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

Appeals No. 26-32/ATVAT/23, &
Appeals No. 34-38/ATVAT/23.
Date of Judgment: 08/02/2024.

M/s HDFC Bank Ltd.
E-13/29, 2nd Floor, Harsha Bhawan,
Middle Circle, Connaught Place,
New Delhi-110001. .....Appellant

v.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel representing the Appellant : Sh. Shammi Kappor with Sh. Sandeep Gupta and Ms. Swati Aggarwal.
Counsel representing the Revenue : Sh. P. Tara

JUDGMENT

1. This common judgment is to dispose of the above captioned 12 appeals.
2. Matters pertain to tax period May, 2005 to November, 2005.
3. Dealer-appellant bank has challenged common order dated 08/12/2022 passed by the learned Objection Hearing Authority-

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Additional Commissioner-Department of Trade and Taxes, Delhi (hereinafter referred to as OHA).

4. Vide impugned order learned OHA disposed of in all 15 objections. The operative part of the impugned order reads as under :

> "(i) Imposition of tax and interest on the sale of securitization of loan amounting to Rs.1,973/- crores is hereby upheld.
>
> (ii) Imposition of tax on sale of fixed assets is set-aside and the appeals are allowed to that extent.
> (iii) Imposition of tax on lease rental of Rs.12,17,00,000/- is hereby upheld.
> (iv) Imposition of tax on sale of repossessed vehicle is hereby upheld.
> (v) Imposition of tax on TDS on Works Contract is upheld.
> (vi) Impugned order of penalty u/s 86(12) and 36A(5A) are hereby allowed and the impugned orders are set aside to that extent.
> (vii) Impugned orders of penalty u/s 86(99), 86(10) and 86(15) along with penalty under Section 36A (8), 36A(9) and 36A(12) are hereby upheld and the appeal to that extent are rejected.
> (viii) Ward Authority is directed to ensure the compliance of aforementioned directions."

5. Initially, assessments were framed for the same period on 24/06/2011. Dealer filed objections against the said assessments. OHA rejected the assessments. However, Commissioner subsequently vide order dated 13/04/2015 revised the order passed by the learned OHA and reinstated the tax demand and penalty. The dealer filed appeals No. 118-132/23, before this Appellate

Tribunal. The Appellate Tribunal disposed of the appeals and remanded the matter to learned OHA to decide all the grounds raised by the dealer, other than the ground of limitation.

That is how, vide impugned order, learned OHA has disposed of objections filed by the dealer bank u/s 74 of DVAT Act.

6. The objections u/s 74 of DVAT Act were filed by the dealer bank against default assessments of tax, interest framed u/s 32 of DVAT Act and assessments of penalty framed u/s 33 of DVAT Act.

As is available from Para 2 of the impugned order, following demands were raised by the Assessing Authority, for the tax period i.e., from April, 2005 to November, 2005:

The Assessing Authority raised the following demands towards tax, interest and penalty are as under –

S.No.	Tax Period	Date of Notice of **Default Assessment of Tax**	**Total Demand** i.e. Tax + Interest (Rs. In lakh)
1.	April, 2005	27/5/2011	47,174.06
2.	May, 2005	24/6/2011	25.13
3.	June, 2005	25/7/2011	113.00
4.	July, 2005	26/8/2011	55.58
5.	August, 2005	28/9/2011	66.53
6.	Sept., 2005	28/10/2011	96.00
7.	October, 2005	23/11/2011	421.34
8.	November, 2005	20/12/2011	60.47
			48,012.11

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S.No.	Tax Period	Date of Notice of Default **Assessment of Penalty**	**Demand** (Rs. In lakh)
1.	April, 2005	28/10/2011	53.14
2.	May, 2005	--	0.00
3.	June, 2005	26/8/2011	19.63
4.	July, 2005	27/7/2011	38.99
5.	August, 2005	07/12/2011	40.75
6.	Sept., 2005	04/11/2011	68.97
7.	October, 2005	23/11/2011	324.02
8.	November, 2005	20/12/2011	38.19
			583.69

referring the observations by special Auditors, and

Learned OHA, while disposing of the objections on different points and while dealing with the contentions raised therein, pertaining to these matters, observed in the manner as:

"5. During the special audit the Special Auditor observed the following as under:

a. The dealer is not maintaining daily movement of stock register for bullion and gold coins.

b. The dealer is not maintaining complete books of accounts of Delhi region.

c. The dealer has not maintained trading account for Delhi region duly certified by statutory auditors.

d. The Dealer has not included in his turnover the sale of securitized loan of Rs.19,73,33,00,000/- which is on account of sales.

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e. The dealer has not included in his turnover the sale of re-possessed vehicles to the tune of Rs.18,91,77,931/-.

f. The dealer has not included in his turnover regarding sale of fixed assets of Rs.22,80,693/-.

g. The dealer has not included in his turnover regarding the receipt of lease rent of Rs.12,17,00,000/-

h. The dealer has not deducted the required TDS of VAT Rs.16,13,754/- on total contracts of Rs.8,06,87,702/-

"26. That the counsel for the objector dealer further argued that the objector dealer is not liable to pay tax on the sale of re-possessed Vehicles/assets. The issue of taxability on sale of re-possessed vehicle/assets were squarely covered by the Hon'ble Supreme Court in the matter of Federal Bank [2007] 6VST 736 [SC]; [2007] 137 Comp Cas 44 (SC); [2007] 4 SCC 188 wherein the question was considered by the Apex Court was whether the Bank was a "dealer" in relation to auction sales as per section 2(viii) of the Kerala General Sales Tax Act, 1963. While considering the said issue, the nature of activity of the bank was considered with reference to the provisions of the Banking Regulation Act, 1949."

"29. Hence, while applying the above principles as enunciated in the above judicial pronouncements to the case in hand, I have no hesitation in holding that in the present case the objector dealer HDFC Bank is a dealer and liable to pay VAT on sale of repossessed vehicle."

"37. Impugned orders have also been assailed on the ground that penalties were wrongly imposed by the Assessing Authority u/s 86(10), 86(12) & 86(15) along with Penalty u/s 36(A)5(A), 36(A)8, 36(A)9, 36(A)12. In this regard, the objector dealer has relied upon the orders passed by Hon'ble VAT Tribunal in their own case wherein multiple penalties were discussed and penalty u/s 86(12) was deleted by the Hon'ble VAT Tribunal. It is pertinent to mention that vide said order relied upon by the objector dealer the Tribunal has upheld the

penalty u/s 86(10) and 86(15) in the same order. In view of the given circumstances, the penalty u/s 86(10) & 86(15) are required to be upheld as held by the Hon'ble VAT Tribunal. However, in the month of October, 2005 there seems to be a calculation error while computing the penalty u/s 86(10) & 86(15) which is required to be imposed as per law."

7. Hence, these appeals.

8. Arguments heard. File perused.

9. Admittedly, dealer-appellant was issued directions by the Commissioner, Department of Trade & Taxes-Respondent herein, that it should get its books of accounts audited from M/s P. K. Singhal and Co., Chartered Accountants.

   As per record, special audit report for the year 2006-07 was submitted by the above named auditors.

10. Audit report revealed that the dealer had not paid tax by concealment/omission/failure to disclose fully material particulars as regards the following points:

    1. The dealer has not made payment of VAT on account of sale of repossessed vehicles.
    2. The dealer has not made payment of Tax required to be deduced on payments made for work contracts.
    3. The dealer has not submitted the statutory forms 'F' till the final date of submission the DVAT-51 and
    4. The records/books of accounts have not been maintained properly as per the provisions of DVAT Act.

11. Record further reveals that vide order dated 20/04/2011, Commissioner-respondent had directed the dealer-assessee to get audited its books of accounts, for the year 2005-06 also, from the above named auditors. Ultimately, the said auditors submitted special audit report.

12. The auditors called upon the dealer to furnish certain record, but the dealer-assessee is stated to have not complied with the directions. However, following reply came to be submitted by the dealer to the auditors:

> "Under the RBI guidelines, Securitization is defined as a process by which assets are sold to a bankruptcy remote special purpose vehicle (SPV) in return for an immediate cash payment. The cash flow from the underlying pool of assets is used to service the securities issued by the SPV. Securitized Receivables are derecognized in the balance sheet when they are sold, true sale criteria are being fully met and consideration has been received in the bank. Sales/Transfer that do not meet this criteria for control are accounted as secured borrowings.
> In respect of receivable pools securitized out, the bank provides redit enhancement as specified by the rating agencies in form of cash collateral/guarantee and/or by subordination of cash flow to senior pass through certificate.
> Gain or loss from sale of such receivables is computed as difference between sales consideration and book value, expenses incurred on account servicing and incidental costs of the contracts so securitized out are not deferred but expenses out at the time of transaction.
> The bank generally enters securitization transaction either through direct assignment route which are similar like assets backed securitization though SPV route except that such portfolios of receivables are assigned directly to purchaser and are not represented through pass through certificates."

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Sale of re-possessed vehicles

13. Counsel for the appellant has contended that these transactions were not exigible to tax, same being not covered by the definition of "sale". At the same time, counsel for the appellant has contended that such transactions being transactions of second sale, provisions of section 15 of DVAT Act come into application and the dealer –appellant was entitled to a tax credit, which was not granted by Assessing Authority.

As is available from the impugned order, as regards the definition of "dealer", learned OHA placed reliance on decision in **Federal Bank's case**, (2007) 6 VST 736; **ICICI Bank Ltd. v. Joint Commissioner, Sales Tax Central Section Kolkata**, [2010] 31 VST 178 (WBTT); **CITI Bank v. Commissioner of Sales Tax** in ST. Ref. 01/2003, decided by our own Hon'ble High Court on 14/12/2015; **HDFC Bank v. Commissioner of Value Added Tax, Delhi**, VAT Appeal No. 29/2016, decided by our own Hon'ble High Court on 21/10/2016.

Learned OHA, while applying the principles enunciated in the above decisions to the case in hand, held that objector bank is a "dealer" and liable to pay VAT on sale of re-possessed vehicles.

Assessing Authority found that the auditors had noticed that the dealer bank had recovered dues from its borrowers due to sale of

vehicles while resorting to condition 14.2 of the agreement of auto/car loan(s).

The Assessing Authority further found that the auditors had noticed 33 cases of sales of commercial vehicles, only @ Rs. 1/- each.

14. Counsel for the respondent has contended that in view of decision by our own Hon'ble High Court in HDFC's case (supra), there is no merit in the contention raised by the counsel for the appellant.

In reply, counsel for the appellant has contended that decision by the Hon'ble High Court has been challenged before Hon'ble Supreme Court.

15. In **Citi Bank v. Commissioner of Sales Tax**, 2016 AD (Delhi) 58, cited on behalf of the appellant, reference was made by this Appellate Tribunal u/s 49 of DST Act, 1975, to the Hon'ble High Court, for answer to, in all, six questions of law, including following four:

> "(iii) Whether in the facts and under the circumstances of the case the Tribunal was correct in holding that the disposal of repossessed cars by the Appellant Bank constitutes a sale by the Bank?
>
> (iv) Whether in the facts and under the circumstances of the case the Appellate Tribunal was correct in holding that the Appellant Bank which has disposed of cars repossessed from defaulting borrowers is a dealer within the meaning of Section 2 (e) read with Section 2 (c) of the Delhi Sales Tax Act?
>
> (v) Whether in the facts and under the circumstances of the case the Tribunal was correct in holding that the activity of the banking

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carried on by the Appellant Bank amounts to business under Clause (i) of Section 2 (c) of the Delhi Sales Tax Act, 1975?

(vi) If the answer to Question No. 5 is yes, whether in the facts and under the circumstances of the case the Tribunal was correct in holding that the sale of the repossessed cars by the Appellant is incidental or ancillary or in connection with the Appellant's business.?"

It may be mentioned here that Questions (i) and (ii) were not pressed, before the Hon'ble High Court.

16. In Citi's Bank case (supra), while dealing with the above said questions of law No. (iii) and (iv) were decided as under:

"16. However, as far as the present case is concerned, the facts are more or less similar to those in the case of State Bank of India v. State of Odisha (2014) 74 VST 120 (Ori). There the State Bank of India (SBI) initiated action under Section 13 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') for enforcing the security interest to realise the outstanding loan dues. The accounts of the borrowers had been classified as non-performing assets ('NPA'). The movable assets of such borrowers were put to auction sale under Rule 6 of the Security Interest (Enforcement) Rules 2002 and the sale proceeds were appropriated to the loan account of the borrowers. When the said sale was brought to tax by the Sales Tax Officer, SBI challenged the assessment order contending that it is not a 'dealer' under the Orissa Value Added Tax Act 2004 ('OVAT Act') and that there was no legal element of 'sale'. Reference has been made to the decision in State of Tamil Nadu v. Board of Trustees of the Port of Madras (supra) as well as Federal Bank Limited v. State of Kerala (2007) 6 VST 736 (SC). After analysing the provision of OVAT Act, it was held that the definition of 'dealer' under the OVAT Act did not exclude the bank when the bank is selling the goods as part of its business

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of banking. This was inconsonance with the decision of the Supreme Court in Federal Bank Limited (supra). Further the decision in Board of Trustees of the Port of Madras (supra) was distinguished and it was observed that "unlike activities of Port Trust, sale of pledged goods is in the course of banking business."

17. In Tata Motors Finance Limited, ICICI Bank Limited and Family Credit Limited v. Assistant Commissioner of Sales Tax (decision dated 8th October 2033 in W.P.T.T. Nos. 4 and 6 of 2011 and 24 of 2010) the Division Bench of the Calcutta High Court was considering the question whether the bank was a dealer within the meaning of Section 2 (11) of West Bengal Value Added Tax Act, 2003 ('WBVAT Act'). In that case, the bank had disposed of vehicles hypothecated to it for recovery of outstanding loans under the strength of irrevocable power of attorney obtained from the borrower. It was held that the Petitioners/Banks were 'dealers' under the wider meaning of that expression under Section 2 (11) of the WBVAT Act. The word 'dealer' included an 'agent' and since the bank had undertaken the sale on the strength of irrevocable power of attorney, it was also acting as an agent. It was noted that "they undertake the activity of selling the hypothecated vehicles for the purpose of realizing the consideration which had already passed from them to the borrower. By selling the vehicles both the banking and non-banking financial companies realize their dues which naturally includes profits."

18. Recently in the decision of HDFC Bank Limited v. The State of Tamil Nadu 2015 VIL 372 (Mad), the Division Bench of the Madras High Court addressed the issue whether the Bank which had "sold thousands of repossessed vehicles from defaulting customers' was a dealer within the meaning of Section 2 (15) of the Tamil Nadu Value Added Tax Act, 2006 ('TNVAT Act'). In answering the question that in a hypothecation, the ownership of the hypothecated goods remains only with the borrower, the Court observed as under:

> "11. It is true that in a hypothecation, the ownership of the hypothecated goods remains only with the person creating the hypothecation. But, as observed by the Tribunal, a bank, which advances facilities for the purchase of a

vehicle, enters into an agreement with the loanee. The hypothecation agreement invariably contains clauses empowering the bank to repossess the vehicle in the event of a default and also to bring the vehicle to sale through public auction or by private negotiation without even involving the owner of the vehicle."

19. Under the expanded definition of 'dealer' under Clause 2 (15) of TNVAT Act read with Explanation III thereof, any person who is disposing the goods by auction or otherwise is also deemed to be a dealer. Therefore, this did not require the seller must be in a position to itself pass on title in order to considered as a 'dealer' under Section 2 (15) of TNVAT Act. Further it was held that in view of the Explanation III, no distinction could be drawn between a statutory right of sale or a contractual right to bring a hypothecated property to sale.

20. Turning to the case on hand, the definition of 'dealer' under Section 2 (e) has both exhaustive part as well as inclusive part. In the exhaustive part it means that "any person who carries on business of selling goods" and in the inclusive part which includes "'any mercantile agent', by whatever name called", who "sells goods belonging to any principal whether disclosed or not." It also includes "an auctioneer who sells or auctions goods belonging to any principal, whether disclosed or not ....."

21. Going by the above broad definition, and in light of the law explained in the aforementioned cases, the Court has no difficulty in holding that the Petitioner Bank is indeed a 'dealer' within the meaning of Section 2 (e) read with Section 2 (c) of DST Act. The sale by the Bank of cars hypothecated to it or offered as security against loans advanced towards financing the purchase of the car is a 'sale' within the meaning of S. 2 (m) of the DST Act. Even if the borrower is the owner in possession of the car, the sale is made by the Bank on the strength of the letter of authorisation executed in its favour by the borrower. Questions No. 3 and 4 referred to this Court are answered accordingly."

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17. While dealing with Questions No. (v) and (vi), Hon'ble High Court observed in the manner as :

> "22. The next question is whether the selling of vehicles hypothecated to it by the Petitioner/Bank constitutes business" within the meaning of Section 2 (c)(i) of DST Act. Again the word 'business' as defined is an inclusive one. It includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture whether or not it is for gain or profit. It also includes "any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern." It is not in dispute that the Petitioner-Bank was granted permission to sell goods/assets offered to it as security for the purposes of recovering the outstanding loans. Thus, the selling of the assets by way of auction or otherwise by a Bank to realise its dues and adjust it against the outstanding loan indeed forms part of the permissible business activity of the Petitioner. In other words by undertaking the activity of sale of assets hypothecated to it by way of auction, the bank is not undertaking an impermissible activity within the four corners of the law. Question No. 5 was, therefore, correctly answered by the Tribunal in holding that the activity of the banking carried out by the Appellant bank amounts to business under Section 2 (c)(i) of the DST Act. As a corollary, in answer to Question No. 6, it is held that the Tribunal was correct in holding that sale of the repossessed cars by the Appellant bank is incidental or ancillary to its main banking business.
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> 23. An attempt was made by Mr. Mahna to urge that the sale of motor vehicles is a first point sale in terms of Section 5 of DST Act read with the Schedule thereof. It is pointed out that with effect from 29 th March 1996 the motor vehicle has been subsequently identified as the type of goods which qualify for a single point sale read with Section 5 which would be exempted from any further tax. It is accordingly submitted that even if the Petitioner-bank was held to be a dealer, the sale of motor

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vehicles by it which has already suffered first point sales tax cannot be subjected to any further sales tax.

24. Apart from the fact that this issue has not been urged by the Appellant Bank when its appeal was considered by the Tribunal, the Court finds that none of the questions urged for reference to this Court by the Bank include such an issue. In any event, as of date it appears that no demand as such has been raised against the Bank for any period prior to 29 th March 1996. Therefore, a question that has not been raised in this appeal is not required to be considered by the Court."

18. Questions (iii) to (vi) referred to above were answered by the Hon'ble High Court as under:

"26. Question (iii) is answered by holding that in the facts and circumstances of the case the Tribunal was correct in holding that the disposal of repossessed cars by the Bank constitutes a sale' under the DST Act..

27. Question (iv) is answered by holding that the Tribunal was correct in holding that the Bank which has disposed of the cars repossessed from defaulting borrowers is a dealer within the meaning of Section 2 (e) read with Section 2 (c) of the DST Act.

28. Question (v) is answered by holding that the activity of banking carried on by the Bank amounts to business under Clause (i) of Section 2 (c) of the DST Act.

29. Question (vi) is answered by holding that, in the facts and circumstances of the case, the Tribunal was correct in holding that the sale of the repossessed cars by the Appellant Bank is incidental or ancillary or in connection with the Appellant's business.

30. The reference is disposed of accordingly."

19. Findings by our own Hon'ble High Court by adjudicating the same issue are binding. This legal preposition cannot be disputed by counsel for the appellant. Accordingly, the impugned order passed by learned OHA holding that the objector dealer bank is a dealer and liable to pay VAT on these transactions of sale of repossessed vehicle, is upheld.

20. As regards the contention that this is a case of sale of second hand goods, and that the dealer-appellant was entitled to tax credit, counsel for the revenue had rightly submitted that the dealer-appellant never claimed any such benefit in the returns by claiming that these transactions were of sale of second hand goods covered by Section 15 of DVAT Act. In the course of arguments, counsel for the appellant has not disputed that the dealer-appellant ever claimed any benefit of tax credit claiming that these transactions were of sale of second hand goods. Therefore, there is no merit in this contention raised by counsel for the appellant before this Appellate Tribunal.

Result

21. In view of the above discussions and findings, all these appeals No. 26-32/ATVAT/2023 are hereby dismissed.

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Appeals No. 34/23 to 38/23.

Penalty

22. Vide impugned order, learned OHA upheld the assessments framed u/s 33 of DVAT Act levying penalty due to violation of provisions of the said Act, having regard to the provisions of sections 86(10) and 86(15) of DVAT Act.

23. As regards the month of October, 2005, learned OHA observed in the impugned order that there appeared to be an error in calculation, while computing the penalty under the above said two provisions of law. Counsel for the appellant has contended that imposition of penalties is not based on any false, misleading or deceptive statement or disclosure by the dealer-appellant, the reason being that while furnishing returns, the dealer believed that revenues generated from the sale of reprocessed vehicles were not exigible to tax under DVAT Act.

In support of his contention, counsel for the appellant has placed reliance on decision in **HDFC Bank Limited v. Commissioner of Valued Added Tax, Delhi**, VAT Appeal No. 3/2023, whereby our own Hon'ble High Court has set aside penalties imposed u/s 86(10) and 86(15) of DVAT Act, in that matter, and that in view thereof, the impugned order and the impugned assessments of penalty under challenge in these appeals, deserve to be set aside.

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24. Counsel for the respondent has submitted that all the ingredients of each offence were established for the reasons recorded in the assessments and as such no fault can be found with the levy of penalties. Counsel for the respondent has submitted that the dealer-appellant was within the know of the settled law regarding tax liability on the point of sale of repossessed vehicles as per decision in Federal Bank's case, (2007) 6 VST 736, and as such, it cannot be said that false, misleading or deceptive statement or disclosure were not made by the dealer-appellant in the returns, and/decision in VAT Appeal No. 03/2023 relied on by counsel for the appellant, does not come to the aid of the appellant.

25. In VAT Appeal No. 03/2023 titled as HDFC Bank Limited's case (supra), Hon'ble High Court has taken into consideration that the issue of tax being leviable on the sale of repossessed vehicles ultimately came to be settled insofar as Hon'ble High Court of Delhi, is concerned in terms of its decision rendered in **Citi Bank v. Commissioner of Sales Tax,** 2015 SCC OnLine Del 14023, and as such the imposition of penalty was rendered unsustainable, particularly when the appellant therein had chosen not to deposit any tax in respect of transactions pertaining to sale of repossessed vehicles on a bona fide belief that revenue obtained there from was not exigible to tax under the provisions of tax.

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26. In HDFC Bank Ltd's case, VAT Appeal No. 3/2023 (supra), our own Hon'ble High Court, while dealing with levy of penalty u/s 86 (10), (14) and (15) of DVAT Act, set aside the said penalties, while observing in the manner as:

> "28. Turning then to the merits of the imposition of penalty itself, we find that the same is not based on any —false, misleading or deceptive statement or disclosure made by the appellants. The appellants had while furnishing their returns proceeded on the bona fide belief that revenues generated from the sale of reprocessed vehicles would not be exigible to tax under the Act. That controversy has till date not been lent a quietus, since notwithstanding the judgment rendered by this Court in Citi Bank, the matter still appears to be at large before the Supreme Court and on the appeal of the appellant itself. In any case and since the respondents have not founded the levy of penalty on conduct of the appellant which may qualify as falling within the ambit of sub- sections (10), (14) and (15) of Section 86, we find ourselves unable to sustain the levy of penalty.
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> 29. We also take note of the submissions of the appellant who had assailed the levy of penalty based on the provisions of Section 34. It was pointed out that for the purposes of imposition of penalty pertaining to the period December 2005 to March 2006, the respondents had sought to invoke the extended period of limitation as constructed in terms of the Proviso to Section 34(1) of the Act. It was pointed out that the aforesaid Proviso empowers the respondents to commence proceedings for reassessment in cases where the Commissioner has reason to believe that tax was not paid on account of —concealment, omission or a failure to disclose material particulars by an assessee.
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> 30. Regard must be had to the fact that the non-payment of tax on the sale of repossessed vehicles is not alleged even by the respondents as being an outcome of —concealment, omission or a failure to disclose all material particulars. The appellant chose not to deposit any tax in respect of the subject transactions proceeding on the assertion that the

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revenues obtained therefrom were not exigible to tax under the provisions of the Act. That uncertainty came to be accorded a degree of finality only once the judgment came to be pronounced by the Court in Citi Bank. The imposition of penalty therefore, would be rendered unsustainable additionally on this score.

31. In fact, the invocation of the Proviso placed in Section 34(1) lends further credence to our conclusion that the order of the Court dated 26 September 2016 cannot possibly be interpreted as restricting the scope of inquiry to the question of proportionality alone. Accepting such a contention as advanced by the respondents would compel us to construe the aforesaid decision as intending to empower the respondents to levy a penalty even though the same may not find sanction under the provisions of the Act. This too leads us to the irresistible conclusion that the order of 26 September 2016 did not detract from the right of the appellant to question the very basis for invocation of the penalty provisions."

Therein, the assessments pertained to the Financial Year 2005-06 and 2008-09. Herein, the impugned order has upheld the assessments pertaining to turnover from sale of repossessed vehicles, during the period from May 2005 to November 2005. Relying on the decision cited by counsel for the appellant i.e. in VAT Appeal No. 03/2023, the impugned order passed by learned OHA and the assessments of penalty framed by learned Assessing Authority, deserve to be set aside. Accordingly, same are hereby set aside. Consequently, all the 5 appeals No.- 34-38/ATVAT/2023 are allowed and the assessment of penalties and the impugned order upholding the same, are hereby set aside.

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27. It may be mentioned here that no other argument has been advanced on any of these 12 appeals by counsel for the parties.

28. File be consigned to the record room. Copy of the judgment be supplied to both the parties as per rules. One copy be placed in the connected appeal file. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.
Date: 08/02/2024.

Narinder Kumar 8/2/2024

(Narinder Kumar)
Member (Judicial)