding that this is a case of violation of the general conditions of the composition scheme.

43. As regards extent of forfeiture, learned counsel for the Revenue has candidly submitted that as per notification dated 30/09/2013, amendment was made qua the extent of forfeiture and as per said amendment and condition No. 8 of the scheme, the amount deposited by the dealer as the composition tax, if any, shall stand forfeited to the extent of 50%.

Having regard to the notification dated 30/09/2013, counsel for the appellant has rightly submitted that the amount deposited by

the dealer as composition tax could be forfeited only to the extent of 50%.

Therefore, the dealer is held liable for forfeiture only to the extent of 50%. Learned Assessing Authority needs to re-calculate the said amount, keeping in view that the amount stood forfeited only to the extent of 50%. Assessing Authority to do the needful accordingly.

Point of grant of deductions as per Rule 3 of DVAT Rules, 2005

44. On the point of composition scheme, another submission on behalf of the appellant is that the Assessing Authority did not allow any general deductions having regard to labour and service charges etc., as per Rule 3 of DVAT Rules, 2005.

45. In view of the terms and conditions of the scheme, the composition dealer-appellant, due to default/violation of the above said condition in having made inter-state purchases, all the provisions of the DVAT Act and Rules including the liability to pay tax u/s 3 of DVAT Act were to apply mutatis mutandis as if the appellant had never opted for the composition scheme, from the financial year in which default had been committed.

3/3

Rule 3 of DVAT Rules, 2005 provides that in the case of turnover arising from the execution of a works contract, the amount included in the taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, but subject to dealers maintaining proper records.

Here, it is not case of the Revenue that the dealer-appellant was not maintaining proper records for the purpose of application of Rule 3. Therefore, while framing re-assessment, learned Assessing Authority should have taken into consideration the provisions of Rule 3 of DVAT Rules.

It is not case of the Revenue that amount of charges towards labour, services and other like charges were not ascertainable from the books of accounts of the dealer. Had it been so percentage as available in the table under proviso to Rule 3(2) would have come into application.

Since it is not claimed by the Revenue that such charges were not ascertainable from the books of accounts of the dealer, the percentage as available in the table would not come into application.

46. In the given situation, it is held that the charges towards labour, services, and other like charges, if shown in the returns, are required to be excluded while calculating turnover arising from the

execution of works contract. Therefore, Assessing Authority needs to make re-calculation, in this regard, as well.

47. Another contention raised on behalf of the appellant is that learned OHA, while disposing of objections did not record any reason on merits.

In para No. 13, learned OHA clearly observed that in the remand proceedings, objector-dealer did not raise any additional ground or submission but only submitted that due to mistake local purchases made by branches of the dealer located outside Delhi, were filled in central purchase column 2(A).

In the operative part of the impugned order i.e. para 14, learned OHA concluded as under:

> "14. In view of the above discussion, I am of the considered view that Impugned notices of default assessment of tax & interest vide no. 150083109380, 150083109390,150083110560 and 150083109398 dated 29.07.2019 for the tax period 1st Qtr 2013-14, 2nd Qtr 2013-14, 3rd Qtr 2013-14 and 4th Qtr 2013-14, issued u/s 32 and u/s 33 of the DVAT Act have been rightly issued in accordance with law and accordingly all objections Ref. No. 519635, 5119636, 519637 and 519638, dated 07-09-2019 filed by the objector dealer are hereby dismissed/rejected in above terms."

For the aforesaid reasons given by learned OHA while disposing of the objections, it cannot be said that the impugned order is the one without reasons.

Result

48. In view of the above discussion, foregoing reasons and findings, the appeals are partly allowed and the Assessing Authority is directed to make re-calculations, only on two points i.e. on the point of exclusion of charges towards labour, services, and other like charges, if shown in the returns, as provided under Rule 3 of DVAT Rules, while calculating turnover arising from the execution of works contract, and also on the point of forfeiture of the amount only to the extent of 50%, in terms of the subsequent amendment in the composition scheme.

    As regards all other issues, the appeals are dismissed.

49. Dealer to appear before learned Assessing Authority on 20/03/2023.

50. 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 : 03/03/2023

Narinder Kumar 3/3/2023

(Narinder Kumar)
Member (Judicial)