

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

M.A. No. 339-340/2023

In Appeals No.- 119-120/ATVAT/2023

Date of Order: 09/11/2023

M/s S.S. Impex,  
Ak-50, Shalimar Bagh,  
New Delhi-110088.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Rakesh Aggarwal.

Counsel representing the Respondent : Sh. M.L. Garg.

**ORDER**

1. This common order is to dispose of two applications filed u/s 76(4) of DVAT Act i.e. one seeking relief in respect of default assessment pertaining to tax and interest framed u/s 32 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act); and the other as regards the assessment of penalty framed u/s 33 of DVAT Act, in so far as same have been upheld by learned OHA.
2. In the first mentioned appeal challenge is to levy of tax and interest, by way of assessment for the tax period - 3<sup>rd</sup> and 4<sup>th</sup> quarter of the year 2013-14. In the second mentioned appeal

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challenge is to levy of three penalties by way of assessment for the tax period - 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter of the year 2013-14

3. Dealer-assessee filed objections before learned OHA and the same were dismissed vide order dated 11/11/2021.
4. After dismissal of the objections, dealer-objector filed application u/s 74 B of DVAT Act before the OHA, seeking review of the order dated 11/11/2021.

Said application stands dismissed vide order dated 11/08/2023.

5. Hence, these two applications filed with appeals No. 119/ATVAT/2023 and 120/ATVAT/2023.
6. Application filed with prayer for condonation of delay in filing the appeals already stands disposed of and the applicant is stated to have deposited costs imposed while condoning delay in filing of the appeals.
7. Arguments heard on applications u/s 76(4) of DVAT Act. File perused.
8. 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

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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 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.”

9. Default assessment of tax and interest u/s 32 of DVAT Act as regards 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2013-14, came to be framed on 28/03/2018, while observing in the manner as:-





"Initially the notice in Form DVAT 37 was issued to the dealer on 11-08-2016 for conducting desk audit of the business affairs of the dealer for the period of 01/04/2013 to 31/03/2014 requiring the dealer to produce the books of accounts & other records pertaining to the firm, in VAT Audit Branch on 22/08/2016.

However, in response to the notice no one appeared on the scheduled date on behalf of the said dealer.

A Show Cause Notice dated 06.10.2016 was issued requiring submission of records on 20.10.2016. Again, no response was received from the dealer and no one turned up to attend the proceedings.

Meanwhile, the Authority to conduct audit in Form DVAT-50 was issued afresh by the Competent Authority vide endorsement number F.Misc/Estt/08/2014-15/1567-1571 dated 08-02-2017. Therefore, the notice in Form DVAT-37 was issued again on 14-02-2017 to start the audit proceedings ab-initio. However, no response was received from the dealer again.

Another Notice dated 01.03.2018 was sent to the dealer through VATI of the concerned ward requiring presence and submission of records. In response to the notice, Shri Ankit Singhal, CA appeared on 15/03/2018 and 23/03/2018 and Sh Manoj Kumar, CA appeared on 28/03/2018 with POA on behalf of the dealer.

Copies of Form DVAT-30, DVAT-31, Balance Sheet, Sale-Purchase Summary, Sale invoices, Bills of Entry in r/o Imports, Supporting documents for exports including shipping bills and bank realization certificates were submitted during the proceedings.

The dealer also produced the books of accounts, sale-purchase invoices alongwith GRs in respect of inter-state sales for inspection and copies of C and H forms stating that the original Forms are already submitted to the ward authority.

The dealer is engaged in manufacturing/trading of Utensils and trading of S S patti/circles and Other Chemicals (other than petro chemicals) taxable @ 5% under the DVAT Act.



The dealer has made local and central sale-purchase transactions including C and H Form transactions. There is no mismatch of annexure 2A with respective annexure 2B filed by the selling dealers. The dealer has filed all returns in time.

Observations/Discrepancies:

1. The dealer failed to produce G.Rs/RRs or any supporting documents confirming the interstate movement of goods in respect of the inter-state sales amounting to Rs. 1,20,06,705 made against C-forms to M/s Maa Padmavati Steel Pvt. Ltd. (TIN: 06803018640) as per following details:

**Third Quarter:**

Sales made for Rs. 97,84,485 vide following sales invoices:

(i) sale invoice no. 007 dated 21/10/2013 for Rs. 12,57,100/-

(ii) sale invoice no. 008 dated 25/10/2013 for Rs. 12,64,900/-

(iii) sale invoice no. 009 dated 12/12/2013 for Rs. 13,63,600/-

(iv) sale invoice no. 010 dated 16/12/2013 for Rs. 13,73,400/-

(v) sale invoice no. 019 dated 21/12/2013 for Rs. 15,94,860/-

(vi) sale invoice no. 022 dated 26/12/2013 for Rs. 14,80,000/-

(vii) sale invoice no. 025 dated 30/12/2013 for Rs. 14,50,625/-

**Fourth Quarter:**

Sales made for Rs. 22,22,220/- vide following sales invoices:

(i) sale invoices no. 027 dated 03/01/2014 for Rs. 11,40,300/-

(ii) sale invoices no. 029 dated 07/01/2014 for Rs. 10,81,920/-





The dealer has informed that the buying dealer M/s Maa Padmavati Steel Pvt. Ltd. had collected the purchased goods in Delhi and transported the goods themselves in their own vehicle.

As the delivery of goods was made to the buyer within Delhi, these sales cannot qualify to be inter-state sales under the provisions of section 3 of the CST Act merely on the ground that the invoices are raised to buyers located outside the territory of Delhi.

Further, the proof of inter-state movement of goods in respect of interstate sales is a mandatory requirement to qualify the transaction to be in the course of inter-state trade or commerce as per the provisions of the Section 3(a) of Central Sales Tax Act. Hon'ble High Court, Delhi in its judgement in the case of **B.R. Fibres (P) Ltd v. The Commissioner, Value added Tax** (STA 72/2014) held that proof of interstate movement of goods is requisite to qualify the sale as inter-state sale u/s 3 of CST Act. Hon'ble High Court, Delhi in the above case in Para 3 of its order observed as under:

"the first and foremost requirement as provided in the above section, is movement of goods. The prime requirement for movement of goods is GR/RR. The submission of the Ld. Counsel for the appellant that GRS were not issued due to the exporter's own procedure is not satisfactory. The actual movement of goods from one State to another cannot be judged by documents like bank statement, retail invoice, C forms etc...

In absence of the supporting documents, as the movement of goods on concessional interstate sale has not been proved, therefore, such concessional interstate sale are to be treated as local sales taxable @5%.

However, benefit of CST paid/adjusted is allowed under DVAT Act, subject to verification from scroll. Hence, the dealer is liable to pay the additional tax alongwith interest @15% p.a. as per section 42(2) of DVAT Act, 2004 and penalty under section 86(10) of the DVAT Act."

2. As per the Audited balance sheet filed by the dealer, in addition to sales reflected in returns the dealer had made



sales of Focus licenses and Duty drawback licenses amounting to Rs. 32,25,000 and Rs. 92,66,130 respectively. The dealer has not paid due tax on these sales. As per the entry no. 03 of the Third Schedule of the DVAT Act sales of such tradable licenses is taxable @ 5. Therefore, the turnover on account of the sales of tradable licenses is added to the turnover reported by the dealer in his 4th Qtr. return and the dealer is liable to pay tax on these sales along with interest under section 42 and penalty under section 86(10) of the DVAT Act.

3. Dealer has not filed Annexure 1D relating to stock position with the second quarter return. Therefore, the dealer is liable to pay penalty under Section 86(10) of the DVAT Act.”

10. Vide separate order of 28/03/2018, learned VATO framed assessment of penalty u/s 33 of DVAT Act levying penalty and raising demand of Rs. 9,94,754/- due to violation of provisions of section 86(10) of DVAT Act, as tabulated in following table:

Act	Section	Year	Tax Period	Amount
DVAT	Section 86(10)	2013	Second Quarter-2013	10,000
DVAT	Section 86(10)	2013	Third Quarter-2013	2,93,534
DVAT	Section 86(10)	2013	Fourth Quarter-2013	6,91,220

11. Applicant, a proprietorship, has its office in Wazirpur Industrial Area, Delhi. It is engaged in the business of manufacturing, trading, export and import of utensils and SS Patti/Circles. It is a dealer registered with Department of Trade & Taxes, Delhi.
12. As is available from record, on 11/08/2016, a notice in Form DVAT 37 was issued to the dealer for conducting of desk audit





of its business affairs for the period from 01/04/2013 to 31/03/2014, and thereby the dealer was directed to produce on 22/08/2016 its books of accounts and other records.

Since none appeared before Audit Branch on behalf of the dealer on the aforesaid date, a show cause notice dated 06/10/2016 was issued for 20/10/2016 directing production of record, but, even then no one on behalf of the dealer appeared.

On 08/02/2017, the competent authority authorised the concerned authority to conduct audit in form DVAT 50. Accordingly, notice in form DVAT 37 came to be issued on 14/02/2017, once again, to commence the audit proceedings, but there was no response.

It was only in response to another notice dated 01/03/2018 that Sh. Ankit Singhal, Chartered Accountant of the dealer appeared on two dates and Sh. Manoj Kumar, CA, appeared on the third date i.e. 28/03/2018.

13. As is available from the assessment, copies of form DVAT 30, DVAT 31, balance sheet, sales produce summary, sales invoices, bills of entry as regards goods imported, supporting documents as regards exports, like shipping bills and bank realisation certificates were submitted. Books of accounts, sales purchase invoices, GRs and copies of 'C' and 'H' forms were submitted in respect of Inter-state sales.
14. In the default assessment, certain discrepancies were noticed by the Assessing Authority and same have been reproduced above.

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15. Before the Assessing Authority, dealer – appellant submitted that M/s Maa Padmavati Steel Pvt. Ltd. had collected the goods purchased, in Delhi itself, and transported the said goods itself in its own vehicle.

Having regard to this submission on behalf <sup>of the</sup> dealer, learned Assessing authority observed that the delivery of the goods having been made to the buyer in Delhi, said transaction of sale could not qualify to be Inter-state sale u/s 3 of CST Act and that the claim that the invoices were raised to the buyer located outside Delhi, was of no avail to the dealer.

Learned Assessing Authority observed that in absence of supporting documents as regards movement of goods, the turnover of concessional Inter-state sale was to be treated as the turnover of local sale and taxable at the rate of 5%. At the same time, the Assessing Authority allowed adjustment of Central Sales Tax paid by the dealer subject to its verification. However, the Assessing Authority held the dealer liable to pay additional tax with interest.

16. As regards Focus-licences and Duty-drawback-licences, Assessing Authority observed in the default assessment of tax and interest that the dealer had made sales of said two items, but, not paid tax due thereon.

Having regard to entry No. 3 of the Third Schedule of DVAT Act, learned Assessing Authority observed that said tradeable

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licenses were taxable at the rate of 5%. Accordingly, the Assessing Authority added turnover on account of sales of tradeable license to the turnover of 4<sup>th</sup> Quarter as reported by the dealer in the return, and held the dealer liable to pay tax thereon with interest.

17. After hearing both the sides, learned OHA dismissed the objections while observing in the manner as:

“8. The non production of valid GRS/RRS to the VATO (Audit) is in itself a roof that the objector dealer was not in possession of the GRS/RRS at that time. Even the GRS/RRS submitted at the time of hearing appears to be after thought concocted to fulfill the Tax statutory requirement in light of judgment of Hon'ble High Court of Delhi in B.R. Fibers (P)Ltd. VIS The Commissioner Value Added ST APPL.72/2014/68/2014,69/2014/70/2014/73/2014 Decided on March 17,2015. The GRS/RRS submitted are not legible and does not bear the wear and tear of the time lapse of more than 8 years besides being illegible which points towards the fact that the GRS/RRS seems to have been created on a later date to mislead the OHA and get the tax relief.

9. The quantity of items in terms of weight as per tax invoices submitted points towards fact that the removal of goods from premises of the seller i.e M/s S.S. Impex require the presence of vehicle and the GRS/RRS would have to be prepared at the, premises itself.

10. In view of above discussion, perusal of available records impugned detailed assessment order, I am of the view that impugned notices have been issued mostly in accordance with law and liable to be upheld It would not be appropriate to interfere in the findings of the VATO (Audit) by issuing Impugned notice of default assessment of tax & interest and penalty which came to be issued on 28.03.2018. Audit is statutory provisions and involves comprehensive analysis of the registered person.”





18. Counsel for the applicant has contended that the Assessing Authority erred in treating the Inter-state Sale made to M/s Maa Padmavati Steel Pvt. Ltd. as local Intra-state Sales and that learned OHA also failed to appreciate that the dealer had produced copies of permits issued by the Government of Haryana for import of said goods.
19. Further, it has been submitted that the observation made by the OHA that production of GRs/RRs appeared to be an after-thought to fulfil the statutory requirement, and that GRs/RRs were not legible and did not bear the wear and tear of the time lapse of more than 8 years and appeared to have been created on a later date to seek relief, are not correct.
20. On the other hand, counsel for the revenue has contended that in order to prove movement of goods, production of goods receipts is necessary, but, the dealer failed to produce any goods receipt even though the buyer is said to have taken delivery of all the goods from the dealer-applicant at Delhi itself.
21. Counsel for the revenue has submitted that in the impugned order, OHA observed that at the time of hearing of objections filed by the dealer, some GRs were produced before him, but, this fact has not been correctly recorded by him, as, in the course of arguments counsel for the applicant,

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has himself submitted before this Appellate Tribunal that only seven permits (not G.Rs) issued by the State of Haryana were produced before the OHA. Counsel for Revenue has urged that simply from issuance of the permits, it cannot be said that the goods sought to be purchased from the dealer actually moved from Delhi to Haryana.

22. Record reveals that the copies of challans-inward submitted by the applicant with these appeals are illegible to a greater extent. Only from the sample i.e. typed copy of the Challan-Inward produced by the applicant with the appeals, refer to by counsel for the applicant, it appears that the same is required to be used by a dealer registered under Haryana General Sales Tax Act, 1973, for import of goods in the State of Haryana and the original challan-inward is required to be submitted by the consignee to the consignor for accompanying the goods in transit.

Serial Nos. 1 to 5 of this challan are required to be filled in by the consignee dealer of Haryana before sending it the consignor. Then, there is a column to be filled in by the consignor. In the end there is a column to be filled in by the transporter.

Counsel for the applicant admits that the applicant did not take any step to summon the buying dealer with the requisite record as regards movement of goods. Indisputably, the applicant also did not take any step to summon any official of the transporter or with any document regarding payment of any toll tax in

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respect of any such vehicle said to have been used for their movement from Delhi to Haryana.

In view of the above discussion and the material available on record prime facie, it cannot be said that the dealer-objector placed on record any sufficient and satisfactory material in support of its claim that this is a case of inter-state sales.

### **Duty Drawback Incentive.**

23. As regards levy of tax on the observation regarding sale of duty drawback license, counsel for the applicant has submitted that whatever amount was received by the applicant by way of incentive, was shown in one ledger, whereas the "amount of duty drawback receivable" was shown in another ledger, but, there was no sale at all as has been wrongly observed by the Assessing Authority.

Reference has been made to the illegible photocopies of the shipping Bills for export, during the relevant period, and available from page 86 to 109, depicting value of total duty drawback.

24. On the other hand, counsel for the revenue submitted that the applicant has failed to produce complete record as copy of the account of the applicant made available is only from one ledger which depicts the amount of the incentive receivable by way of duty drawback, whereas the other ledger depicting the amount of the incentive actually received as not been produced.

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Counsel for the revenue has referred to the balance sheet as on 31/03/2014, which depicts, a sum of Rs. 5,557,029/- towards duty drawback receivable whereas the trading and profit and loss account shows income of Rs. 9,266,130/- towards duty drawback.

24. ✓ It may be mentioned here that as is available from the review application filed by the dealer against the impugned order passed by learned OHA, the objector-applicant alleged in para 2 of the grounds for review as under:

"2. The OHA was seized with only one issue regarding nature of sales in this case i.e. whether assessing authority was justified in treating interstate sale as intra sales."

Said observation prime facie goes to show that no issue except the issue regarding nature of sales i.e. whether it was inter-state sale or intra-state sales, was agitated or pressed on behalf of the objector, during hearing on objection, *as rightly submitted for Revenue.*  
However, from the above said documents referred to by counsel for revenue, difference was noticed in the amount shown in the balance sheet towards duty drawback receivable, and the amount by way of income as against duty drawback, shown in the Trading and Profit & Loss Account. It was after the conclusion of the arguments on the applications that on behalf of the applicant, copies of following 3 documents came to be filed while supplying their copies to counsel for the respondent, and *today,*





this led to further submissions by counsel for the parties as regards utilisation of duty drawback incentive:

- “1. Copy of Account Ledger (Drawback Receivable) from 01/04/2013 to 31/03/2014 of Appellant.
2. Certified copy dated 06/11/2023 of Adjustment order vide Ref. No. 67031 dated 16/05/2022 passed by AVATO, Ward No. 67, New Delhi.
3. Copy of Bank Statement from 01/04/2013 to 31/03/2014.”

Having gone through these three documents, counsel for the Revenue has candidly submitted that prime facie, at this stage, it does not appear to be a case of sale of duty drawback incentive/license.

### **Focus Licenses**

25. As regards Focus Licenses, in the course of arguments, after going through the documents, mostly photostate copies, available from page 110 to 188, counsel for the revenue candidly submitted that the value of the Focused Licenses as shown in the Balance Sheet and the Trading and Profit & Loss account, available at page 206 and 207 reveal that the dealer prime facie, cannot be said to have indulged in any sale of the said licenses.

### **Penalty**

26. As regards penalty, counsel for the applicant has submitted that the Assessing Authority levied penalty for the tax period – 2<sup>nd</sup>

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Quarter 2013-14 on account of failure of the applicant to file Annexure ID relating to stock position, but, the penalty has been wrongly levied under some other provision i.e. u/s 86(10) of DVAT Act.

Counsel for the revenue has prime facie, rightly submitted that because of non-filing of such document, in view of provisions of sub-section (2) of section 59, penalty is levied u/s 86(14) of DVAT Act and not u/s 86(10).

As regards the other two penalties, counsel for the revenue has contended that same have been rightly and legally assessed.

27. Counsel for the applicant has referred to one of the documents <sup>presented</sup> submitted, in the meanwhile, and submitted that the department has adjusted a sum of Rs. 4,06,182/- towards one of the demands of penalty imposed u/s 86(10) of DVAT Act, and that this fact be also taken into consideration while disposing of these applications.

Counsel for the Revenue, after having gone through the copy of the said adjustment order dated 16/05/2022, has not disputed the contention raised by counsel for the applicant.

28. No other argument has been advanced by counsel for the parties on these applications.
29. In view of the well settled law on the point of exercise of discretion as regards pre-deposit condition for entertaining of appeals and having regard to all the facts, circumstances and the submissions put forth by counsel for the parties, the applications

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are disposed of and both the appeals are entertained subject to deposit of 20% of the disputed demand of tax and interest (excluding the demands raised on the basis of duty drawback sales and sales of focus licenses) and 20% of the disputed demand of Rs. 5,78,572/- towards two penalties (excluding the amount already adjusted and the amount of penalty of Rs. 10,000/- imposed for the second quarter of the year 2013). The pre-deposit amount to be deposited within 25 days from today.

On deposit, in compliance with this order, Counsel for the applicant to apprise the Registry and Counsel of the Revenue about the compliance, so that appeal is taken up on the next date i.e. 06/12/2023 for final arguments.

Both the applications are disposed of accordingly.

30. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 09/11/2023.

*Narinder Kumar*  
9/11/2023  
(Narinder Kumar)  
Member (J)

