

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

Appeal No. 470/ATVAT/2022

Date of Judgment: 06/06/2023

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

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

Judgment

1. The above captioned appeal has been filed challenging order dated 10/06/2022, whereby dealer-appellant-proprietor has challenged order dated 10/06/2022, whereby objections filed by the said dealer u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), came to be dismissed.
2. Subsequently, order dated 21/11/2022, was passed by learned OHA by way of corrigendum to the previous order dated 10/06/2022.



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3. Matter pertains to tax period- 1st Quarter, 2017.
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. 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. Learned OHA disposed of the objections 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.



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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 ATVAT 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



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

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."

6. *Arguments heard. File perused.*

It may be mentioned here that vide order dated 10/04/2023 application u/s 76(4) of DVAT Act came to be disposed of directing the appellant to deposit Rs. 5 lacs by way of pre-deposit for entertaining of this appeal. Said order has been complied with.

7. A perusal of the assessment order passed on 25/08/2020 by learned Assessing Authority would reveal that thereby not only demand of additional tax and interest was raised, but an application filed by the dealer – assessee with the prayer for unblocking of downloading of the statutory 'H' forms was also rejected.

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As per case of the appellant, 'H' forms could not be submitted because of blocking of downloading of the said forms. On behalf of the appellant, it is submitted that he is not having in his brief copy of the said application submitted before the concerned VATO. It is further submitted that earlier Sh. H.C Wadhwa, Advocate was representing the dealer before the department - Assessing Authority, but, he having left this world, no brief pertaining to this matter could be traced out in his office.

8. Counsel for the respondent has already submitted before this Appellate Tribunal that copy of said application is also not available in the record of the department. Surprisingly, as submitted by counsel for the respondent even no order, said to have been passed, for blocking of downloading of the 'H' forms is available in the record of the concerned ward.

On behalf of the appellant, it is submitted that no such order was passed.

9. Factors to be considered, while framing default assessments of tax and interest u/s 32 of DVAT Act are different from the factors to be considered while disposing of an application filed by the dealer – assessee with the prayer for unblocking the downloading of statutory forms. Such an application was required to be dealt with separately. In other words, separate order should have been passed while disposing of the application and that too prior to the framing of default



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assessment of tax and interest u/s 32 of DVAT Act. Rejecting the application for unblocking the downloading of statutory forms, while framing default assessment, cannot be said to be the right procedure, as also submitted by counsel for the respondent.

10. It is true that this aspect was required to be agitated by the appellant – assessee before learned OHA, by way of objections. Learned CA admits that no objection was filed before learned OHA challenging the rejection of the aforesaid application. However, he adds that verbally he had raised this point before learned OHA.

11. However, ~~in pursuance of~~ the impugned order does not refer to any such verbal submission made by learned CA for the objector. Therefore, it cannot be said that any such submission was put forth before learned OHA challenging the rejection of the above said application.

Even if, no such submission was made or objection was raised by the dealer, learned OHA could himself take cognizance of this fact that while framing default assessment of tax and interest, application filed by the dealer for unblocking the downloading of the statutory forms could not be decided vide the same order i.e. dated 25/08/2020. Had he taken cognizance of this point, needful could be done while disposing of the objections. But, the fact remains that even learned OHA did not, of its own, decide this point.



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12. Leaned CA submits that the review application was filed by the dealer before learned Assessing Authority on 10/03/2021. Copy of this application is available on record. When enquired as to whether said application seeking review was ever disposed of by the Assessing Authority, learned CA states at Bar that said review application was not disposed of.
13. In the given facts and circumstances, as rightly submitted by learned CA for the appellant and learned counsel for the respondent, this is a fit case for remand of the matter to learned Assessing Authority for decision afresh.
14. Consequently, this appeal is disposed of and the matter is remanded to learned Assessing Authority with the direction to dispose of the application filed by the dealer – assessee with prayer for unblocking the downloading of statutory forms i.e. 'H' forms, ^{afresh} after going through the record and providing reasonable opportunity of being heard to the appellant.

In case of loss or non – availability of record with the department/ ward even by then, Assessing Authority to take steps for reconstruction of the record. As already observed, the application would be required to be disposed of vide separate order, and not while framing default assessment of tax and interest. In other words, in case the Assessing Authority finds, after disposal of the application for unblocking the downloading of the statutory forms, that default assessment of tax and interest



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is required to be framed, it would be required to be framed separately and subsequently.

15. Dealer - assessee to appear before learned Assessing Authority on 14/06/2023.
16. 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 : 06/06/2023.



Narinder Kumar
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(Narinder Kumar)
Member (J)