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

Misc. Application No.- 141/2018
In Appeal No.-125-126/ATVAT/21
Date of Order: 27/07/2023

M/s. Gupta Bros. India,
232, Jor Bagh,
New Delhi - 110003

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Rajesh Jain.
Counsel representing the Respondent : Sh. C.M Sharma

ORDER

1. The above captioned two appeals initially presented on 13/07/2018, were dismissed vide order dated 28/12/2021, same being barred by limitation.
2. Vide judgment dated 17/08/2022, in VAT Appeal No. 22/2022, Hon'ble High Court directed this Appellate Tribunal to hear and dispose of appeal on merits.
3. With the appeals, only one application (M.A. No. 141/88) was also ~~be~~ filed u/s 76(4) of DVAT Act with prayer for the entertainment of the two appeals without calling upon the dealer to deposit any amount by way of pre-deposit. The

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application ultimately came to be amended. This order is to dispose of said application.

4. On 18/07/2018, notice of default assessment of tax and interest u/s 32 of DVAT Act came to be issued to the dealer-appellant-assessee, by AVATO (W-98) – Assessing Authority raising the total demand of Rs. 6,37,46,292/- i.e. Rs. 3,89,99,994 towards additional tax and Rs. 2,47,46,298/- towards interest. The default assessment, as per case of the Revenue, pertains to the tax period - Annual 2010.

5. Vide separate assessment of even date i.e. 18/07/2014, Assessing Authority levied penalty u/s 33 of DVAT Act. Penalty of Rs. 8,57,99,780/- came to be imposed, because of violation of provisions of section 86(12) of DVAT Act.

6. Assessing Authority framed the assessment due to the following reasons:-

> "The main points are as under:-
> 1. M/s Gupta Bros. (I) was awarded renovation work of Ashoka Hotel which is not a commonwealth project.
> 2. The work of renovation of Ashoka Hotel was terminated without notice on 11th May, 2010 and the site was vacated by forcing out creating a bomb hoax.
> 3. The material, machinery, personnel belongings, documents, files and other related papers were confiscated and none of the papers and articles, machines and material were allowed to be taken out of the campus.
> 4. Now the matter is sub-judice in the Hon'ble High Court of Delhi.
> As per discussion with Sh. Parnesh Gupta, company has not executed any CWG project. The dealer is a regular dealer,

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but he has no records regarding filing of returns in the department etc.

He submitted the photocopies of TDS certificate issued by the ITDC but informed that original TDS certificates are not in the possession of the dealer.

He submitted that the amount of total contract was Rs. 63,99,99,905/- but it was terminated vide letter dated 11.05.2010 after payment of Rs. 32 crores approximately. However, he is not having any documentary proof in this regard. He could not produce copies of any DVAT returns.

In this regard, it is noticed that the dealer, neither could produce the copies of returns nor any returns of the dealer are available on the system.

In view of the above facts, it seems that the dealer has not filed any returns for the year 2009-10.

Further the dealer also could not produce any supporting documents regarding receiving of payment of only 32 crore approximately.

As the dealer could not produce the original TDS certificates, the benefits of the same is disallowed.

It is further noticed that as per information available on CVC website, the amount of contract was Rs. 63,99,99,905/- and date of completion was 12.10.2009. It is further mentioned that physical progress of the work in percentage is 65% and the work terminated.

Accordingly, the undersigned has left no option but to decide the case by taking 65% of the contract amount of GTO of Rs. 63,99,99,905/- which comes to Rs. 41,59,99,938/-. The undersigned as per his best judgment taking the GTO of Rs. 41,59,99,938/- and after giving 25% deductions on account of labour services and other like charges, rest of the amount i.e. Rs. 31,19,99,953/- is taxed @ 12.5% along with interest as per provisions of DVAT Act, 2004."

7. Feeling aggrieved by the assessments, dealer-assessee filed objections. Vide order dated 21/09/2017, objections were dismissed.

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8. Learned Special Commissioner-I/ OHA dismissed the objections filed by the dealer-objector and thereby upheld the notices of default assessment of tax & interest and assessment of penalty, due to the following reasons:-

> "On the aforesaid grounds of objection taken up by the objector, the D.R. states it is evident from the Notices of Default Assessment that the objector has not filed his returns/revised returns nor paid any taxes during the period for which the order has been framed. Further, even in the grounds of appeal, objector does not, even, once, speak of having filed returns or paid tax even after the issue of the Notices of Default Assessment. Even in the compilation, nowhere does the objector mention whether he has filed the returns/revised returns for the period. The objector has also not countered in his grounds of appeal, the recording of the fact in the Notices of Default Assessment that the system in the Deptt. does not show any returns filed in respect of the objector. Even then, the Assessing Authority accepted the submission of objector that only 65% work was completed, and he estimated the GTO accordingly.
>
> Consequently it is abundantly clear that neither return for the period have been filed by the objector nor due tax paid. This is inspite of the fact that the objector had received payment, as per his own admission, of Rs. 32 Crores (approx) from the contractee. Consequently, in the absence of returns, the Assessing Authority was clearly constrained to assess the objector and levy tax in the manner as he deemed fit. Consequently there is no ground to interfere with the Notices of Default Assessment framed by the Assessing Authority.
>
> In view of what has been stated above, there appears to be no ground on which relief can be granted to the objector and the grounds of appeal furnished by him in the written submissions do not hold any water. Consequently,

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there does not appear to be any ground on which the Notices for Default Assessment for tax, interest and penalty issued by the Assessing Authority should be interfered with. Consequently, the objections are dismissed and the Notices for Default Assessment in respect of all the aforesaid period stands."

9. Hence, these appeals accompanied by the only application u/s 76(4) of DVAT Act.

10. Arguments heard on the application. File perused.

11. As noticed above, the dealer-appellant, which was awarded renovation work of Ashoka Hotel, was to be subjected to audit of its business affairs for the years 2009-10 and 2010-11. Said partnership firm was registered with the Department of Trade and Taxes in connection with work executed in Commonwealth Games, 2010.

A notice dated 03/07/2014 in form DVAT-37 was issued by the Assessing Authority-AVATO (Ward-98) to the dealer-assessee directing it to submit relevant records/documents on or before 07/07/2014, for conducting of audit. Thereupon, Sh. Parnesh Gupta, partner of the said firm submitted written submissions before the Assessing Authority on 14/07/2014.

12. While framing assessment dated 18/07/2014, learned Assessing Authority observed that the dealer did not produce before him copies of returns; that on the system of the department, no return of the dealer was available, and as such,

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it appeared that the dealer had not filed any return for the year 2009-10.

As further observed by the Assessing Authority, the dealer also did not produce any supporting document regarding receipt of only a sum of Rs. 32 crores (approx.) by way of payment, as claimed by the appellant before him.

However, the Assessing Authority, came across an information available on CVC website, that the amount of contract was Rs. 63,99,99,905/-; that the work was to be completed by 12/10/2009; that physical progress of the work in percentage was 65%, and that the work was terminated.

Learned Assessing Authority further observed that the dealer did not produce before him original TDS certificates, and rather, submitted only photocopies of TDS certificates, and as such, he disallowed any benefit to the firm on their basis.

Audit proceedings u/s 58 of DVAT Act are said to have been initiated ~~conducted~~ in terms of order dated 12/11/2013 issued by the Commissioner.

13. First contention raised on behalf of the applicant is that the Assessing Authority framed combined assessments for the years 2009-10 and 2010-11, and as such, the impugned assessments have been passed against the provisions of DVAT

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Act. In support of this contention, counsel has placed reliance on following decisions:

1. **Devendra Ch. Das v. CTO**, (1978) 42 STC 438 (Cal);
2. **J.K. Engineering v. CST**, (1995) 99 STC 209 (Bom).

Prima facie, this is not a case of framing of assessments for two years vide single order. Section 32 of DVAT Act empowers the Commissioner to assess or re-assess to the best of his judgment the amount of net tax for a tax period of more than one tax period by a single order so long as all such tax periods are comprised in one year.

Herein, as per column (1) of the table available at the bottom of the default assessment of tax and interest and at the bottom of the other assessment pertaining to penalty, ~~in~~ the tax period, "Annual 2010" finds mentioned. In this column, there is no mention of any other tax period. Assessing Authority specifically observed that the firm had not filed any return for the year 2009-10.

Even in the objections filed in form DVAT 38, the appellant himself mentioned against serial no. 6 that the same pertained to the tax period from 01/04/2010 to 31/03/2011.

From the material available on record, prima facie, it cannot be said that the assessments pertain to 2 tax periods or that the single assessment pertains to tax periods comprised in more than one year.

14. As per claim of the applicant, its business premises situated at 232, Jor Bagh, New Delhi, falls within the jurisdiction of

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Ward-98; that the notice for audit, in Form DVAT-37, was issued on 03/07/2014 by Sh. Manikant Tiwari, AVATO; that same AVATO ultimately, on 18/07/2014, also framed default assessment of tax, interest and assessment of penalty, u/s 32 and 33 of DVAT Act respectively.

15. One of the additional ground raised by the applicant, by way of amendment of the memorandum of appeal is that during relevant time Sh. Anand Sharma was serving as jurisdictional VATO in Ward-98; that the notice issued by Sh. Manikant Tiwari was without delegation of powers u/s 68(2) of the Act, and further that Sh. Manikant Tiwari was not having any jurisdiction even to frame default assessment dated 18/07/2014.

Counsel for the applicant has contended that AVATO Sh. Manikant Tiwari had no jurisdiction to frame the assessments firstly, because he was not empowered by the Commissioner to do so by way of any specific order and, secondly, because he was not the jurisdictional VATO.

The other limb of the argument advanced by the counsel for the applicant is that since that audit notice was issued by Sh. Manikant Tiwari, he was not having any jurisdiction to frame assessment.

In support of said ground of challenge to the assessment, counsel for the applicant has relied on following decisions:

1. **JMD Digital Art and Exchange v. CTT**, decided by our own Hon'ble High Court on 10/08/2016;

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2. **ITD-ITD CEM JV v. CTT,** decided by our own Hon'ble High Court on 03/10/2016;
3. **Playwell Impex Pvt. Ltd. v. Commissioner of Trade & Taxes, Delhi,** in Appeal No. 688-689/13, decided on 15/12/2021;
4. **Prakash Trading Company v. CTT,** in Appeal No. 53-54/ATVAT/2018-19, decided on 19/12/2019.
5. **Larsen and Turbo and Another v. GNCTD of Delhi and anothers,** W.P. (Civil) 1820-1821/2013.
6. **Capri Bathaid Pvt. Ltd. and Ors. v. Commissioner of Trade and Taxes**, 2016 (155) DRJ 526 (DB), decided by our own Hon'ble High Court on 02/03/2016.

16. On the point of waiving of condition of pre-deposit, counsel for the applicant has presented plethora of cases, as shown in the following list:

1. **Karishma Overseas v. Union of India**, 2014 (314) E.L.T. 33 (Guj.)
2. **J.N. Chemical (Pvt.) Ltd. v. CEGAT**, 1991 (53) E.L.T. 543 (Cal.)
3. **Encore Healthcare Pvt. Ltd. v. Commr. of C. Ex., Aurangabad**, 2012 (280) E.L.T. 551 (Tri .-Mumbai)
4. **AERO Products v. Commissioner of Service Tax, Bangalore**, 2009 (15) S.T.R. 225 (Tri.-Bang.)
5. **Lots Shipping Ltd. v. Commissioner of C. Ex. & Cus., Cochin**, 2008 (10) S.T.R. 124 (Tri.-Bang.)
6. **Texmo Industries v. Commissioner of Central Excise, Coimbatore,** 2005 (180) E.L.T. 319 (Tri.- Chennai)
7. **Digi Studio v. Commissioner of C. Ex., Calicut**, 2008 (9) S.T.R. 205 (Tri.- Bang.)
8. **Sudha Digital Images v. Commissioner of C. Ex., Hydrebad**, 2009 (14) S.T.R. 765 (Tri. Bang.)
9. **Sun Petrochemicals P. Ltd. v. Commr. of C. Ex., Mumbai-II**, 2008 (11) S.T.R. 514 (Tri.- Mumbai)
10. **S.V. Colour Lab. v. Commissioner of Central Excise, Hydrebad**, 2008 (12) S.T.R. 768 (Tri.- Bang.)
11. **Boopalan Electronics v. Commissioner of Service Tax, Mysore**, 2010 (19) S.T.R. 781 (Tri:-Bang.)

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17. I have gone through the decisions to appreciate the contentions raised.

Contentions on behalf of Respondent

18. Counsel for the respondent has submitted that this is a case where admittedly the dealer – applicant did not file any return; In support of its claim regarding tax deduction at source the appellant – applicant did not submit original TDS certificate/ document before the Department; and that even before this Appellate Tribunal, he has not submitted any such original document.

Another submission put forth by counsel for the Respondent is that as per section 76(4) of DVAT Act, no appeal against an assessment can be entertained by the Appellate Tribunal unless it is satisfied that such amount, as the appellant admits due from him, has been paid. The contention is that since the appellant – applicant has not deposited any amount admitted to be due from it as per its own version, this appeal cannot be entertained.

19. Another contention is that none of the arguments advanced by counsel for the appellant was raised before OHA, and as such, OHA had no opportunity to give findings on any of the said points raised in these appeals for the first time.

Discussion

20. It is significant to mention here that despite repeated mentioning by the counsel that it is for the applicant to tell

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about the exact admitted VAT due from it, and that the applicant has not deposited even the admitted VAT, counsel for the applicant has not advanced any argument in reply to the said contention.

21. Sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.

As per first proviso to sub-section (4) of section 76, the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount, as it may direct.

On the point of admission of appeal with or without pre-deposit, in **Ravi Gupta Vs. Commissioner Sales Tax,** 2009(237) E.L.T.3 (S.C.), it was held as under:-

> "It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no legs to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this court has indicated the principles that does not give a license to the

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forum/ authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, interim relief can be given."

22. So far as the contention raised on behalf of the respondent while referring to the provision pertaining to deposit of the admitted tax amount, is concerned, second proviso to sub-section (4) of Section 76 of DVAT Act provides that the Appellate Tribunal is to satisfy about deposit of such sum which the appellant has admitted to be due from it, and further that no appeal is to be entertained by the Appellate Tribunal unless such admitted amount has been paid.

Indisputably applicant has not deposited any amount towards demands of tax or interest or penalty.

Before these appeals are entertained it is to be seen if this is a case where applicant has admitted that any tax amount is due from it.

As is available from the default assessment of tax and interest, on 14/07/2014, Sh. Parnesh Gupta, the partner of the appellant – applicant submitted written submission admitting award of renovation work of Ashoka Hotel to the applicant.

Non-filing of return- Admitted case of applicant

23. In the default assessment, Assessing Authority observed that the assessee – regular dealer had no record regarding filing of returns in the Department.

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In the given situation, having regard to the tenure of the agreement and the date when the work commenced, it was for the applicant to furnish return and also to submit copies of the returns before the Department. But, undisputably, no return was filed by the assessee in connection with the transactions based on the above said agreement. There is nothing in the assessment to suggest that any explanation was furnished on behalf of the assessee before the Assessing Authority, or prior thereto, for non furnishing of returns. In the course of arguments, no submission has been put forth as to why the assessee did not furnish any return for the relevant tax period. There is also no averment in the memorandum of appeal in this regard.

Assessing Authority observed that no return of the assessee was available on the portal of the department. In the given situation, prima facie, framing of assessment can be said to be as per requirement of the law.

Proof of TDS

24. As regards claim of the applicant that TDS was deducted by ITDC in respect of the transactions based on the above said agreement, assessee was required to produce the original TDS certificates. But, it failed to produce any original TDS certificate.

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What was submitted before the Assessing Authority on behalf of the assessee were photocopies of TDS certificates issued by ITDC. The representatives of the assessee admitted before the Assessing Authority that original TDS certificates were not in possession of the dealer. Assessee could collect or requisition record of TDS from ITDC.

It could also summon record or officials from ITDC to prove deduction -TDS, but no such step appears to have been taken. No such step appears to have been taken before the OHA or after passing of the impugned order or before filing of present appeals.

In the written submissions furnished at the time of arguments on this application, by way of Annexure A-1, a chart depicting WCT deducted by ITDC at source and copies of certain TDS certificates have been furnished.

It may be mentioned here that in the course of arguments on this application, counsel for the applicant did not make any reference to Annexure A-1.

It is found that details of WCT said to have been deducted and as shown in the single chart for the year 2009-10 and 2010-11, have not been authenticated or verified by anyone. This document does not show as to by whom the same has been prepared.

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Summaries of amount received and TDS deducted, as available at page 7 and 14 are only photocopies and have not been authenticated or verified by any one. These documents also do not show as to by whom the same have been prepared.

It does not find mention in the written submissions/that these documents were or were not produced before the Assessing Authority or before the OHA. In case these were not produced before them, applicant was required to file application before this Appellate Tribunal ~~before~~ filing the same with written submissions or prior thereto. No such application has been filed.

The above said summary statements are accompanied by photocopies of TDS certificates, ~~but~~ their originals have not been filed. Therefore, no reliance can be placed on these documents.

With the written submissions Annexure A-2 has also been submitted. This Annexure contains photocopies of orders dated 04/06/2010, 25/05/2010 & 17/05/2010. These copies are not certified copies.

Annexure A-2 also contains photocopy of summary of report dated 31/05/2010 submitted by Sh. B.S. Kataria (Architect) appointed as Local Commissioner by our own Hon'ble High Court in OMP No. 273/2010. No certified copy thereof has been submitted.

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It does not find mention in the written submissions that these documents were or were not produced before the Assessing Authority or before the OHA. In case these were not produced before them, applicant was required to file application before this Appellate Tribunal for making them part of record or written submissions. No such application has been filed.

So, at the time of final arguments, assessee- appellant may have to explain as to why no step, as observed above, was taken or has been taken to satisfy about TDS for the relevant tax period. But, in the given situation, at this stage, prima facie, non production of original TDS certificates is one of the issues involved.

25. As is available from the default assessment, the representative of the dealer admitted before the Assessing Authority about receipt of payment of Rs. 32 crores (approximately). Admittedly, total amount of contract was Rs. 63,99,99,905/-. In the written submissions, it has been submitted for the first time, without pleadings, that the dealer had received a sum of Rs. 31,65,03,000/- which comes to 49.45% of the total contract amount. But, copy of the report of the Local Commissioner annexed in written submissions does not reveal as to upto which tax period said amount had been received. No authenticated document has been filed by the applicant to show that such and such amount pertained to

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the year 2009-10 and rest of the amount pertained to the year 2010-11.

26. Before the Assessing Authority, it was submitted by the representative of dealer that the contract was terminated vide order dated 11/05/2010. As observed in the default assessment, the representative was not having any documentary proof about receipt of only Rs.32 crores approximately.

Even, before the OHA, it was submitted on behalf of the objector – assessee that the project was terminated on 11/05/2010. But, it was for the assessee - objector to produce relevant record to support its claim or to specify the exact amount received during the relevant tax period i.e. upto 31.3.2010, so that the Assessing Authority and OHA could analyse the relevant documents for framing assessment for Annual 2010, on the basis of best judgment.

When the assessee-objector failed to do so before the Assessing Authority or before the Objector, prima facie, the question arises as to how its claim could be accepted as regards receipt of about Rs.32 crores only. In this situation, when the Assessing Authority had not before him the exact amount received by the assessee during the relevant tax period, there was no option with the Assessing Authority except to work out the turnover on guess basis.

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27. As is available from the impugned order, counsel for the objector submitted before learned OHA that the objector had filed detailed statement showing details of sale/ purchase for 2010 and 2011, depicting VAT due as Rs. 29,70,153/-. Even in DVAT 38, in para 12 and 13, the objector admitted that a sum of Rs. 29,70,153/- was due from it.

Here, in the course of arguments, on behalf of the applicant, no such document has been referred to. It was for the applicant to file such document with all supporting documents, but none came to be filed before the department. It would be for the appellant to explain as to how, in absence thereof, Assessing Authority could even guess about the admitted VAT stated to be due from the applicant for the relevant tax period. It is significant to note that even after having shown in DVAT 38 the amount of tax due from the applicant, such admitted amount of tax was never deposited.

28. Before the learned OHA too, the objector did not dispute that it had not filed any return. Learned OHA also took into consideration admission by the dealer that it had received payment of Rs. 32 crores (approximately) from the contractee. Objector could explain even before OHA if the amount approximately Rs.32 crores was received during the tax period 2009-10 or said amount included any receipt during the tax period 2010-11 i.e. upto 10.5.2010.

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29. In OMP No. 273/2010, pending before the Hon'ble High Court, Local Commissioner is stated to have submitted his reported dated 31/05/2010. Surprisingly, no copy of said report appears to have been produced before the OHA. Had any such report been submitted, learned OHA would have considered the same while deciding the objections. There is no explanation from the applicant in this regard.

No step appears to have been taken by the assessee to summon any official or record from ITDC on this point. Only the assessee has to explain the same. In absence of any such clarification or explanation or record or step, how the department or the OHA could guess that said amount of about Rs.32 crores included any receipt pertaining to the subsequent tax period i.e. from 1.4.2010 onwards.

As regards deduction of 25% towards labour and service charges, ~~it was for~~ had a chance the objector to produce record even before the OHA. There is nothing on record to suggest if the objector produced any authenticated record to claim said full deductions.

No challenge has been made to assessments on this ground, while addressing arguments.

Surprisingly, for the first time in the written submissions, it has been submitted that the calculation made by the Assessing Authority is wrong because after discharging its tax liability, the applicant is entitled to carry forward of tax credit of Rs.

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4,55,964.94/-, for the year 2009-10. Significant to note here that no such plea was put forth before the authorities below. Even in the memorandum of appeal, no such plea has been put forth. Therefore, this submission put forth for the first time in the written submissions is beyond pleadings.

Same can be said in respect of the plea put forth, for the first time, as regards the year 2010-11 in the written submission, even though the assessments pertain to the year Annual 2010.

In order to meet or rebut the findings recorded by the Assessing Authority or the OHA, on the point of its liability to pay tax, the burden of proof placed by section 78 of DVAT Act remains on the applicant.

30. In view of the above discussion, when the appellant has not deposited the amount of tax due from it in view of its own case, that only a sum of Rs. 31,65,03,000/- was received; when the applicant has not filed any authenticated document to specify that such and such turnover, out of the said amount, pertained to the year 2010-11 for being excluded, and when no authenticated document came to be filed on the point of input tax credit, as per requirement of law, prima facie applicant had to deposit the tax on the admitted turnover (of Rs. 31,65,03,000/- less 25% towards deductions on account of labour and service charges), with interest thereon.

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Jurisdictional Issue

31. In the default assessment, Sh. Manikant Tiwari specifically mentioned that the audit of business affairs in respect of the appellant was assigned to him by the competent authority.

32. Applicant has placed on record photocopy of information provided by PIO/Assistant Commissioner (HR) to the effect that Sh. Manikant Tiwari (AVATO) was posted in special zone during the relevant period (i.e., from 01/04/2014 to 31/07/2014). Applicant has also submitted copy of order dated 31/03/2013 issued by Sh. R.C. Kalia, VATO/HOO. Counsel for the applicant has submitted that as per this order Sh. Anand Sharma was the jurisdictional VATO in respect of ward-98, in which the business premises of the applicant falls.

33. In the given situation, when Sh. Manikant Tiwari framed assessment and disclosed therein his designation as AVATO (ward-98) and also specifically recorded in the assessment that audit of business affair of the appellant was assigned to him by the competent authority, at this stage, when the matter is pending for consideration of the application u/s 76(4) of DVAT Act, prima facie, it cannot be said that the above said facts have been wrongly recorded by the Assessing Authority simply because In the impugned order, learned OHA observed that even though ward file was requisitioned from ward-98, VATO ward 98 informed vide letter dated 05/06/2017 that the ward file was not traceable. So this is one of the questions to be decided

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at the final stage of the appeals. Therefore, the final decisions on merits cited on behalf of the applicant on this point do not assist the applicant at this stage, so far as the application u/s 76(4) of DVAT Act on pre-deposit is concerned.

34. One of the arguments advanced counsel for the applicant is that since that audit notice was issued by Sh. Manikant Tiwari, he was not having any jurisdiction to frame assessment.

Having going through decisions cited by counsel for the applicant, I find that in Capri Bathaid's case (supra), following common issues had arisen for consideration in the four petitions:-

> "(i) Whether the AVATO Enf-I who undertook the survey, search and seizure operation and later passed the default assessment orders of tax, interest and penalty, as duly empowered to do so in terms of the DVAT Act?
>
> (ii) Whether the AVATO Enf-I could have proceeded to reverse the ITC claimed during an earlier period and could such reversal take place in the order of default assessment for a different period?"

Therein, order in Form DVAT-50 issued by the Special Commissioner on October 15, 2014 did not permit the Enforcement Officer to carry out any assessment and therefore, orders of default assessment of tax, interest and penalty passed by the AVATO Enf-I under sections 32 and 33 of the DVAT Act were held to be without the authority of law.

Herein, the assessment came to be framed by AVATO ~~within~~ (Ward 98) after issuance of a notice in DVAT 37 and in view of the report of the VATI that the property stood demolished and

there was no trace of the dealer at the site, and only when representative of the dealer appeared and submitted only certain documents out of total record requisitioned before the Assessing Authority. In Capri Bathaid's case, order issued by the Commissioner under Section 68 of DVAT Act was dated 12th November 2013. Here, as finds mentioned in the assessment order by Sh. Manikant Tiwari, AVATO (Ward-98) he was assigned audit of business affairs of the appellant, by the competent Authority. As per order dated 12/11/2013, the competent authority delegated powers under section 58 of DVAT Act to audit the business affairs, for confirming assessment or serving notice of assessment or reassessment as well.

35. Even though, in reply to the information sought under RTI Act, PIO informed that Sh. Manikant Tiwari, AVATO during the period, from 01/04/2014 to 31/07/2014, was posted in special zone, as already discussed above, at the stage, it is difficult to disbelieve the Assessing Authority when he mentioned therein that he was authorised by the competent authority, simply because the ward file is not traceable with the Department.

Having regard to the provisions of section 58 available under chapter X of DVAT Act, which talk about audit and also framing of assessments on the material acquired in the course of such audit, coupled with what the AVATO recorded in the assessment about assignment of the matter to him, prime facie, it can be said that Sh. Manikant Tiwari was delegated powers and in view of section 58, he was competent to frame assessment as well.

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In the peculiar facts and circumstances of this case, at the stage, the decisions cited on behalf of the applicant do not assist the applicant.

Assessments without signatures- their validity

36. By way of amendment of appeal, another additional ground has been put forth to allege that the notices of default assessment of tax, interest and assessment of penalty issued by the Assessing Authority do not bear signatures of the Assessing Authority.

The contention is that such an order cannot be said to be in substance and effect in conformity with or according to the intent and purpose of DVAT Act. In this regard, counsel for the applicant has placed reliance on the following decisions:

1. **Swastik Polymers v. CTT**, (2018) 56 DSTC-109 (Delhi);
2. **Combined Trading Agency v. CTT**, W.P.(C) No. 231/2018, decided by our own Hon'ble High Court on 18/09/2018;
3. **M/s V.A. Infosolutions Pvt. Ltd. v. Commissioner of Trade & Taxes,** Delhi, Appeals No. 402-405/ATVAT/22, by this Appellate Tribunal on 8/07/2022;
4. **M/s Choudhary Plastics Works v. Commissioner of Trade & Taxes**, Appeal No. 395-396/22, decided by this Appellate Tribunal on 17/06/2022;
5. **M/s Goldman Hosieary v. Commissioner of Trade & Taxes,** Appeal No. 449-450/ATVAT/22, decided by this Appellate Tribunal on 29/12/2022.

37. I have gone through the decisions. Same were rendered while delivering judgments on merits.

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38. Section 100 A of DVAT Act provides that where a notice or communication is prepared on **any automated data processing system** and **is properly served on any dealer or person**, then, the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by the Commissioner.

39. In M/s Choudhry Plastics Works's case (supra), it was found that the assessment order levying penalty were system generated; that the same were neither bearing signatures nor the name of the concerned Assessing Authority.

Herein, the impugned assessments cannot be said to have been prepared on any automated data processing system. Rather, the entire default assessment of tax and interest and the other assessment of penalty have been got typed on computer. Specific reasons find mentioned in the assessment for levy of tax and imposition of penalty. The assessments, prime facie, cannot be said to be the ones generated by system.

Similar view was taken by this Appellate Tribunal in M/s V. A. Infosolutions Pvt. Ltd's case (supra), while observing therein that the assessment order levying penalty was system generated, without signatures, that same also did not disclose name of the concerned officer and that the dealer was able to challenge the said assessment before learned OHA.

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40. Here, the assessments were framed after notices of audit. These assessments bear name of the Assessing Authority and also the number of the ward. The assessee challenged the assessments before the concerned OHA. Had these two particulars not been there, how the assessee could challenge the assessments? Had it entertained even little doubt about authenticity or genuineness of the document of assessments, its officers or representative would have at once visited the concerned Ward to enquire as to how it came to be uploaded in its account available on the portal of the department. There is nothing to suggest that any representative of the dealer had visited the Ward to enquire about uploading of the assessments framed against it. Rather, it was able to challenge the assessment before the OHA. No objection was raised before the OHA regarding validity of the assessments due to absence of digital signatures of the Assessing Authority. It goes to suggest that the dealer never entertained any doubt about authenticity of the assessments and rather acted on their basis. Therefore, prime facie, no prejudice can be said to have been caused to the Assessee who was able to challenge the impugned assessments which contained name of the Assessing Authority with the number of the ward.

41. In M/s Goldman Hosieary's case (supra), one of the contentions raised on behalf of the appellant therein was that

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the assessments of penalty had not been digitally signed and that the same were system generated.

While dealing with the above contentions in that matter, this Appellate Tribunal observed in the manner as:

> "Here, a perusal of the impugned assessments would reveal that same cannot be termed to be "system generated", the reason being that the due date of filing of the returns does not appear to have been generated by the system; the period of delay in filing of the returns also appears to have not been generated by the system. Even the amount of penalty cannot be said to have been generated by the system. Rather, it appears that these particulars have been typed. Even the date by which the amount of penalty was required to be deposited, appears to have been typed and not generated by system. Significant to note that the assessments bear Reference numbers with date. Therefore, the assessments are held to be not the ones generated by system."

42. In the given peculiar facts and circumstances of this case, at this stage, decisions in Swastik Polymers' case (supra) and Combined Trading Agency's case (supra), prime facie, do not come to the aid of the applicant.

43. No other argument was advanced by counsel for the parties in the course of arguments on this application.

44. In view of the above discussion, if the version of the applicant put forth in the written submissions for the first time, that entire of Rs. 31,65,03,000/- was the total turnover received by it, is considered, prima facie, it appears that the entire turnover of Rs. 31,65,03,000/- was during the tax period 2009-10 (in absence of any authenticated material placed on record to bifurcate this figure to show any turnover of the next year),

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and notwithstanding the guesswork done by the Assessing Authority in the given compelling situation which appears to have been created by the applicant itself, there is merit in the contention raised by counsel for the Revenue to direct the applicant to deposit, by way of pre-deposit entire VAT due on admitted turnover i.e. turnover of Rs. 31,65,03,000/-, (less 25% towards deductions on account of labour and service charges), with interest thereon, for the purpose of entertainment of the appeals.

As regards amount of pre-deposit relating to demand raised under assessment of penalty, in the given facts and circumstances, when the applicant admittedly did not file any return and the factum of tax deficiency on the basis of admitted turnover as put forth by the applicant, I deem it just and proper to direct the applicant to deposit by way of pre-deposit a sum of Rs. 4 crore towards the demand of penalty.

45. While disposing of this application, I order accordingly.

46. Consequently, the applicant is directed to deposit the above said amounts by way of pre-deposit u/s 76(4) of DVAT Act within 25 days.

Dealer – applicant to comply with the order within the above said period and apprise the Registry and counsel for the respondent, so that, on compliance, the appeals are taken up on the next date i.e. 23/08/2023 for final arguments, and in case of non-compliance, for further orders, due to the non-compliance.

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47. Copy of this common order be placed in the connected file, for record. Its copy be also 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 : 27/07/2023

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(Narinder Kumar)
Member (J)