

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

Appeal No.: 221/ATVAT/2016  
**Date of Judgment : 12/12/2023**

M/s Nutrionex Manufacturers Ltd.,  
(previously known as M/s. Shri Lal Mahal Ltd.)  
B-16, Bhagwan Dass Nagar,  
East Punjabi Bagh,  
New Delhi-110026.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. M. L. Garg.  
Counsel representing the Revenue : Sh. P. Tara.

**Judgment**

1. These proceedings pertain to the year 2010-11.
2. Learned VATO (Ward-52) framed assessment dated 30/03/2015 under Section 9(2) of Central Sales Tax Act thereby creating demand towards tax and interest of Rs. 11,06,37,578/- (Tax Rs. 6,95,23,485/- + Interest Rs. 4,11,14,093/-).
3. The impugned demand came to be raised due to the reason that as per central sales declared in the latest return furnished for the year 2010-11, the applicant had not declared the status of central

  
*Narinder Kumar*  
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statutory forms received by him against the concessional sales claimed either in column R-10 or in reconciliation return in CST Form 9.

4. Being aggrieved by the above said assessment, the appellant filed objections.
5. Vide impugned order dated 15.09.2016. Learned OHA disposed of the objections granting certain exemptions.
6. Still feeling aggrieved, dealer filed appeal before this Appellate Tribunal. Application u/s 76(4) of DVAT Act was filed with the appeal. Dealer – appellant was directed to deposit part of the disputed demand.

Previously this appeal was once dismissed in default of appearance. It was restored to its original number and adjourned to 13/05/2020. But, it was never put up by the staff before the Appellate Tribunal for about one and a half year. The Registry traced out the file and put up the same for the first time on 30/09/2021.

However, during pendency of appeal, Dealer-applicant filed amended application dated 04/10/2022 u/s 76(4) of DVAT Act seeking modification in the order earlier passed under the said provision. Thereupon, the order earlier passed u/s 76(4) of DVAT



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Act was modified and appeal was entertained without calling upon the dealer to deposit any amount by way of pre-deposit. In this regard, this Appellate Tribunal observed in the order dated 03/11/2023 as under:

“9. As per copy of order dated 19/09/2023 passed by Hon’ble NCLT, liquidator has been appointed and he is to follow up the pending applications etc. for their disposal during the process of liquidation.

When this Appellate Tribunal has enquired from counsel for the Revenue, claim if any, regarding the present liability in terms of the impugned assessment has been filed before the liquidator, counsel submits that he has already apprised the concerned branch i.e. L & J Branch of Department of Trade & Taxes and it is for them to follow up. Counsel for the applicant submits that he has no information if any claim has been filed by the Revenue before the liquidator in proceedings u/s 33 of IBC.

10. Having regard to the significant fact that the liquidation proceedings have already commenced, no resolution plan having been received from any resolution applicant, as regards the dealer, this is a fit case where the previous order passed u/s 76(4) of DVAT Act needs to be modified.

As regards safeguarding of the interest of the Revenue, the liquidation process under IBC provides for filing of claim by the operational creditors, like the Department of Trade & Taxes. Accordingly, it is for the Revenue to proceed in accordance with law to safeguard its interest as regards the liability already assessed, though under challenge before this Appellate Tribunal after the same





has been upheld by the learned OHA in the manner indicated therein.”

7. Vide impugned order, learned OHA disposed of all the objections while observing in the manner as:

“11. Having heard the arguments of Ld. Counsel and the D.R., the objector was directed to produce copy of return filed with the VAT Deptt. Karnataka so that the claim of the objector that the sale of goods to the tune Rs. 12,98,04,634/- was actually in state of Karnataka and not against from H could be verified. But the objector could not submit copy of VAT returns filed in Karnataka reflecting this transaction. Neither he could produce copy of the petition filed before Bellikeri court Karnataka or throw any light on the latest status of the case, under consideration of the Karnataka court as claimed by the objector. Under the circumstances the claim of the objector that the Sale of goods amounting Rs. 129804634/- against H-form actually pertains to the state of Karnataka cannot be accepted and the tax levied on this sale by the Assessing Authority is upheld. However, in case of other sales made against F-form and H-form, the objector claims that they have relevant statutory forms with them. Accordingly the objector is given another opportunity to produce these statutory forms before the Assessing Authority. Hence the case is referred back to the Assessing Authority with the direction to examine the matter afresh in light of records i.e. statutory forms in possession of the objector and then pass a well reasoned and speaking order strictly in accordance with the provisions of CST Act 1956 & relevant rules and DVAT Act 2004. The objector shall appear before the Assessing Authority with all relevant



documents on or before 05/10/2016, Ordered accordingly.”

8. Counsel for the dealer-appellant has submitted that in this appeal, the challenge is to the demand of Central Sales Tax and interest raised, only as regards turnover to the tune of Rs. 12,98,04,634/-. While referring to the claim of the appellant, counsel has submitted that it made sales, against Form ‘H’, worth Rs. 12,98,04,634/- to M/s Shree Mallikarjun Shipping Pvt. Ltd. for export purpose, during the A.Y. 2010-11 after the said goods had been purchased by the dealer from the dealers in the State of Karnataka and Andhra Pradesh, and were stored at shipping port at Bellikeri Port, Karnataka.

Counsel for appellant has emphasised that the said goods were sold by the appellant at the place of its storage i.e. Bellikeri Port, Karnataka and delivered to the above said Private Ltd. Company only at the said place. The contention is that in the given situation, there was no movement of goods from Delhi to Bellikeri Port, Karnataka. Counsel explains that in the given situation, actually the said transactions of sale should have been reflected in the sales tax return filed before the Tax Authorities of the State of Karnataka, but, while filing return in Delhi, where the Head

Office of the appellant is situated, by mistake, said sale was considered as sale made from Delhi.

In support of the above contention, counsel for appellant has placed reliance on following documents:

1. Copies of purchase invoice;
2. Copies of sale invoice;
3. Copy of contract for sale in the course of export; and
4. Copies of goods receipt (GRs) regarding transportation/ transfer of goods.

### **Discussion.**

9. Section 4 of Central Sales Tax Act (hereinafter referred to as CST Act) reads as under:

“(1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State if goods are within the State-

(a) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of party is prior or subsequent to such appropriation.

Explanation - Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each of such places.”





10. When the objections filed by the dealer were pending, learned OHA observed that the objector was directed to produce copy of return filed with VAT Department, Karnataka to support the claim of the objector that the sale of goods to the tune of Rs. 12,98,04,624/- was actually in the State of Karnataka and not from Delhi to Bellikeri Port, Karnataka, but the objector did not submit copy of any such return filed before the Taxation Department of the State of Karnataka.
11. In the objections before learned OHA, dealer – objector averred that matter was pending before <sup>the</sup> court at Bellikeri Port, Karnataka by way of a petition filed by the dealer – objector there. Learned OHA observed in the impugned order that the dealer-objector did not produce copy of any such petition filed before the Court at Bellikeri Port, Karnataka. The dealer-objector could not throw any light regarding the status of any such petition, as further observed by learned OHA.

Accordingly, learned OHA rejected the claim of the dealer and upheld the assessment framed as regards the said turnover of Rs. 12,98,04,624/-.

In this case, default assessment was framed on 30/03/2015. No step was taken by the dealer-objector for furnishing of revised return, in view of the ~~said~~ amendment made <sup>in Sec. 28 of DVAT Act -</sup> with effect from 18/06/12, for removal of any discrepancy.

Counsel for the appellant has submitted that the dealer-objector having come to know of the said mistake only on framing of the default assessment i.e. 30/03/2015, it could not take any such step for filing of revised return.

12. Available at page 35 of the appeal file is copy of statement depicting 17 transactions of purchases by the dealer from 5 different selling dealers. At page 38 and 39 are available copies of 2 GRs issued by Star Minerals, Bellikeri, district Karnataka depicting transport of goods worth Rs. 12,82,500/- and Rs. 4,75,000/- to Shri Lal Mahal at Bellikeri Port, Karnataka. It is significant to note that these 2 GRs did not reflect order number or truck number in the relevant columns. These also do not reflect any receipt issued by the representative/official of the dealer – objector. In other words, these two columns are lying blank. Similarly, other copies of GRs available purported to be in respect of transport of goods to the dealer – objector on 31/03/2010, 02/04/2010, 08/05/2010 do not reflect number of the vehicle or any receipt issued by the representative/official of the dealer – objector.
13. In the course of arguments, when counsel for the dealer-appellant submitted that the above said documents produced by the dealer before the OHA were not considered, counsel for the Revenue submitted that the OHA may verify said documents on remand of





the matter by this Appellate Tribunal. Thereupon, counsel for the dealer-appellant has also submitted that matter may be remanded to the OHA for verification of said documents and their consideration.

14. When the above said documents are stated to have been filed by the objector before learned OHA, the same were required to be discussed in the impugned order. Since, said documents need verification before the same are considered by the OHA, this is a fit case for remand of the matter to the learned OHA for fresh decision on the objections.
15. As a result, this appeal is disposed of and the matter is remanded to learned OHA for fresh decision on the objections. Dealer-appellant is directed to appear before learned OHA on 20/12/2023.
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: 12/12/2023.



*Narinder Kumar*  
12/12/2023  
(Narinder Kumar)  
Member (Judicial)