

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

M.A. No. 651/STAY/2022
In Appeal No. 470/ATVAT/2022
Date of Order: 10/05/2023

M/s DCS International Hair Company
223, DLF Towers,
Shivaji Marg, Moti Nagar
Delhi – 110015.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

CA representing the Applicant : Sh. Mohit Golchha with C.A
Sh. Yogesh Harjai.
Counsel representing the Revenue : Sh. S.B. Jain.

ORDER

1. Matter pertains to tax period - 1st Quarter, 2017.
2. With the above captioned appeal, initially no application u/s 76(4) of DVAT Act was presented. It came to be subsequently presented on 10/01/2023. This order is to dispose of said application.
3. Dealer – applicant – proprietor has challenged order dated 10/06/2022, whereby objections filed by the said dealer u/s 74 of DVAT Act came to be dismissed. Subsequently, order dated



21/11/2022, was passed by learned OHA by way of corrigendum to the previous order dated 10/06/2022.

4. The objections were filed by the dealer before learned OHA challenging assessment dated 25/08/2020, framed by learned Assessing Authority. Said assessment was framed due to the following reasons:

“Whereas I am satisfied that the dealer has not furnished returns/furnished incomplete returns/incorrect returns/furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004/Assessment order.

An application for unblocking of downloading the statutory forms was filed by Sh. S.C. Wadhwa, Adv. on behalf of the dealer. From checking DVAT Portal, it came to notice that the automatic downloading of statutory forms facility for central forms has temporarily been suspended by Ward in charge due to transaction suspected of evading VAT/CST.

A digitally signed notice vide ref. No. 10942890 dt. 22/01/2020 was issued to the dealer with date of appearance as on 29/01/2020. Sh. S.C. Wadhwa, Adv. appeared before the undersigned with same purchase bills No proof of delivery of the goods was produced. The counsel sought time to produce the same on 11.02.2020 and left on receiving an urgent call and did not sign the order sheet. None appeared on 11/02/2020. Another notice vide ref. No. 11063023 on 10.06.2020 with Date of appearance 17.06.2020 was issued. But none appeared nor any documents or intimation received.

On scrutiny of the case, it has been seen that the firm has claimed purchase amounting to Rs. 17,80,73,541/- against ‘H’ form, from Delhi dealers and Outside Delhi dealers.

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However no documents proving the purchase and delivery of goods could be produced by the dealer.

Hence, the request of the dealer for unblocking the statutory forms downloading is rejected.

Further, M/s DCS International Hair Company (07087211791) deals in the trading of Human Hair which was taxable @ 12.5% under DVAT Act, 2004. However, the item is exempted under GST Act. The firm has made purchase amounting to Rs. 17,80,73,541/- against 'H' form during the period first quarter of 2017-18 and a stock of Rs. 7,04,46,285/- was lying at the end of 30/06/2017. Further Dealer has not migrated to GST. Accordingly the closing Stock as claimed by the dealer in dealer profile is taxed @ 12.5% along with interest and penalty.

Further on account of type – 3 mismatch in 2A & 2B the additional tax of Rs. 18937.5/- as assessed vide order no. 150083201189 dt. 21/02/2020 is also payable along with interest.”

5. Feeling aggrieved by the above assessment, dealer filed objections which led to passing of two orders 10/06/2022 and 21/11/2022.
6. Feeling dissatisfied with the order dated 10/06/2022 passed by learned OHA, dealer has filed this appeal.
7. Objections came to be disposed of with the following reasons:

“4. After hearing the counsel for the Objector Dealer and impugned order passed by the Assessing Authority, it would be first appropriate to examine the claim of the Objector Dealer on his specific contention that due to the technical glitches on the GST Portal, the migration from VAT to GST regime could be completed though the Objector Dealer has been granted provisional GSTIN No: 07AANFD4020E1ZU and thereafter, the Objector Dealer had taken a fresh registration under GST vide GSTIN No: 07AANFD4020E2ZT. In this context, it is relevant to mention here



that the representative for the Objector Dealer has neither indicated or pointed out that what technical glitches were being faced by the Objector Dealer which prevented him from not completing the migration process from VAT into GST regime nor filed/submitted any documentary evidence before this Authority to show the bonafide on the part of the Objector Dealer. Furthermore, the Objector Dealer has also failed to show before this Authority as to what action has been taken by the Objector Dealer pursuant to his own stand/submissions on the ground of technical glitches/issues being faced by him on the portal in the course of the migration. Moreover, the Objector Dealer has also failed to even file any grievance to the GSTIN grievance cell in order to enable them to resolve the technical issues which were being faced according to the Objector Dealer. In view of these observations and in the absence of any documentary evidence with the Objector Dealer, prima facie, it appears that there is not merit in the contentions of the Objector Dealer on the above aspect, and is hereby rejected accordingly.

5. Further, it has also been observed that the Objector Dealer had never informed any issue be it technical or otherwise to the Department for the problem being faced by him in the process of migration rather on his own accord/will has applied for the fresh registration which has been granted to him with effect from 21.07.2017 vide GSTIN 07AANFD4020E2ZT and carried forward the closing Stock of Rs. 704,46,285/- as on 30.06.2017 (under the VAT regime) which is not permissible in accordance with law. Clearly, the Petitioner on his own has carried forward the said amount of closing stock to the above GSTIN which cannot be permitted in accordance with law and same was also not brought to the knowledge of the Department also.

6. On the other contention of the Objector Dealer that the tax on closing stock can only be imposed under Section 28 of the DVAT where the registration of the dealer is cancelled is not applicable where the dealer himself has not migrated to GST as it cannot be said the business of the dealer is a going concern and ceased to exist on the commencement of the GST, therefore, treatment of the closing stock lying at the end of 30.06.2017 in those cases would also be considered as non-functional/cancelled and taxed accordingly. Thus, in the absence of any documentary proof for the technical glitches being faced by the Objector Dealer during the migration process, the Assessing Authority has been justified in



taxing the closing stock of Rs. 704,46,285/- @12.5%, and hence the contention of the Objector Dealer is rejected accordingly.

7. Further, on the claim of mis-match being mentioned in the impugned order wherein the demand of Rs. 18,397.50/- has been raised on account of mismatch in 2A and 2B concerned, the Objector- Dealer has only relied upon the decision of the Hon'ble AT VAT in the case of M/s Honeywell Automation India Ltd. vs. Commissioner of Trade and Taxes in Appeal No. 08-11/ATVAT/2019. However, in support of the claim on merits, the Objector Dealer has not brought on record the tax invoices and Bank Statements evidencing the payment to the defaulting selling dealer for the tax period 1st Qtr, 2017-18 to show the bonafide on the part of the Objector Dealer. In view of the same, the contention of the Objector Dealer appears to be not tenable and accordingly, rejected.

8. The comments of the concerned Assessing Authority were also called upon on the contentions raised by the Objector Dealer and findings recorded in the impugned order. Accordingly, vide the letter dated 16/09/2012, the above comments have been provided. From a bare perusal of the same, it appears that the inspection on the registered business premises was carried out by the GSTI who in his report dated 14/09/2018 has informed therein that the firm was found non-functioning. Further perusal of the said letter also shows that two notices under section 59(2) were issued to the dealer dated 22/01/2020 and 10/06/2020 but despite of the same, the Objector Dealer had failed to produce the documents concerning the proof of delivery of the goods after granting various opportunities on numerous occasions to him. In view of the same, the contention of the Objector Dealer on this aspect also that no opportunity was provided to the Objector Dealer is also not acceptable, and hence rejected.

9. In view of the aforesaid facts and circumstances of the case and also considering the documents/records submitted by the Objector Dealer and also from the contentions raised by counsel therein, the undersigned is of the considered view that the Assessing Authority has correctly reached to the findings as observed in the impugned Default Notice of Assessment of Tax and Interest dated 25/08/2020 for the tax period 1st Quarter, 2017, which requires no interference of this Authority. Thus, the Objection filed by the Objection Dealer is dismissed and impugned Default Notice of Assessment of Tax



and Interest dated 25/08/2020 is hereby upheld in accordance with law."

8. Subsequently, vide order dated 21/11/2022, on the review application filed by the dealer; following modifications/amendments were made by learned OHA:

"a) At point No.3 of the order, it has been inadvertently recorded as the Objector Dealer mainly deals in books instead of Human Hair. Accordingly, the word "Books" is omitted and shall read as "Human Hair."

b) At point No.4, it has been inadvertently recorded as "the migration from VAT to GST regime could be completed." The word "not" is inserted accordingly. Now the substituted para is to be read as under: "the migration from VAT to GST regime could not be completed."

c) At point No. 6, the referred "Section 28 of the DVAT" is omitted and to be read as "Section 23 of the DVAT."

9. As noticed above, default assessment u/s 32 of DVAT Act, came to be framed on 25/08/2020, not only raising demand of additional tax and interest, but also dismissing an application filed by the dealer-applicant, and thereby disallowing its request made in the said application for unblocking of downloading of statutory forms.

10. On 10/02/2023, in the course of arguments on application u/s 76(4) of DVAT Act, ^{when} a query ^{has been} raised to learned CA for the appellant if the order rejecting prayer for unblocking of downloading of statutory forms was challenged by the dealer before learned OHA, candidly it has been admitted ^{on behalf of applicant-} that no



objection was raised before learned OHA in this regard. Prime facie, it can be said that the dealer accepted said order, vide which its application was rejected.

11. Additional tax and interest came to be levied on the ground that it was found that the dealer had not migrated to GST and that on 30/06/2017, that is the last day of operation of DVAT Act, dealer was found to have closing stock of 7,04,46,285/-. Said closing stock was subjected to tax @ 12.5%.
12. Another ground for levy of tax and interest was mismatch (of type 3), worth Rs. 18,937.5/-, as assessed vide order dated 21/02/2020. In the course of arguments, learned CA has submitted that dealer – applicant is not aggrieved by the impugned order on this aspect.
13. Case of the dealer-appellant, before learned OHA i.e. in the objections u/s 76(4) of DVAT Act, was that the dealer had migrated to GST on 01/07/2017 itself, but due to certain technical glitches/error at the initial stage of implementation of GST, which glitches/error beyond its control, provisional GSTIN could not be activated, and as such it had to obtain the fresh registration vide GSTIN w.e.f. 21/07/2017.

Further, it was pleaded before learned OHA that stock carried forward to GST was sold under registration dated 21/07/2017.

It was also case of the dealer in the objections that the dealer mainly deals in goods, which are exempted as per Entry 5 of



First schedule under DVAT Act, and as such no tax could be levied.

Another ground put forth on behalf of the objector before learned OHA was that the assessment order was not a speaking order.

14. Learned OHA, while dealing with the objections, observed that representative of the objector could not indicate or point out as to what technical glitches were faced by it, which prevented it from non completion of migration process i.e. from VAT to GST regime. No documentary evidence, in this regard, was submitted before learned OHA to show bona fide and as to what steps were taken by it to redress its grievance due to any such technical glitches. Therefore, this objection of the dealer was rejected.
15. As regards fresh registration under GST w.e.f. 21/07/2017, learned OHA observed that the dealer, of its own, complied for fresh registration and carried forward closing stock as on 30/06/2017, but this was not permissible under the law, particularly when this fact was never brought by the objector to the notice of the department.
16. Another objection raised on behalf of the objector was that tax *can* ~~could~~ be levied on closing stock only in view of provision of section 23 of DVAT Act, where registration of ^athe dealer is cancelled, but here, it was not a case of ^hthe cancellation. While



dealing with the said objection, learned OHA observed that dealer had not migrated to GST.

17. Learned OHA also took into consideration that despite issuance of notices to the dealer-objector on 22/01/2020 and 10/06/2020, u/s 59(2) of DVAT Act, the objector failed to produce documents in proof of delivery of goods and further that on inspection of the registered business premises by GSTI, report dated 14/09/2018 was made that the said firm was not found functioning.

18. In this regard, it may be mentioned that learned CA^{has} not disputed ^{during arguments} that initially Sh. S.C Wadhwa, Advocate represented the dealer before Assessing Authority, but, ultimately, none appeared on behalf of the dealer before the Assessing Authority.

18. On the point of cancellation of registration of the applicant under DVAT Act, learned CA submits that registration of the applicant under DVAT Act is still in existence for the purpose of proceedings/ formalities under DVAT Act. In this regard, no document has so far been filed. From the impugned order, it does not transpire that any such document was filed. But, in the given facts and circumstances, the main question involved is as to whether learned OHA was justified in observing that it was a case of "deemed cancellation" of the registration of the applicant under DVAT Act, whereas the claim of the applicant is that its case is not covered by section 23 of DVAT Act. Furthermore, a question involved in this appeal is as to whether learned



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Assessing Authority conducted any enquiry before levy of tax so as to comply with the provisions of section 23 of DVAT Act, i.e. to find out as to what would be the amount equal to the higher of the amount of tax payable under Clause (a) or the amount of tax credit as mentioned in Clause (b), in case it is found that the same were applicable to the given facts. In this situation, learned CA for the applicant has submitted that applicant is ready to deposit, by way of pre-deposit Rs. 5,00,000/- of the disputed demand towards tax and interest under challenge in this appeal and ^{prayed} ~~praise~~ that the appeal be entertained.

Learned counsel for the Revenue has no objection to the deposit of Rs. 5,00,000/- by the applicant by way of pre-deposit u/s 76(4) of DVAT Act.


19. In the given facts and circumstances, the application is disposed of and appeal is entertained subject to deposit of Rs. 5,00,000/- by the applicant by way of pre-deposit. Learned CA submits that dealer – applicant shall deposit the amount of Rs. 5,00,000/- within 20 days from today.
20. Learned CA to submit compliance report with the Registry and also apprise counsel for the Revenue about it, so that on 06/06/2023, as requested by learned CA for the applicant, appeal is taken up for final arguments. It is made clear that in case of non-compliance, the matter shall be taken up for further orders, due to non-compliance regarding pre-deposit.



21. Copy of the 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


10/5/2023
(Narinder Kumar)
Member (J)

