

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

Appeals Nos. 44-48/ATVAT/23

Date of Judgment: 25/04/2023

M/s D C Automobile,
195/16 Prem Gali, Punja Sharif,
Kashmiri Gate,
New Delhi-110006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.


.....Respondent

Counsel representing the Appellant : Sh. R.C. Kapoor.
Counsel representing the Revenue : Sh. N. K. Gulati.

Judgment

1. This common judgment is to dispose of above captioned 5 appeals. In the first mentioned 4 appeals No. 44-47/23 filed u/s 76 of DVAT Act, dealer-objector-assessee has challenged order dated 24/01/2023 passed by learned Special Objection Hearing Authority (hereinafter referred to as SOHA), under Central Sales Tax Act (CST Act), as thereby learned SOHA upheld demands raised by way of default assessment of tax and interest dated 22/03/2021, pertaining to all the four quarters of the year 2016-17.

By way of 5th appeal No. 48/23 filed u/s 76 of DVAT Act, dealer-objector-assessee has challenged order dated 20/01/2023


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passed by learned SOHA, under CST Act, in respect of 1st quarter of 2017-18.

While disposing of objections u/s 74 of DVAT Act, learned SOHA upheld demand raised by way of default assessment of tax and interest dated 08/03/2022 in respect of 1st quarter of 2017-18.

2. Default assessments of tax and interest came to be framed due to the reason that dealer-appellant failed to furnish requisite declaration forms or details thereof in Form-9, in respect of the said 5 quarters.
3. When the matter came up before SOHA, dealer submitted 49 'C' forms pertaining to 1st quarter of the year 2016-17; 46 'C' forms pertaining to 2nd quarter of the year 2016-17; 35 'C' forms pertaining to 3rd quarter of the year 2016-17; 45 'C' forms pertaining to 4th quarter of the year 2016-17 and 38 'C' forms pertaining to 1st quarter of the year 2017-18. On the basis of these 'C' forms produced, learned SOHA granted exemptions to the dealer in view of decision in M/s **Kirloskar Electric Co. v. CST, Delhi**, 83 STC 485.
4. Feeling aggrieved by the demands upheld by learned SOHA, dealer-assessee has come up in appeals.
5. Arguments heard. File perused.

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6. As per claim of the appellant in the memorandum of appeals, the impugned assessments have not been framed by passing speaking orders, and rather these are system generated orders and also not digitally signed; that there is nothing in the default assessments to indicate if any notice u/s 59(2) of DVAT Act was ever issued by the Assessing Authority to the appellant before framing assessments. It is also case of the dealer-appellant that substantial amount of refund is due to the dealer from the department.
7. Learned counsel for the appellant has contended that this is a case where Assessing Authority framed assessment without service of notices u/s 59(2) of DVAT Act. He further submits that this point was raised by the objector even before the learned SOHA but he did not decide the same, and as such the impugned order passed by learned SOHA deserves to be set aside.

Today, in the form of paper book, learned counsel for the appellant has submitted copy of notice dated 11/01/2019 purported to have been issued u/s 59(2) of DVAT Act for the period from 01/04/2017 to 30/06/2017. He has also placed on record copy of notice dated 28/10/2020 purported to have been issued u/s 59(2) of DVAT Act, in respect of tax period from 1/4/2016 to 31/03/2017.

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The contention is that these copies have been downloaded by the dealer from the portal of the Department of Trade & Taxes, but said notices were never duly served upon the dealer, and that in view of the decision in **M/s Bhumika Enterprises v. Commissioner, Value Added Tax**, (2015) 85 VST 367 (Delhi), this is a case of no service of said notices upon the dealer before framing of assessments.

8. Learned counsel for the Revenue, submits that no notice u/s 59(2) of the DVAT Act is required to be served upon the dealer - assessee for framing of assessment, the reason being that the return filed by the assessee amounts to self-assessment.
9. It is not case of the Revenue that no notice u/s 59(2) of the DVAT Act was issued by the Revenue. Had it been so, it would have been a different matter, but, when Revenue has come up with the plea that notices u/s 59(2) of DVAT Act were issued, their due service upon the dealer - assessee was required to be established, and objection on this point was required to be decided by learned SOHA. Therefore, there is no merit in the contention raised by learned counsel for the Revenue.

In M/s Bhumika Enterprise's case (supra) our own Hon'ble High Court quashed all the notices/ orders which were system generated notices u/s 59(2) of DVAT Act, but

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,at the same time observed that it was open to the Department to issue fresh notices/ orders by taking steps in accordance with law.

After the decision in M/s Bhumika Enterprise's case (supra), Special Commissioner (Policy), issued Circular No. 24 of 2015-16, advising all the VATO's that the concerned VATO should issue fresh notices in accordance with law; that they would take steps pursuant thereto, which would also be in accordance with law, and that notices or orders should not be system generated notices or orders without human interference, in view of the above said decision.

Learned counsel for the Revenue has submitted that vide Circular dated 17/01/2014, learned Commissioner, Value Added Tax issued instructions in connection with service of notices or summons or orders under DVAT Act.

As is available from the said order dated 17/1/2014 as soon as the document is issued by any VAT Authority, the same shall be available instantly to the dealer for view as under:

"2. As soon as a 'document' is issued by any VAT Authority the same shall be available instantly to the dealer for view as under.

- i. On the dealer's web page under the link 'Notices/Summons/Orders'.
- ii. As soon as dealer logs on to his web page, a pop-up message will appear. This pop up message will also

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appear at the time of next two logins also. After reading the 'document', the dealer shall click on 'OK' button available at the end of the notice, as a proof of reading the 'document'. Afterwards, the dealer may access other links.

- iii. An SMS alert to the dealer's mobile number registered with the department, showing notice/summon/order number and date of hearing/appearance, if any, will also be generated, simultaneously as under;
- TIN :
 - Notice/Summon/Order ID :
 - Date of Hearing/ Last Date of :
compliance

This manner of service of service, shall be deemed to be a service of document for the purpose of Rule 62 of the Delhi Value Added Tax Rules, 2005, at par with other manner prescribed under the said Rule.

- Dealers shall quote the 'document' reference number and date alongwith their TIN in their further communication with regard to that particular hearing/compliance.
- The dealers are advised to visit their webpage regularly in order immediate access of notice/summon/order issued to him, if any.
- The notices/summons/orders may also continue to be issued by registered post till 31.03.2014."

10. Once the above said objections regarding non - service of notice u/s 59(2) of DVAT Act was raised by the dealer -



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objector before learned SOHA in the objections u/s 74 of the DVAT Act, it was for learned SOHA to decide the said objections and record his specific finding if notice u/s 59(2) of DVAT Act was or was not duly served upon the dealer - assessee, before framing of the impugned assessments, in view of the directions contained in the above said circulars/orders. ^{and about its effect -} But, the fact remains that no such finding has been recorded by learned SOHA in the impugned order while deciding said objection.

11. Similarly, certain other objections were raised by the dealer - objector before learned SOHA, as find mentioned in the document available at page No. 8 & 9 of the Memorandum of Appeal. Learned counsel for the appellant submits that the dealer does not press objections No. 7, 8 and 9 raised before learned SOHA. He further submits that learned SOHA was required to decide the other objections from serial No. 3 to 6 as well, in addition to the objections pertaining to non - service of notices u/s 59(2) of DVAT Act.

Since the objections from serial No. 2 - 6 have not been decided by learned SOHA, the matter requires to be remanded to learned OHA for decision afresh.

12. When it has been brought to the notice of learned counsel for the appellant that the matter is required to be remanded to the learned SOHA, learned counsel for the appellant has no objection to the remand of the matter to learned SOHA.



13. In view of the above discussion, all these five appeals are disposed of and matter is remanded to learned SOHA for decision afresh on the above said points, having regard to the decisions cited on behalf of the appellant and the orders issued by the Commissioner, VAT, while affording reasonable opportunity of being heard, to the dealer - objector.
14. Dealer to appear before learned SOHA on 11/05/2023.
15. File be consigned to record room. Copy of the judgment be supplied to both the parties as per rules. One copy be placed in the files of the connected appeals. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open court.

Date : 25/04/2023

Narinder Kumar
25/4/2023
(Narinder Kumar)
Member(J)

