

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 11/ATVAT/23

Date of Judgment : March 15, 2023.

M/s Mobile Planet,
DDA Shop BNo. 9, Plot No. 7,
District Centre, Janakpuri,
New Delhi-110058.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi.

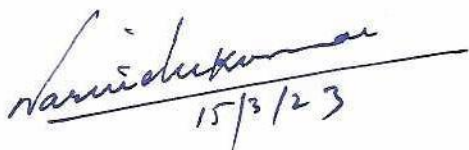
..... Respondent

Counsel representing the Appellant : Sh. Yuvraj Singh.

Counsel representing the Respondent : Sh. N.K.Gulati.

JUDGMENT

1. The above captioned appeal came to be preferred by the dealer-assessee so as to challenge order dated 09/11/2022 passed by learned Special Objection Hearing Authority (hereinafter referred to as SOHA).
2. Vide order dated 09/11/2022, learned SOHA disposed of objections filed by the dealer-objector-appellant.
3. The objections were filed challenging notice of default assessment of tax and interest framed u/s 32 of DVAT Act and


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assessment of penalty framed u/s 33 of the Act by the Assessing Authority.

4. Assessing Authority framed default assessment of tax and interest on 01/12/2020 raising a demand of Rs. 1,63,559/- i.e. towards additional tax and interest. The reason for raising of this demand, as per default assessment, is that on cross-checking of the purchase related data filed by the dealer online in Annexure 2A, with 2B filed by the respective selling dealers, it revealed that more input tax credit had been claimed than the corresponding output tax reported by the selling dealers.

Assessing Authority observed that in this way the dealer violated provisions of clause (g) of sub-section (2) of Section 9 of DVAT Act, and, accordingly, framed default assessment.

Separate notice of penalty u/s 33 of DVAT Act came to be framed by the Assessing Authority on 18/12/2020, thereby imposing penalty of Rs. 1,16,771/- u/s 86(10) of DVAT Act.

Before learned SOHA, it was represented by the partner of the dealer that the selling dealer M/s Tele word Mobile P. Ltd. had already shown sales in 2B. Learned SOHA checked and verified and granted relief to the objector on this point.

5. Before learned SOHA, the dealer-objector is said to have admitted mismatches as reflected in the default assessment at serial No. 1, 3 and 4 and, accordingly, the demand raised by


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learned Assessing Authority in respect thereof, was upheld. Hence, Appeal No. 10/23. Today, counsel for the appellant has withdrawn appeal No.10/23 whereby levy of tax and interest was challenged.

6. By way of this appeal, ^{initially} levy of three amounts of penalty was challenged.

As regards levy of penalties, learned SOHA reduced the penalty accepting the claim of the objector that M/s Teleword Mobile P. Ltd. had shown sales of goods in 2B, but upheld the penalty in respect of remaining deficiencies/mismatch figures.

7. Today, learned counsel for the appellant has not pressed appeal as regards the two amounts of penalty i.e. Rs. 1,524.24/- and Rs. 3,870/- and the appeal has been entertained, vide separate order of even date as regards penalty of Rs. 15,660/- for the reasons recorded therein.

Learned counsel for the appellant submits that the levy of penalty pertains to 3rd Quarter of 2016 and that even though there was justification to explain mis-match as regards this amount of Rs. 15,660/- , the dealer admitted said mis-match before learned OHA, but taking into consideration the factum of deposit of Rs. 15,660/- by the dealer towards tax, with interest, the amount of penalty be reduced. Learned counsel submits that appellant is ready to deposit Rs. 3,000/- towards penalty.

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Admittedly, before learned OHA, the dealer admitted mis-match as regards Rs. 15,660/- and thereupon, learned OHA upheld the assessment framed by learned Assessing Authority.

It is true that the dealer has deposited, after filing of this appeal a sum of Rs. 15,660/- towards tax, with interest, on account of mis-match. This shows bona fide on behalf of dealer-appellant. The two amounts of penalties also levied by Assessing Authority and upheld by learned OHA vide same orders, have also been deposited by the dealer.

8. Learned counsel for the Revenue does not oppose taking of lenient view, in the given circumstances.
9. Penalty has been imposed u/s 86(10) of DVAT Act, due to the reason that the dealer furnished a return which was false, misleading and deceptive on account of mis-match. The fact remains that the dealer has already deposited the said amount of Rs. 15,660/- towards tax, with interest due on it. Keeping in view all the facts and circumstances, the amount of penalty is reduced to Rs. 3,000/-.

Result


10. As a result, this appeal is partly allowed, with the modification in the quantum of penalty, in the manner indicated above (appeal having not been pressed as regards the other two amounts of penalty i.e. Rs. 1524.24/- and Rs. 3,870/-)
11. Copy of the Judgment be supplied to both the parties as per

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rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : March 15th, 2023.


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Narinder Kumar
Member (J)