

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

Appeals No : 352-353/ATVAT/2006
Date of Judgment : 10/05/2023

M/s Rashtriya Transport Corporation
5810, Gali No.-08, Block No.-04,
Dev Nagar, Karol Bagh,
New Delhi.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. R. Mahana.
Counsel representing the Revenue : Sh. P. Tara.

Judgment

1. Earlier, on 26/08/21, the above captioned two appeals filed by the ~~dealer~~^{assessee} were disposed of while observing in the operative part of the judgment as under:-

"In view of the above discussion, no interference is called for in the impugned order passed by learned OHA, so far as levy of tax is concerned and as such the same is upheld.

Impugned order regarding upholding of penalty u/s 86(14) of DVAT Act is also upheld. However, as regards the imposition of penalty u/s 86(19) of DVAT Act is concerned, impugned order deserves to be set-aside, for the reasons given above.

As a result, this appeal is partly allowed as regards the imposition of penalty u/s 86(19) of DVAT Act, but the



appeal as regard levy of tax and imposition of penalty u/s 86(14) is hereby dismissed."

2. By way of above captioned two appeals, ^{appellant}~~dealer~~ challenged order dated 03/04/2006 passed by learned Objection Hearing Authority-Joint Commissioner-III, whereby objections filed by the assessee-objector challenging default assessment of tax and interest u/s 32 of DVAT Act and separate assessment of penalty framed by the Assessing Authority on 22/03/2006, u/s 33 of DVAT Act were disposed of.
3. The two assessments came to be framed on the basis of audit conducted by the field staff on 09/03/2006 at the godowns of the assessee.
4. The assessments pertain to the tax period 2005-06 notice of default assessment of Tax u/s 32 of DVAT Act read with section 3 (9) of the Act, issued by the Assessing Authority on 22/3/2006 reads as under -

"Whereas godowns of M/s Rashtriya Transport Corporation situated at Godown No. 1 Opp. N.D.P.L. Poll No. 52, Gali No. 2 (Inside Gali No. 6) Master Mohalla.

Godown No. 2, Opp : N.D.P.L. Poll No. 83 & 84, Gali No. 2 (Inside Gali No. 6) Master Mohalla, visited by the Field Staff of this office on 09.03.06 and sealed the premises for want of purchase bills and other related documents.

Whereas the transporter failed to produce the proper documents of the goods lying at his godown premises at the time of detention and assessed as under :

S.No.	Amount	Rate of Tax	Tax
1.	1,22,77,400/-	4%	4,91,096/-



This dealer is hereby directed to pay tax amounting Rs. 4,91,096/- and furnish proof of such payment to the undersigned on or before 06.04.06 for getting release of goods/deseal of the Godown".

5. Assessment of penalty u/s 33 of DVAT Act, issued by the Assessing Officer on 22/3/2006 reads as under -

"Whereas I am satisfied that the transporter has a liability to pay penalty u/s 86 of Delhi Value Added Tax, 2004 for the following reasons:-

Penalty u/s 86 (19) equal amount of tax (Rs.491096/-). As the goods being transported without proper documents.

Penalty u/s 86 (14) fail to furnish all records regarding transactions of goods detained (Rs. 50,000/-) now therefore, the transporter is hereby directed to pay penalty of an amount of Rs.541096.00 and furnish proof of such payment to the undersigned on or before 06.04.06 for getting the goods released".

6. Learned OHA disposed of the objections while observing in the manner as:-

"The D. R. stated that both the above situations cannot be viewed in isolation and since the objector did not produce any documents relating to the goods are owned by him for sale in Delhi and hence the notice of default assessment is justified. The manager, in his statement recorded at the time of inspection, has also stated that he is unable to produce the documents for the goods kept in the godwon.

As regards imposing of penalty u/s 86 (14) the D. R. Stated that since the dealer did not produce any document or information about the goods kept in the godown at the time of inspection hence penalty imposed u/s 86 (14) is justified.



The D. R. also stated that since the goods had already left the premises of the selling dealer but had not reached its destination, the goods are in transit and this is covered u/s 61 of the DVAT Act and hence the penalty imposed u/s 86 (19) is in accordance with law.

I have heard the arguments put forth by the Departmental Representative and the objector. I am inclined to accept the arguments put forth by the D. R., hence the objection is rejected and the notice for default assessment and penalty issued by the Border Duty branch of the Deptt. is upheld."

7. Feeling aggrieved by the judgment dated 26/08/2021, passed by this Appellate Tribunal, the ^{transporter} ~~dealer~~ filed VAT Appeal No. 06/21. Vide judgment dated 27/03/2023, said appeal has been disposed of by the Hon'ble High Court while remanding the matter to this Appellate Tribunal for decision on particular aspects as specified therein. Relevant paragraphs of the judgment passed by Hon'ble High Court are reproduced hereunder for ready reference:-

"24. The plain reading of Sub-section (9) of the Section 3 of the DVAT Act indicates that if a person who transports or holds goods in custody fails to furnish any information in respect of the goods in his possession, on being required to do so by the Commissioner, it would be presumed that he is the owner of the goods.

25. Undisputedly, the presumption under Section 3(9) is a rebuttable presumption. Further, the said presumption would arise only if a person who is in custody of the goods fails to Neutral Citation Number is 2023:DHC:2322-DB VAT APPEAL 6/2021 Page 7 of 9 produce the information in his possession in respect of the goods.



26. It is the appellant's case that it had, in fact, produced relevant documents to show the ownership of the goods in question and therefore, no such presumption could be drawn.

27. Admittedly, there is no dispute that at the time of inspection of the godown, the appellant's Manager had not produced the relevant documents. However, the record indicates that the appellant had produced the relevant documents at a subsequent stage prior to the order of default assessment. There appears to be no real dispute that the appellant had done so. The appellant has produced photocopies of the documents that were filed before the VATO Enforcement at the time of the default assessment or prior, thereto. These were also produced before the Appellate Tribunal.

28. It is the appellant's case that although the documents were not produced at the time of inspection of the godown, they were produced immediately thereafter. According to the respondents, the same does not negate the presumption under Section 3(9) of the DVAT Act; the respondents contend that the documents are required to be produced immediately at the time of inspection and not thereafter.

29. Thus, the first and foremost question that was required to be addressed by the learned OHA and the Appellate Tribunal was whether the production of the documents immediately after the inspection would be sufficient to rebut the presumption under Section 3(9) of the DVAT Act. However, neither the learned OHA nor the Appellate Tribunal had addressed this question. Both the Authorities have proceeded solely on the basis that since the documents were not produced at the time of inspection, the presumption of Section 3(9) of the DVAT Act is attracted.

30. It is material to note that Section 3(9) of the DVAT Act does not specifically provide a time-frame for submission of documents. It merely contemplates a presumption as to the ownership of the goods if the person in custody of goods fails to furnish any information in



possession in respect of the goods on being required to do so by the Commissioner.

33. In our view, it would be open for a person found in custody of goods to produce the relevant information in its possession in respect of the goods within a reasonable time on being required to do so by the Commissioner. The question as to what is a reasonable period of time for providing information is necessarily required to be determined in the facts of each case. In the given facts of the present case, the question as noted in paragraph no. 4 above is required to be answered in the affirmative; that is, in favour of the appellant and against the Revenue.

34. It is material to note that none of the Authorities have even examined whether the documents produced by the appellant established the ownership of the goods in question.

35. We do not consider it apposite to the address this question in this appeal. It would be apposite for the Appellate Tribunal to consider the same at the first instance.

36. In view of the above, we consider it apposite to set aside the impugned order to the extent that it holds that the presumption under Section 3(9) of the DVAT Act is applicable in the facts of the present case and penalty is leviable under Section 86(14) of the DVAT Act, in the given facts.

37. The appellant's appeal is restored to the Appellate Tribunal. The Appellate Tribunal shall consider the documents as produced by the appellant and take an informed decision on the appellant's appeal. The Appellate Tribunal is requested to dispose of the same as expeditiously as possible, preferably within a period of eight weeks from today."

8. Hence, these appeals, once again, before this Appellate Tribunal for decision on the abovesaid aspects.

9. Arguments heard. File perused.



10. On behalf of the appellant, it has been submitted that this is a case where by producing documents before the learned Assessing Authority and before learned OHA, the appellant rebutted the presumption that the goods found lying at its godowns at the time of survey, were not owned by the appellant and that the same were ^{neither} ~~not~~ being held by the appellant for sale ^{nor sold.}
11. On behalf of the appellant, reliance has been placed on an earlier decision dated 20/05/2016 by this Appellate Tribunal in case titled as **M/s Ajay Road Lines India Pvt. Ltd. v. Commissioner of Trade & Taxes**, Appeal No. 83/ATVAT/10-11, to submit that almost in similar facts and circumstances, the Appellate Tribunal was of the considered view that in view of the particulars i.e. list of consigner and consignee of the supari seized by the Department, as mentioned in the memorandum of appeal therein, with number of goods receipt and number of bill, it was established beyond doubt that the appellant was not seller or purchaser of supari and rather, simply a transporter, who was transporting the goods on behalf of the party from Assam to the parties at Jaipur and Jodhpur.
12. On the other hand, on behalf of the Revenue, it has been contended that no reliance can be placed on the documents relied on behalf of the appellant because of various discrepancies in the said documents and also because the



appellant has not been able to connect the said documents with the items and quantity mentioned in the inventory prepared by the survey team at the time of survey of the godowns of the appellant. It has been urged that the assessee being owner of the goods, mentioned in the inventory, the impugned order deserves to be upheld.

13. As per case of the ~~dealer~~^{it-} appellant, ~~dealer~~^{dealer} is engaged in carrying on business of transportation of goods, as a proprietorship concern. It has its Head Office/ Principal Place of business in Dev Nagar, New Delhi. It has also two godowns in Delhi.

As further claimed by the ~~dealer~~^{appellant}, on 09/03/2006, a team of Enforcement-I Branch of Department of Trade & Taxes, Delhi conducted a survey at the godowns of the ~~dealer~~^{appellant}. At that time, Sh. Ram Kumar, Manager of the ~~dealer~~^{appellant} was present at the said godown. Statement of the said Manager was recorded.

14. On 22/03/2006, default assessment was framed by the Assessing Authority, u/s 32 read with section 3(9) of DVAT Act. Separate assessment imposing penalty u/s 86(19) of DVAT Act was also framed. In addition, penalty u/s 86(14) of DVAT Act was also levied.
15. It may be mentioned here that vide previous judgment dated 26/08/2021 passed by this Appellate Tribunal, assessment of penalty u/s 33 read with section 86(19) of DVAT Act already



stands set aside. As such, challenge before this Appellate Tribunal remains as to the default assessment of tax u/s 32 of DVAT Act and assessment of penalty imposed u/s 86(14) of DVAT Act.

16. Case of the ~~dealer~~^{transporter} appellant further is that representative of the appellant had appeared before the Assessing Authority-VATO (Border duties) and provided all the relevant documents including L/R, Invoices, Registration number of the purchasing dealer to whom the goods belonged, in addition to other record, as required under the law, but even then the Assessing Authority held that ~~dealer~~^{transporter} was deemed to be owner of the goods.
17. In the objections filed u/s 74 of DVAT Act, ~~dealer~~^{transporter} objector had claimed to have produced all the documents before VATO (Border duties), and pleaded that it was a case of non violation on the part of the ~~dealer~~^{transporter}.
18. It was further claimed ^{in objections} that with the production of relevant documents, provisions of section 3(9)(a) (b) of DVAT Act was not attracted.
19. Learned Joint Commissioner, while dealing with the objections observed that according to DR, the objector had not produced any document related to goods kept in the godown at the time of visit by the official with the Department, and as such, in view of provisions of Section 3(9) (a) of DVAT Act, it was presumed that the goods were owned by the dealer for sale in



Delhi, Learned Joint Commissioner accordingly held that the notice of default assessments was justified.

Learned OHA also relied on the statement of the Manager of the dealer, recorded at the time of inspection, wherein he has stated that he was unable to produce the documents for the goods kept in the godown.

20. While disposing of VAT Appeal No. 06/21, filed by the present ^{appellant} dealer, and dealing with the provisions of Section 3(9) of DVAT Act, Hon'ble High Court has observed that the said provision merely contemplates a presumption as to the ownership of the goods if the person in custody of goods fails to furnish any information in possession in respect of the goods on being required to do so by the Commissioner.

Hon'ble High Court went on to observe that it would be open for a person found in custody of goods to produce the relevant information in its possession in respect of the goods within a reasonable time on being required to do so by the Commissioner.

Hon'ble High Court further observed that aspect to be examined in the appeal is as to whether the documents produced by the appellant establish the ownership of the goods in question, and as such Hon'ble Court considered it apposite that this Appellate Tribunal considers the same at the first instance.

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That is how, this Appellate Tribunal proceeds to examine as to whether the documents produced by the appellant establish the ownership of the goods in question.

21. The relevant provision for raising of presumption against the person who transports goods or hold goods in custody for delivery to or on behalf of any person, is available in the form of Section 3(9) of DVAT Act. When extracted, it reads as under:

“3. Imposition of tax

.....(9) If any person who transports goods or holds goods in custody for delivery to or on behalf of any person, on being required by the Commissioner so to do, fails-

- (a) to furnish any information in his possession in respect of the goods; or
- (b) fails to permit inspection thereof,

then without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, are owned by him and are held by him for sale in Delhi and the provision of this Act shall apply accordingly.....”

22. In para 33 of the decision in VAT Appeal No. 6/21, as regards the question as to what is a reasonable period of time for providing information, Hon'ble High Court has already answered this question in affirmative in favour of the appellant and against the Revenue i.e. the appellant produced necessary information in its possession in respect of the goods stored at the godown.



23. The other question raised by the Hon'ble High Court, and to be determined by this Appellate Tribunal is as to whether the documents produced by the appellant establish the ownership of the appellant in respect of goods in question.
24. Record reveals that when the matter was scheduled to be taken up on 01/10/2013, for arguments, in the meanwhile on 06/09/2013 copies of certain documents were submitted on behalf of the appellant. Earlier these documents were not considered by this Appellate Tribunal for the reasons already recorded in the earlier decision dated 26/08/2021. But, in view of the decision by the Hon'ble High Court in VAT Appeal No. 06/21, all the said documents are required to be considered to decide the abovesaid question regarding ownership.
25. As per list submitted by counsel for the appellant during arguments, photocopy of following documents came to be so submitted;

Page No. Nature of document

- | | |
|------|--|
| "144 | Acknowledgment of LPS International for 76 Bid PLC GR NO. 6425 |
| 145 | Acknowledgment of LPS International for 104 Bid PLC GR NO. 6425 |
| 146 | Tax Incoice no. 014 of Swastik Chemicals to LPS Intenational Goods: PLC Rubber 76 Bdls(Page no. 147) |
| 147 | Lorry Receipt Consignor's name: Swastik Chemicals and Consignee name LPS International dated 08-03-2006 (page no. 146) |



- 148 Rashtriya transport Receipt dated 28-12-2005. Oswal Enterprises to LPS International LR No. 006425
- 149 Form No. 2 (Declaration regarding interstate transport of rubber by a dealer) Rubber Board Certificate for invoice of oswal enterprises dated 28-12-2005. LR No. 006425
- 150 Oswal Enterprises to LPS International Invoice dated 28-12-2005
- 151 Form of delivery note
- 152 Letter of Jain Enterprises dated 08-03-2006 in which they want to store their material 28 drums* 205 ltr (5740) Latex
- 153 Invoice of BL Rubber Industries pvt. ltd. to jain Enterprises dated 08-03-2006 goods: rubber latex 5740ltr.
- 154 Lorry Receipt of Rashtriya Transport Consignor Glen view rubber chemical dated: 17-02-2006
- 155 Despatch Note Glen view rubber company to bhagwathi rubber chemical dated: 17-02-2006
- 156 Despatch Note Glen view rubber company to bhagwathi rubber chemical dated: 17-02-2006
- 157 Tax voice Glen view rubber company to bhagwati rubber chemical dated: 17-02-2006
- 158 form no. 3 Rubber board Certificate of page no. 157
- 159 Form no. 15 Form of delivery note in which transporter is Rashtriya transport
- 160 & 161 form no. 27B Declaration
- 162 Lorry Receipt of Invoice page no 163 Consigner's name : The Meenachil Rubber Marketing & processing cooperative society ltd. Consignee name: Rahul enterprises dated 13-02-2006
- 163 & 164 Tax Invoice TheMeenachil Rubber Marketing & Processing cooperative society ltd. dated 13-02-2006



- 165 Form no. 3 Rubber Board Certificate for invoice no. CLF/00925/dated 13-02-2006(page no. 162 to 164)
- 166 Form no. 15 form of delivery note of invoice no. CLF/00925/dated 13-02-2006
- 167 Tax Invoice of Saniya rubber to LPS International Invoice no. 018 dated 07-03-2006
- 168 Lorry receipt of invoice no. 018 dated 07-03-2006 of Saniya Rubber to LPS International (Page no. 167)
- 169 Lorry receipt of invoice no. 017 dated 07-03-2006 of Saniya Rubber to LPS International (Page no. 170)
- 170 Tax Invoice of Saniya rubber to LPS International Invoice no. 017 dated 07-03-2006
- 171 Tax Invoice of Saniya rubber to LPS International Invoice no. 016 dated 06-03-2006
- 172 Lorry receipt of invoice no. 016 dated 06-03-2006 of Saniya Rubber to LPS International (Page no. 171)
- 173 Lorry receipt of invoice no. 015 dated 06-03-2006 of Saniya Rubber to LPS International (Page no. 174)
- 174 Tax invoice of Saniya Rubber to LPS International Invoice no. 015 dated 06-03-2006.
- 175 Lorry receipt of invoice no. 01/31 dated 04-03-2006 of Meerame India Rubber to LPS International (Page no. 176)
- 176 Tax Invoice of Meerame India Rubber to LPS International Invoice no. 01/31 dated 04-03-2006(175)
- 177 Tax Invoice of Meerame India Rubber to LPS International Invoice no. 01/20 dated 03-03-2006(178)
- 178 Lorry receipt of invoice no. 01/20 dated 04-03-2006 of Meerame India Rubber to LPS International (Page no. 177)
- 179 Tax Invoice of Meerame India Rubber to LPS International Invoice no. 01/19 dated 03-03-2006(180)



- 180 Lorry receipt of invoice no. 01/19 dated 03-03-2006 of Meerame India Rubber to LPS International (Page no. 179)
- 181 Tax Invoice of Meerame India Rubber to LPS International Invoice no. 01/18 dated 01-03-2006(182)
- 182 Lorry receipt of invoice no. 01/18 dated 01-03-2006 of Meerame India Rubber to LPS International (Page no. 181)
- 183 Lorry receipt of invoice no. 242 dated 10-02-2006 of Idukki Rubber pvt. Ltd. to Grover International (Page no. 184)
- 184 Tax Invoice of Idukki Rubber pvt ltd. To Grover International Invoice No. 242 dated 10-2-2006 (Page no. 183)
- 185 Form no. 15 Form of delivery note of invoice no. 242 dated 10-02-2006 (Page no. 184)
- 186 Form no. 3 Rubber board certificate for invoice no. 242 dated 10-02-2006 (Page no. 184)
- 187 Lorry receipt of invoice no. 241 dated 10-02-2006 of Idukki Rubber pvt. Ltd. to Grover International (Page no. 188)
- 188 Tax Invoice of Idukki Rubber pvt ltd. To Grover International Invoice No. 241 dated 10-2-2006 (Page no. 187)
- 189 Form no. 3 Rubber board certificate for invoice no. 241 dated 10-02-2006 (Page no. 188)
- 190 form no. 15 form of delivery note of invoice no. 241 dated 10-02-2006(page no 188)
- 191 Lorry receipt of invoice no. 106 dated 22-02-2006 of Ishwardassons Rubber pvt. Ltd. to oriental agencies (Page no. 192)
- 192 Tax invoice of Ishwardassons Rubber pvt. Ltd. to oriental agencies Invoice no. 106 dated 22-02-2006(Page no. 191)



- 193 Tax invoice of Pure Rubber Company to Ishwardassons Rubber pvt.Ltd Invoice no. 344 dated 22-02-2006
- 194 Permit of Invoice no. 106 dated 22-02-2006(Page no. 192)
- 195 form no 27B Declaration of Invoice no. 106 (page no. 192)
- 196 Form no. 3 Rubber board certificate for invoice no. 106 dated 22-02-2006 (Page no. 192)
- 197 Lorry receipt of invoice no. 104 dated 20-02-2006 of Ishwardassons Rubber pvt. Ltd. to oriental agencies (Page no. 199)
- 198 Tax invoice of Pure Rubber Company to Ishwardassons Rubber pvt.Ltd Invoice no. 342 dated 22-02-2006
- 199 Tax invoice of Ishwardassons Rubber pvt. Ltd. to oriental agencies Invoice no. 104 dated 22-02-2006(Page no. 197)
- 200&201 Permit of Invoice no. 104 dated 20-02-2023(Page no. 199)
- 202&203 form no 27B Declaration of Invoice no. 104 (page no. 199)
- 204 Rubber board certificate of Invoice No. 104 dated 20-02-2006(page no.199)
- 205 Letter from Richa Enterprises to Rashtriya Transport for deliver the goods to Rahat latex as per invoice no 45(207) dated 03-03-2006
206. Letter from Rahat Latex to Rashtriya transport in which rahat lates acknowledged that they are receive only 27 out of 42 BDL of rubber latex and remaining 15 is still in the godown of rashtriya transport for a week's time.
207. Tax Invoice of Richa Enterprises to Rahat latex Invoice no. 45 dated 03/03/2006 (Page no. 205-206).



208. Lorry receipt of invoice no. 148 dated 16/02/2006 of Anand Trading Co. To Richa Enterprises (Page no. 209).
209. Tax Invoice of Anand Trading Co. to Richa Enterprises Invoice no. 148 dated 16/02/2006 (Page no. 208).
210. Rubber Board Certificate of Invoice No. 148 dated 16/02/2006 (Page no. 209).
211. From of Delivery note of Invoice No. 148 dated 16/02/2006 (Page no. 209).
212. Letter from Richa Enterprises to Rashtriya Transport for deliver the goods to Sharma chemical as per invoice no. 52 dated 11/03/2006.
213. Lorry receipt of invoice no. 147 dated 15/02/2006 of Anand Trading Co. To Richa Enterprises (Page no. 214).
214. Tax Invoice of Anand Trading Co. to Richa Enterprises Invoice no. 147 dated 15/02/2006 (Page no. 213).
215. Rubber Board Certificate of Invoice no. 147 dated 15/02/2006 (Page no. 214).
216. From of Delivery note of Invoice No. 147 dated 15/02/2006 (Page no. 214).
217. Letter from Patel Oil Mills to Rashtriya Transport for deliver the goods to Richa Enterprises as per invoice no. 50 dated 09/03/2006.
218. Letter from Richa Enterprises to Rashtriya Transport regarding Patel oil mills goods invoice no. 50 dated 09/03/2006 (Page no. 217).
219. Lorry receipt of invoice no. 155 dated 22/02/2006 of Anand Trading Co. To Richa Enterprises (Page no. 220).
220. Tax Invoice of Anand Trading Co. To Richa Enterprises Invoice no. 155 dated 22/02/2006 (Page no. 219).

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221. From of Delivery note of Invoice no. 155 dated 22/02/2006 (Page no. 220).
222. Rubber Board Certificate for Invoice no. 155 dated 22/02/2006 (Page no. 220).
223. Letter from Relaxo Footwears Ltd. To Rashtriya Transport regarding delivered the goods to Richa enterprises dated 16/03/2006.
224. Lorry Receipt of Invoice no. 07 of M L Anand & Sons Pvt. Ltd. to Richa Enterprises (Page no. 227).
- 225&226. Tax Invoice of Richa Enterprise to Relaxo Footwears Pvt. Ltd. Invoice no. 04 dated 15/02/2006 (Page no.).
- 227 Tax Invoice of M L Anand & Sons Pvt Ltd. to Richa Enterprises Invoice no. 7 dated 31/01/2006 (Page no. 224).
228. Rubber Board Certificate of Invoice No. 4 dated 15/02/2006 (Page no. 225).
229. Letter dated 16/03/2006 from Relaxo Footwears Ltd. To Rashtriya Transport regarding delivered the goods to Richa Enterprises against Invoice no. 134.
230. Lorry Receipt of Invoice no. 134 of Anand Trading Co. To Relaxo Rubber Ltd. (Page no. 227).
231. Tax Invoice of Anand Trading co. to Relaxo Rubber Ltd. Invoice no. 134 dated 05/01/2006 (Page no. 229, 230).
232. Rubber Board Certificate of Invoice no. 134 dated 05/01/2006 (Page no. 231).
233. From of Delivery note of Invoice no. 134 (Page no. 231).
234. Lorry Receipt of Invoice no. 72/05-06 of B L Rubber Kerala to B L Rubber Delhi no. 72/05-06 (Page no. 235).
- 235-236. Tax Invoice of B L Rubber Kerala to B L Rubber Delhi Invoice no. 72/05-06 dated 22/12/2005 (Page no. 234).

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237. Permit of Invoice No. 72/05-06 dated 22/12/2005 (Page no. 235).
238. Rubber Board Certificate for invoice no. 72/05-06 (Page no. 235).
239. From of Delivery note of invoice no. 72/05-06 (Page no. 235).
240. Lorry Receipt of Invoice no. 884 dated 20/12/2005 of Harrisons Malayalam Ltd. to B L Rubber Delhi (Page no. 241).
- 241&244. Tax Invoice of Harrisons Malayalam Ltd. to B L Rubber Delhi invoice no. 884 dated 20/12/2005 (Page no. 240).
245. Rubber Board Certificate for invoice no. 884 (Page no. 241).
246. From of Delivery note of invoice no. 884 (Page no. 241).
247. Lorry Receipt of Invoice no. 1106 dated 09/02/2006 of Harrisons Malayalam Ltd. to B L Rubber Delhi (Page no. 248).
- 248&249. Tax Invoice of Harrisons Malayalam Ltd. to B L Rubber Delhi invoice no. 1106 dated 09/02/2006 (Page no. 247).
250. Rubber Board Certificate for invoice no. 1106 (Page no. 248).
251. From of Delivery note of invoice no. 1106 (Page no. 248).
252. Lorry Receipt of Invoice no. 947 dated 31/12/2005 of Harrisons Malayalam Ltd. to B L Rubber Delhi (Page no. 253).
- 253&254. Tax Invoice of Harrisons Malayalam Ltd. to B L Rubber Delhi invoice no. 947 dated 31/12/2005 (Page no. 252).
255. Rubber Board Certificate for invoice no. 947 (Page no. 253).



- 256&257. From of Delivery note of invoice no. 947 (Page no. 253).
258. Lorry Receipt of Invoice no. 1090 dated 31/01/2006 of Harrisons Malayalam Ltd. to B L Rubber Delhi (Page no. 259).
- 259& 260. Tax Invoice of Harrisons Malayalam Ltd. to B L Rubber Delhi invoice no. 1090 dated 31/01/2006 (Page no. 258).
261. Rubber Board Certificate for invoice no. 1090 (Page no. 259).
262. From of Delivery note of invoice no. 1090 (Page no. 259).
263. Lorry Receipt of Invoice no. 204/05-06 dated 31/01/2006 of Malankara Plantations Ltd. to B L Rubber Delhi (Page no. 264).
264. Tax Invoice of Malankara Plantations Ltd. to B L Rubber Delhi invoice no. 204/05-06 dated 31/01/2006 (Page no. 263).
265. From of Delivery note of invoice no. 204/05-06 (Page no. 264).
266. Rubber Board Certificate for invoice no. 204/05-06 (Page no. 264).

26. Indisputably, survey was conducted at the godowns of the appellant. Available at Page-14 of the Memorandum of Appeal is Annexure P-1/14. This document is "sealing memo".

27. As per this sealing memo, Sh. Ashok Kumar, VATO (Border Duties), visited the premises/office Pole 83-84 in gali no-2, Master Mohalla, Libaspur, Delhi, belonging to the appellant and found that lakh/rubber was lying stored there. Further, it stands recorded in this memo that no documents regarding



sale/purchase/transfer of lakh/rubber lying stored there were produced before the VATO reflecting ownership of the goods. VATO found that there was every possibility of evasion of Value Added Tax. Accordingly, he directed for sealing of the premises and the premises was sealed.

28. Annexure 'A' appended to the sealing memo depicts the items and the quantity in respect of which documents were not produced as regards sale/purchase/transfer reflecting ownership of said goods. It reads as under.

Sl. No.	Item No.	Quantity
01	Latex	188 Drums
02	PLC-IX	75 bags of 50 kg each
03	PLC-3	39 bags of 50 kg each
04	PLC-1	19 bags of 50 kg each
05	PLC-3	23 bags of 50 kg each
06	PLC-3	191 bags of 50 kg each
07	RMA	320 bags of 50 kg each
08	BNR-20	120 bags of 50 kg each

29. In the course of arguments, learned counsel for the Revenue has referred, one by one, almost to all the documents submitted by the objector-appellant, running from Page-144 to 266, to point out that there are various discrepancies in these documents.

30. Some of these documents are stated to have been issued in December 2005, and letters asking the transporter to keep its goods in the godown are pointed to have been issued by the concerned dealer after about a month.

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31. Attention has been drawn to almost all the transactions wherein date of delivery of the said items does not mention in the Goods Receipts (GR's).
32. It has also been pointed out that in some of the cases goods purported to have been sold by the dealer from Delhi were to be delivered/transported by the appellant at Delhi itself and as such there was no occasion for keeping the said goods at the godown of the transporter.

Reference has also been made to the invoices to point out that the quantity/description of the goods as mentioned in the invoices did not tally with the quantity/description given in the GR's, which fact also creates doubt in the version of the appellant.

Reference has also been made to certain transactions, as available from the invoices, to point out that in case of inter-State sales, the goods were to be transported to other states, and there was no chance of the goods being kept at the godown of the transporter-appellant.

Another point raised by learned counsel for the Revenue is that description of the goods and quantity mentioned in various invoices and GR's does not tally with the inventory (Annexure-A) lying appended to the sealing memo, and as such it cannot be said that the documents running from Page-144 to 266 pertain to the items which were found lying detained at the said godown of the objector-appellant.



As regards, documents available from Page- 223 to 228, counsel for the Revenue has specifically pointed out that these documents pertain to E-1 transaction dated 15/02/2006 and that in such like transaction when the goods are sold in transit, there is no chance of such goods being kept at the godown like that of the transporter-appellant

33. In the course of arguments, counsel for the Revenue has submitted in writing the deficiencies as regards the said documents. Same read as under:

Page no.	Deficiencies
144-145	These are letters dated 28.01.2006 having no relevance with deficiency found during survey on 09.03.2006. The document being as old as 40 days. Whereas GR No.6425 is dated 28.12.2005, therefore, seems to be a self-serving document. No intimation of godown at RTC.
146-147	Bill and GR dated 08.03.2006 with local transaction only hence must have been delivered on 08.03.2006 itself.
148-151	The transaction is dated 28.12.2005 which is as old as 70 days from the date of survey therefore, no relevance can be attached to this sets of documents.
152-153	Transaction dated 08.03.2006 being local transaction so must have been delivered on 08.03.2006 itself and no relevance can be attached to the letter dated 08.03.2006 at RTC office is not a public godown and no intimation on record to use it as a godown.
154-161	The transaction is dated 17.02.2006 which is as old as 20 days and moreover the transaction is for party at Faridabad hence no relevance can be attached for Delhi matters.
162-166	The transaction is dated 13.02.2006 which is as old as 24 days and moreover the transaction is for party at Meerut hence no relevance can be attached for Delhi matters moreover the items and packing is different from the items considered for tax and penalty.
167-174	These transactions are local transactions from Sadar Bazaar to Dev Nagar as per Bills dated 07.03.2006 , 06.03.2006. However GRS the transaction are shown to be from Sadar Bazaar to Haider Pur. The alleged transactions are 2-3 days old and being local must have been completed on same day. The items mentioned in bill do not match moreover the items and packing



	is different from the items considered for tax and penalty. The rates for same material also vary from day to day bill @ Rs.50, @Rs.53, @ Rs.58. The GRs are being issued in favour of only one party on different dates with continuous serial numbers from 14208-14211.
175-182	These transactions are local transactions from Dev Nagar to Dev Nagar as per bills dated 04-03-2006, 03-03-2006, 01-03-2006. However GRs the transaction are shown to be from Daya Basti to Haider Pur. The alleged transactions are 5-8 days old and being local must have been completed on same day. The items mentioned in bill do not match moreover the items and packing is different from the items considered for tax and penalty. The GRs are being issued in favour of only one part on different dates with continuous serial numbers from 14204-14207. If clubbed with above papers from 167-174 then Si. No. of Grs issued to only one party is from 14204 to 14211 within a span of 8 days which required to be considered at length.
183-190	The transactions dated 10-02-2006 with different invoices are as old as 27 days. The items and packing are also different from the items considered for tax and penalty. Moreover, the transaction is for Panipat party hence no relevance can be attached with Delhi matters.
191-192	The transactions dated 22-02-2006 with different invoices are as old as 15 days. The items and packing are also different from the items considered for tax and penalty. Moreover, the transaction is for Panipat party hence no relevance can be attached with Delhi matters.
193-196	The transactions dated 22-02-2006 with different invoices are as old as 15 days. The items and packing are also different from the items considered for tax and penalty. Moreover, the transaction is for Panipat party hence no relevance can be attached with Delhi matters.
197-204	The transactions dated 22-02-2006/22-02-2006 with different invoices are as old as 17/ 15 days. The items and packing are also different from the items considered for tax and penalty. Moreover, the transaction is for Panipat party hence no relevance can be attached with Delhi matters.
205-207	The paper placed at 205 is not clear about its relevance with this case. The other documents are also of different dates and as old as 6 days from the date of survey and relevance is not proved.
208-211	The transaction dated 16-02-2006 is as old as 21 days. The items and packing are also different from the items considered for tax and penalty.
212-216	The letter dated 11-03-2006 is after the date of survey hence it is self-serving document. However, the transaction is dated 15-02-2006 which is as old as 22 days therefore, no relevance can be attached. The items and packing are also different from the items considered for tax and penalty
217	The letter dated 16-03-2006 is after the date of survey hence it is self-serving document.



218-222	The transactions dated 22-02-2006 with different invoices are as old as 15 days. The items and packing are also different from the items considered for tax and penalty. Moreover, the letter at page 218 not supported by any bill or GR between Richa Enterprises and Patel Oil Mills hence not relevant.
223-228	The letter dated 16-03-2006 is after the date of survey hence it is self serving document. Remaining documents are pertaining to transaction dated 15-02-2006 and transaction dated 31-03-2006 which are as old as 22 days and 37 days hence no relevance can be attached. Moreover, the said transaction is stated to be E-1 transaction by Richa Enterprises on 15-02-2006 for Bahadur Garh which cannot be withheld by any transporter as per CST Act till 09-03-2006. Therefore, no relevance can be attached.
229-233	The letter dated 16-03-2006 is after the date of survey hence it is self-serving document. The transaction is dated 05-01-2006 which is as old as 64 days hence no relevant can be attached.
234-239	The transaction is dated 14-12-2005 which is as old as 83 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.
240-246	The transaction is dated 20-12-2005 which is as old as 77 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.
247-251	The transaction is dated 09-02-2006 which is as old as 30 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.
252-257	The transaction is dated 31-12-2005 which is as old as 68 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.
258-262	The transaction is dated 31-01-2006 which is as old as 37 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.
263-266	The transaction is dated 31-01-2006 which is as old as 65 days hence no relevance can be attached as nothing is proved against the allegations before imposing tax and penalty.

34. No doubt, there are discrepancies in the documents placed on record by the appellant, as pointed out by learned counsel for the Revenue in the course of arguments. Firstly, it was for the VATO – Assessing Authority to look into all the documents and verify their genuineness. In this regard, the Assessing Authority could call upon the appellant to bring on record any



other supporting document or evidence or any other document required for any clarification. In this regard, the Assessing Authority could also call upon the appellant to produce representatives of the concerned parties to the transactions or to produce their relevant records, to find out if any of the buyer or the seller named in the invoices deposited tax in accordance with law or indulged in evading tax on any of the transactions. However, no such steps appear to have been taken.

35. No objection/ defect regarding the documents was recorded by the Assessing Authority while framing assessments. Even learned OHA neither took any such step nor raised any objection regarding the documents stated to have been produced before the Assessing Authority.
36. Neither from the sealing memo nor from the inventory it can be made out as to which of the record or account books of the transporter were perused at the spot. Even from the assessments, it cannot be made out as to which of the record or account books were perused by the Assessing Authority, so as to verify the contents of the inventory i.e. the item number and the quantity, before framing assessments. No such exercise appears to have been done even by learned OHA. It is also significant to note that *vide impugned order or assessments* Revenue does not claim that the transporter-appellant indulged in any conspiracy with any other party i.e. the seller or the buyer, in connection with



evasion of any tax, so far as the goods found detained at the godowns of the transporter are concerned. In absence of detailed enquiry by the Assessing Authority or by learned OHA, it cannot be said that the documents produced by the transporter before them or before this Appellate Tribunal do not pertain to any of the goods so found at the godowns of the transporter or that the same have been submitted only to meet the items and the quantities mentioned in the inventory.

37. In M/s Ajay Road Lines India Pvt. Ltd's case (supra), the appellant company was a transporter. Its godown at Alipur was subjected to search by Enforcement Branch team. It led to recovery of 2,271 bags containing supari, each bag weighing 70 Kg.

Assessing Authority therein framed assessments u/s 32 and 33 read with section 86(19) of DVAT Act. The dealer challenged said assessments.

Aggrieved by the order passed by learned OHA/ Joint Commissioner, dealer filed appeal before the Appellate Tribunal.

In the impugned order, learned OHA observed that the consignment notes and invoices were manipulated or result of after thought.

On behalf of the appellant, it was contended therein that Assessing Authority had not observed that the papers produced by appellant were false, fake and fabricated and that Joint



Commissioner could not raise new grounds for rejection of the objections.

Therein, Appellate Tribunal observed that in the facts and circumstances of the case, it was not found that the papers were fabricated or manipulated; that in the papers, the name of the consigner and consignee was mentioned; that Revenue could very well enquire from the parties about the genuineness of the said papers.

38. Therein, the Appellate Tribunal went on to observe that appellant had mentioned in the body of appeal the list of consigner and consignee of supari seized by the Department along with GR number and Bill number. This Appellate Tribunal observed:

“photostat copy of the bill and GRs have also been filed on the record. This amply proves beyond doubt that appellant is not seller or purchaser of supari, he simply is a transporter who was transporting the goods on behalf of the Assam party to the parties at Jaipur and Jodhpur.”

39. Herein, in none of the documents, name of the transporter stands recorded as buyer or as owner of the goods which find mentioned therein.

In the course of arguments, counsel for the appellant has clearly submitted that when the transactions pertain to the year 2006 and about 17 years have passed, appellant would not be able to bring any better evidence, at ^{this} ~~the~~ stage, as regards the



documents already submitted before the Revenue authorities in the very beginning.

40. It may be mentioned that in the course of arguments, on behalf of the Revenue no ^{application} ~~request~~ has been ^{filed} ~~made~~ to call upon any of the dealers, who transacted in respect of the goods, which were found lying at the godowns of the transporter, for the purposes of verification of the genuineness of the transactions or for the purpose of seeking explanation as to the discrepancies pointed out in the course of arguments.
41. Admittedly, goods-stoppage-order (mall rokoaadesh) was issued on 09/03/2006 itself observing therein that it could not be verified at the spot as to which firm/person the said goods belonged and that all the goods had been duly recorded in the account books.

Once the transporter produced documents before the VATO (Border Duties), it was for him to verify from the said documents as to whom the said goods belonged and as to whether entries were duly made in the account books. However, from the notice of default assessment of tax, it cannot be said that the Assessing Authority- VATO (Border Duties) considered any of such documents produced by the transporter so as to record finding on the above said 2 points. The only fact considered by VATO (Border Duties) was that the transporter had failed to produce proper documents at the

10/5



time of survey/detention, in respect of the goods found lying at its godowns.

From the material available on record and the impugned order, it is found that while disposing of the objections, learned OHA did not discuss the claim of the objector raised in the objections, in detail, and rather rejected the same without giving valid reasons and without taking into consideration the documents relied on by the transporter-objector.

42. In the given facts and circumstances, when the Revenue authorities did not take appropriate steps, as noticed above, at the relevant time, to bring on record or to elicit from the transporter any fact pertaining to the documents produced by it, as desired, and they also did not raise any objection to the genuineness of the documents, the discrepancies pointed out by learned counsel for the Revenue, at this stage, do not help the Revenue or adversely affect the case of the appellant on the point that ^{none of} ~~none of~~ the said documents depicts that the appellant - a transporter was actually the owner of the goods.

Whether it is a case of occurrence of a taxing event?

43. As noticed above, none of the documents submitted by the ~~dealer~~ ^{dealer} appellant shows that the ~~dealer~~ ^{dealer} appellant was owner of any of the goods reflected in the documents. In the assessments framed by the Assessing Authority, there is nothing to suggest that any step was taken by him to conduct



detailed inquiry to establish that ~~dealer~~ appellant was the owner of any of the goods found lying at the godowns.

44. There is nothing on record to suggest that the transporter indulged in purchase or sale of any of the said goods to which the documents pertain ^{or}to suggest that the transporter evaded tax or fabricated the documents for evasion of tax by any of the parties, who transacted with each other.
45. Merely because the Act and the Rules read with together create certain obligations on the transporter in the conduct of its business, it would not be enough to reach a conclusion that in the event of breach of the same, an irrebuttable or rebuttable presumption may arise as to occurrence of a taxing event taking place at the hands of the transporter.
46. A transporter is not a person who is engaged in trading in goods. He is merely a bailee of the goods. For a tax liability to arise at his hands with respect to the goods under its bailment, there must exist a statutory provision under the relevant tax statute. No provision of taxing event exists with respect to completed transactions, in case a transporter ^{simply} fails to account for detention/custody of goods at its godowns. ✓
47. In the given facts, it was for the Revenue to have brought evidence before the Assessing Authority to establish that the assessee had engaged in trading activity. In absence of any material or evidence being brought on record to establish that though the assessee was a transporter but ^{it} had engaged in



trading in goods, no default assessment of tax u/s 32 of DVAT Act could be framed, and as a result the best default assessment including quantification of turnover are found to be without the sanction of law.

48. Section 86(14) of DVAT Act provides that any person who fails to comply with the requirement under sub-section (2) or sub-section (3) of section 59 of DVAT Act shall be liable to pay, by way of penalty, a sum of fifty thousand rupees.

49. Section 59(2) empowers the Commissioner to require any dealer or any other person including the one, who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, produce before him such records, books of accounts, registers and other documents; answer such question and prepare and furnish such additional information relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

Herein, admittedly, VAT (Border Duty) exercised the powers u/s 59(2) of DVAT Act and called upon the transporter to produce documents in respect of the goods which were detained at its godowns.

50. The ^{appellant} dealer/claims that in compliance with the said requisition from VATO (Border Duty), it had produced all the relevant documents. There is nothing in the assessment of penalty to suggest that the ^{appellant} dealer/failed to comply with the notice issued for production of documents in respect of the goods detained at




the time of survey or that the documents produced by the transporter did not pertain to the said goods, so as to say that it failed to comply with the directions. Learned OHA did not discuss levy of penalty at all, before upholding assessment framed in this regard, what to say of discussing documents which the appellant-objector is stated to have produced even during objection-proceedings.

Result

51. In view of the above discussion, reasons and findings, the appeals are allowed and impugned assessments framed by the learned Assessing Authority and the impugned order passed by learned OHA are hereby set aside.
52. File be consigned to the record room. Copy of the ^{Judgment-}order 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 :10/05/2023


(Narinder Kumar)
Member (Judicial)

