

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 133/ATVAT/2024

Date of Judgment: 12/02/2024.

M/s Sam Enterprises,
C-5, Ground Floor, (Adj.) Adjacent to C-4,
Main Market, Malviya Nagar,
Delhi-110017.

.....Appellant

V.

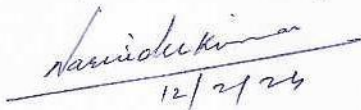
Commissioner of Trade & Taxes, Delhi.

.....Respondent

CA representing the Appellant : Sh. Sohrabh Jindal.
Counsel representing the Revenue : Sh. P. Tara.

Judgment

1. The appeal pertains to the 1st Quarter of the year 2017-18.
2. Dealer-appellant is a partnership firm. It is engaged in the business of restaurant activities, since the financial year 2011-12. Appellant is feeling aggrieved by order dated 14/11/2023 passed by learned Special Objection Hearing Authority (hereinafter referred to as SOHA), thereby upholding the assessment dated 01/04/2021 made by the Assessing Authority/VATO (Ward-96).


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3. Assessing Authority framed default assessment u/s 32 of DVAT Act raising the above said demand of Rs. 33,88,078/-, due to following reasons:

“Whereas I am satisfied that the dealer has not furnished returns / furnished incomplete returns or incorrect returns / furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004. / any other reason Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure- 2B filed by respective selling dealers reveals that more input Tax Credit has been claimed than the corresponding Output Tax, if any, reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of Section 9 of Delhi Value Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section (1) of Section 32 of Delhi Value Added Tax Act, 2004.”

The above said amount includes a sum of Rs. 11,84,499/- towards interest.

4. The appellant is stated to have come to know about the above said demand of Rs. 33,88,078/- raised under DVAT Act, in January 2022, when it learnt about attachment of its bank account due to said outstanding demand. Soon after having so learnt, the dealer applied for de-freezing of its account. Vide order dated 12/01/2022, prayer of the appellant for withdrawing the order of attachment of bank account was allowed by the concerned AVATO, while observing that the submissions of the dealer

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seemed to be justified and that a thorough investigation was required. It was only in October 2023, that feeling aggrieved by the default assessment of tax and interest, dealer filed objections u/s 74 of DVAT Act.

5. On 14/11/2023, learned VATO (Special OHA) disposed of the objections and upheld the default assessment of tax and interest by observing in the manner as:

“The case was originally assessed for the 1st Qtr 2017-18 vide order dated 04-04-2021 demand with interest of Rs.3388078/- was created under DVAT Act, due to mismatch of Input Tax Credit as per annexure 2A filed by the dealer with that of output tax in Annexure 28 filed by the selling dealer. The counsel of the Sh. Sohrabh Jindal, CA of the firm has filed objection against this demand of ward-96 on 13-10-2023 the counsel appeared and produced copy of the objection filed before the undersigned for 1st Qtr 2017-18. The CA stated that the dealer has not purchased the mismatched amount of goods from the seller. The dealer also does not have any documents showing the purchases in question. The demand on the purchases of Rs. 17628629/- is created @12.5% along with interest under DVAT Act.”

6. Feeling dissatisfied with the impugned order, dealer has come up in appeal.
7. In compliance with order dated 23/01/2024, passed by this Appellate Tribunal, on application u/s 76(4) of DVAT Act, dealer has deposited the amount of pre-deposit.
8. Arguments heard. File perused.

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9. As noticed above, default assessment came to be framed on the basis of scrutiny of purchase related data filed by the dealer online in Annexure-2A, and its comparison with Annexure-2B filed by the respective selling dealers. Cross checking revealed that there was mismatch in Annexure 2A and 2B and that dealer-appellant had claimed ITC more than the output tax reported by the selling dealers. So, the Assessing Authority found it to be a case of claim of excess ITC in violation of the provisions of Clause (g) of sub-section 2 of Section 9 of DVAT Act, and accordingly raised the demand of tax with interest.
10. As claimed by the appellant, the default assessment was framed by the Assessing Authority in absence of the dealer and that the dealer learnt about it only when its bank account was freezed, and it could not even login to the DVAT portal due to change of its password. As further claimed, the dealer could not succeed in the resetting the password because its registered mobile phone number was also found to have been changed.
11. As regards the allegation of mismatch, learned CA for the appellant has contended that it is a case of fraud with the dealer, and as such the impugned demand and the impugned order deserve to be set aside.

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Learned CA has pointed out that on the basis of an application filed by the dealer, the concerned AVATO (W-96)^{had} recalled the attachment order, on 12/01/2022.

On 06/07/2022, a fresh notice is stated to have been received from the Department, and the dealer is stated to have replied the same. Again on 11/09/2023, from the Department a show cause notice was received for cancellation of registration of the dealer.

On behalf of the dealer, it has been pointed out that dealer got registered a FIR on 17/09/2023 by reporting the matter to Police of Police Station, Malviya Nagar. On 18/09/2023, a complaint was submitted by the dealer to the Cyber Crime Cell. On the same day, it submitted reply to the above said show cause notice from the Department. Thereafter, on 22/09/2023, the dealer is stated to have also submitted reply to the Department by personally appearing. Accordingly, the contention raised by counsel for the appellant is that the matter be remanded to learned SOHA to enquire into the allegation of fraud as claimed by the dealer, provide^{it-a}/reasonable opportunity of being heard and then give fresh decision on the objections.

12. Today, on behalf of the appellant, true copies of following documents have been filed:

(i) Notice u/s 91 of CrPC issued by Cyber Crime Branch to the Additional Commissioner Zone-09, DVAT Department.

(ii) Status of the Enquiry given by the Cyber Crime Branch.


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13. Learned counsel for the respondent has submitted that even though the appellant cannot be said to be so diligent in pursuing the matter with the Department or with the Police, in the peculiar facts and circumstances of the case, he has no objection to the remand of the matter, particularly, when the matter is being enquired into by the Crime Branch. ✓

14. In the objections before learned SOHA, dealer-objector specifically alleged about commission of fraud and that it had never entered into any such transactions. The objector also specifically alleged that a compliant was filed with the Cyber Crime Cell on 18/09/2023 and also with Police of Police Station Malviya Nagar on 17/09/2023.

But, in the impugned order learned SOHA did not discuss this allegation of fraud leveled by the objector, what to say of conducting any enquiry and rejecting the said objection. Therefore, the matter needs to be remanded to learned SOHA for enquiry and fresh decision after providing opportunity of hearing to the dealer-objector.


15. As a result, this appeal is disposed of and the matter is remanded to learned SOHA for enquiry ^{while} after providing opportunity of hearing ✓



to the dealer-objector on the point of fraud said to have been committed, and fresh decision on the objections.

16. Dealer-objector to appear before learned SOHA on 28/02/2024.
17. 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 : 12/02/2024.


12/2/2024
(Narinder Kumar)
Member (J)