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

Appeal Nos. 310-312/ATVAT/2008
Date of Judgment: 02/02/2024.

M/s Tek Chand & Sons.
Formerly- M-7 Shivam House,
Karampra, New Delhi- 110015.

Presently- C/98 Cement Godown Wali Gali,
Swaran Park, Udyog Nagar,
New Delhi- 110041.

.....Appellant

V.

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

Counsel representing the Appellant : Sh. A.K. Babbar &
Sh. Surendra Kumar.
Counsel representing the Respondent : Sh. C.M. Sharma.

Judgment

1. Instant three appeals No. 310-312/ATVAT/2008 came to be filed by the dealer, challenging common order dated 04/06/2008 passed by Sh. B.L. Sharma, Joint Commissioner–V, Department of Trade & Taxes, Objection Hearing Authority (hereinafter referred to as OHA).

Narinder Kumar 2/2/2024

APPELLATE TRIBUNAL VAT DELHI

2. Matters pertain to assessments for the tax period-1.4.05 to 31.3.06. One of the impugned assessments for penalty pertains to tax period -1.4.2006 to 30.6.2006.

3. On 15/11/2006, by way of default assessment of tax and interest framed u/s 32 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), Learned Assessing Authority – VATO (VAT – Audit) framed assessment due to following reasons:

> "Whereas. I am satisfied that the dealer has furnished return that does not comply with the requirements of Delhi Value Added Tax Act 2004 for the tax period 1.4.05 to 31.3.06/or any other reasons given below.
>
> **Tax Period 1.4.05 to 30.6.05**
>
> 1. During the Ist Qtr. Of 2005-06 the dealer has claimed tax credit for Rs.1339308/- on transitional stock, same is disallowed as dealer could not produce the annexure and other details of purchases of tax borne items. So above claim could not be verified.
>
> 2. The dealer has shown less purchases for Rs. 1801/-, so after adding G.P. @16% these purchases are treated as local sale and taxed @12.5% with interest (Tax=261+ Intt. 58 = 319/-) 3. Input Tax Credit for Rs.2407/- has been claimed on following retail invoices which is disallowed.

Bill No.	Date	Amount
54.	20.4.05	360/-
38.	28.5.05	260/-
14335.	7.06.05	1787/-

Tax Period 1.7.05 to 30.9.05

1. During the IInd Qtr. Of 2005-06, excess purchases has been shown for Rs. 13426/-, so excess ITC claimed on these purchases for Rs 1678/- is disallowed.

2. Input tax credit for Rs.421/- has been claimed on following retail invoices which is disallowed.

Bill No.	Date	Amount
56353.	27.7.05	38/-
044.	23.8.05	20/-
773.	8.9.05	350/-
884.	15.9.05	13/-

Tax Period 1.10.05 to 31.12.05

1. The dealer has shown less purchases for Rs. 124503/- which is treated as local sale and taxed @12.5% with interest after adding GP rate @16% (Tax 18053+ Intt. 2225=20278/-).
2. Input tax credit for Rs.1260/- has been claimed on following retail invoices which is disallowed.

Bill No.	Date	Amount
208.	10.10.05	20/-
1038.	27.10.05	1062/-
1122.	5.11.05	24/-
60.	31.12.05	153.87/-

Tax Period 1.1.06 to 31.3.06

1. Input tax credit for Rs 634/- on following retail invoices claimed which is disallowed.

Bill No.	Date	Amount
2890.	5.1.06	21/-
2895.	5.1.06	240/-
2825.	1.2.06	10/-
1611.	10.2.06	40/-

1618.	21.2.06	252/-
1647.	1.3.06	71/-

Therefore, the dealer is hereby directed to pay tax of an amount of Rs. 1366305/-."

Separate assessments of penalties were also framed. Same read as under:

"Whereas I am satisfied that the dealer has a liability to pay penalty under section 86 of Delhi Value Added Tax Act, 2004 for the tax period 1.4.05 TO 31.3.06 for the reasons given below:-

Tax Period 1.4.05 to 30.6.05

1. During the 1st Qtr. Of 2005-06 the dealer has claimed tax credit for Rs.1339308/- on transitional stock, same is disallowed as dealer could not produce the annexure and other details of purchases of tax borne items. So penalty u/s 86 (11) equivalent to tax credit of Rs. 1339308/- is imposed.
2. Due to difference in purchases and ITC claimed on invalid purchases, penalty u/s 86 (10) for Rs. 10000/- is imposed.

Tax period 1.7.05 to 30.9.05

1. Due to difference in purchases and wrongly claiming ITC on retail invoices, penalty u/s 86(10) for Rs. 10000/- is imposed.

Tax period 01.10.05 to 31.12.05

Return filed incorrect as there is difference in purchases and ITC claimed on retail invoices so penalty u/s 86 (10) for Rs. 10000/- is imposed.

Tax period 1.01.06 to 31.3.06

Dealer filed incorrect return as ITC on retail invoices has been claimed so penalty u/s 86(10) for Rs. 10000/- is imposed.

Therefore, the dealer is hereby directed to pay penalty of an amount of Rs. 1379308/-."

Separate assessment of penalty u/s 33 of DVAT Act, for the tax period 1.4.06 to 30.6.06, came to be ~~imposed~~ framed while observing as under:

"Whereas I am satisfied that the dealer has a liability to pay penalty under section 86 of Delhi Value Added Tax Act, 2004 for the tax period 1.4.06 TO 30.6.06 for the reasons given below:-

Tax Period 1.4.06 to 30.6.06

Dealer filed incorrect returns as there is difference in purchases and has claimed ITC on retail invoices so penalty u/s 86(10) for Rs, 10,000/- is imposed.

Dealer is not maintaining stock register so penalty u/s 86(13) for Rs.50,000/- is imposed.

Therefore, the dealer is directed to deposit penalty of Rs.60000/-."

4. Feeling aggrieved by the above assessments, dealer-objector filed objections. Vide common order dated 04/06/2008, learned OHA rejected the objections with the following reasons:

"The objector's contention with regard to the claim amounting to Rs. 61027/- on account of transitional stock

on the pretext that instead of mentioning the amount of tax borne on tax paid stock of Rs. 1339308/-, he mentioned the value of stock in DVAT-15 for the tax period 1" quarter of 05-06 does not hold any merit for the reason that the objector in DVAT-15. in Column No.4 meant for Tax Credit Claimed had shown the total value of tax credit claimed as Rs. 1339308.75 instead of Rs. 61027/-.

Not only so the dealer had recorded figure of Rs. 1339308.75 in Schedule 1 -Column S2.2 and also in Column No R5.4 in DVAT-16 claiming tax credit.

In fact the amount of Rs. 61027/- has neither been shown in DVAT-18 nor in DVAT-16. Had the audit of the objector not been carried out, the objector would have succeeded in getting away with the tax credit/refund illegally.

Further, the objector's claim could have been acceptable had he filed the objection voluntarily, prior to audit, But in the present case it is the DVAT Audit Team which had detected that the dealer had claimed an amount of Rs. 1339308/- as tax credit which was far in excess of actual entitlement. Had the audit team not detected the said unlawful claim the objector would have availed of the said unlawful benefit/tax credit.

Hence, under the given circumstance, the benefit at the tax credit on transitional stock cannot be granted.

The objector's claim with regard to other discrepancies/violation of provisions of DVAT law pointed out by the audit team are also not sustainable in the eyes of the provisions of the Act and the Rules.

I have gone through the objections filed in DVAT 38 forms, notices of default assessment of tax and interest

and the notices of default assessment of penalty, the documents furnished in support of the said objections, the relevant provisions of DVAT Act and Rules framed thereunder whereupon, I find no merit in the objections filed by M/s. Tek Chand & Sons. Hence the same are rejected."

5. It may be mentioned here that on 17/10/2008, this Appellate Tribunal observed that the objections filed by the dealer-objector before learned OHA were deemed to have been allowed, same having been decided beyond a period of eight months from the date of their filing. In this regard, reliance was placed on decision in M/s Behl Construction's case.

6. Revenue filed review petition with an application seeking condonation of delay. Ultimately, on 17/11/14, the review application was disposed of, same having been withdrawn, in view of the orders passed by the Hon'ble High Court on 25/07/2014. That is how, the matters were adjourned from time to time.

7. Last order available in the main file is of 31/05/2016 vide which these appeals were adjourned to 15/07/2016. Record reveals that neither on 15/07/2016 nor subsequent thereto, files were put up by the staff. Registry came across these files while searching other files, and put up these files on 22/11/2023, for the first time after 31/05/2016.

8. When contacted, Sh. C.M. Sharma, counsel for the Department submitted before the Registry that the matters had not been finalised. Accordingly, notices were issued to the dealer – appellant, its counsel and counsel for the Department.

Fact remains that neither the parties nor their counsel ever pointed out to the Registry that these files of the year 2008remained to be disposed of nor requested of own that the same may be taken up.

9. It was thereafter that applications u/s 76(4) of DVAT Act were taken up, heard and disposed of.

10. Arguments heard. File perused.

11. The first contention raised by counsel for the appellantis that the impugned assessments have been framed by the VATO (VAT Audit), but said VATO had no jurisdiction to make assessments, as there was no specific delegation of powers, which is mandatory, in favour of VATO (Audit) for framing of assessment, and further that the concerned VATO and VATO (Audit) cannot have concurrent jurisdiction to frame assessment, and as such the impugned order deserves to be set aside.

In support of his contention, counsel for appellant has referred to provisions of section 62, 66 of DVAT Act, Rule 65 of DVAT Rules, Circular No. F.No.7(6)/L&J/Circular/2016/373 dated

11.04.2016 issued by the Commissioner (VAT), whereby guidelines were issued to the VAT Authorities, as per directions contained in judgment **Capri Bathaid Pvt. ltd. & Ors. v. CTT**, (2014) 52 DSTC 617, that after audit etc., reports shall be prepared and the reports shall be mandatorily forwarded to the concerned Ward/Branch officer having jurisdiction over the dealer for assessment of tax and penalty, in accordance with the laid down procedure.

Counsel for appellant has also placed reliance on following decisions:

1. **M/s Playwell Impex Pvt. Ltd. v. CTT, Delhi**, Appeal No. 688-689/ATVAT/2013, decided by this Appellate Tribunal on 15/12/2021;
2. **M/s Prakash Trading Company v. CTT**, Appeal No. 53-54/ATVAT/18-19, decided by this Appellate Tribunal on 19/12/2019; and
3. **Capri Bathaid Pvt. ltd. & Ors. v. CTT**, (2014) 52 DSTC 617.

12. On the other hand, counsel for the Revenue has contended that this being a case, where audit was carried out under chapter X of DVAT Act, and deficiencies were observed, even VATO(Audit) had the jurisdiction to frame the assessments, as provided u/s 58 (4) of DVAT Act, and that the decisions cited by counsel for the appellant do not help the appellant in the

given facts and circumstances, particularly when said provision has never been held to be ultra vires of the Constitution of India.

13. As noticed above, these appeals pertain to the year 2005-06 and also to the tax period – Ist Quarter of 2006-2007.

Therefore, the Circular relied on by counsel for the appellant, which is of 11/04/2016, does not apply to these matters.

As per provisions of section 68 of DVAT Act, the Commissioner may delegate any of his power under DVAT Act to any Value Added tax authorities.

During the relevant period, Circular No. F.2(7)/DVAT/L&J/2005-06/1028-1035 dated 31/10/2005 was in force. As per said circular, as regards provisions of section 58 of DVAT Act, all powers to audit the business affairs of dealer/ any person for

(a) confirming the assessment under the review or
(b) serving notice of the assessment or re-assessment of the amount of tax, interest and penalty,

were to be exercised by all the Officers appointed under sub-section (2) of section 66 of Delhi Value Added Tax Act, 2004.

Impugned assessments were framed by VATO (Audit). In the case titled as **H.G. International v. The Commissioner of Trade and Taxes, Delhi**, ST.APPL. No. 63/2014 decided on 16/8/2017 by our own Hon'ble High Court, circular dated

31.10.2005 was held to have been validly issued. Therein, assessments were framed by VATO (Audit). In that case, following question of law was adjudicated

> "Whether the VATO (Audit) can pass an assessment order in terms of the Delhi Value Added Tax Act, 2004?"

Assessments of tax and interest framed u/s 32 of DVAT Act pertained to 2nd, 3rd, and 4th quarters of 2008-09 and penalty u/s 33 read with section 86(13) of the DVAT Act for 2008-09.

Hon'ble High Court observed as under:

> "At the time when the impugned orders of default assessment of tax, interest, and penalty were passed by VATO (Audit) in the present case, the above order was in force. It is a validly issued order and is not a subject-matter of challenge in the present proceedings. The above order delegates to the VATO all the powers of an auditor under section 58 of the DVAT Act for (a) confirming the assessment under review or (b) serving a notice of assessment or reassessment.
>
> Consequently, in the present case, the impugned orders of default assessment of tax, interest and penalty issued by the VATO (Audit) were validly issued and were within his powers and jurisdiction in terms of section 58(1) read with section 58(4), and section 66 read with section 68 of the DVAT Act."

In view of the provisions of section 58 of DVAT Act, the above circular dated 31/10/2005, and decision in H.G. International's case, it can safely be said that in these matters, VATO (Audit) had jurisdiction to frame the impugned assessments.

14. Having going through the decision in Capri Bathaid's case (supra), it is found that therein, 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.

Therein, order issued under Section 68 of DVAT Act was dated 12th November 2013. Present case is not covered by the said order of 12.11.2013.

Herein, as noticed above, at the relevant time, order dated 31st October 2005 issued by the Commissioner, VAT under Section 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules'), was in force.

In L&T Ltd.'s case (supra), ~~vide~~ impugned order under challenge before the Hon'ble High Court pertained to sealing of three premises of the petitioner by the VATO and another order vide which the petitioner was required to deposit Rs. 600 crores as a condition for de-sealing the premises. That case did not pertain to application of provisions of section 58 of DVAT Act.

As regards DVAT 50, there is nothing to suggest that the dealer asked the team which conducted audit, to produce the said document, at the time of audit, or that the representative of the dealer lodged any protest soon after the survey on the point of non production of DVAT 50, which the team members have to carry for being shown to the dealer, on demand. Therefore, there is no merit in the contention raised by counsel for the appellant that when no DVAT 50 can be said to have been issued, this is a case of framing of assessment by VATO Audit, beyond jurisdiction.

In view of the provision of section 58, decision in H.G. International's case (supra), decision in Capri Bathaid's case cited by counsel for the appellant does not come to the aid of the appellant.

15. In M/s Playwell Impex Pvt. Ltd.'s case, this Appellate Tribunal came to the conclusion that the Assessing Authority – VATO framed assessments without any jurisdiction, the reason being that the Revenue failed to prove that jurisdiction in this regard was conferred on the said VATO by following due process of law. In para 21, this Appellate Tribunal observed as under:

> "From the record made available by the appellant during this appeal, it cannot be said that Sh. Bijendra Kumar was VATO, Special Assessment Cell. It was for the Revenue to bring on record material to suggest that Sh. Bijendra Kumar was VATO, Spl. Assessment Cell so as to connect the proposed approval granted after 26/9/2012, with Sh. Bijendra Kumar was VATO, Spl. Assessment Cell, in order to prove that the Commissioner had transferred the case to the said VATO for the purpose of default assessment.
>
> Revenue has also not brought on record any general order passed by the Commissioner, during the relevant period, to suggest that VATO(s), Special Assessment Cell, was/were delegated all the powers by the Commissioner, u/s 68(1) of the Act, including that of framing of default assessment."

The decision in M/s Playwell Impex Pvt. Ltd.'s (supra) is distinguishable on facts, and as such does not come to the aid of the dealer-appellant.

16. So far as decision in M/s Prakash Trading's case (supra) relied on by counsel for the appellant is concerned, therein assessments were framed vide order dated 31.12.2013, for the period March 2011-12, issued by VATO (Audit).

Here, during the relevant period, circular dated 31/10/2005 was in force. Applying the same and the decision in H.G. International's case (supra), to the facts of the case, decision in M/s Prakash Trading's (supra) case does not come to the aid of the appellant.

17. One of the contentions raised by counsel for the appellant is that this is a case where principle of natural justice was not followed, the reason being that the assessments came to be framed by the VATO(Audit), who himself conducted the audit. On this point, counsel for the appellant has relied on decision in **Cantonment Executive Office &Anr. v. Vijay D. Wani &Ors.**, AIR 2008 SC 2953.

In this regard, a perusal of Chapter X of DVAT Act would reveal that same stipulates provisions in respect of Audit, Investigation and Enforcement. Sub-section (4) of Section 58 clearly empowers the Commissioner, in a case where audit has

been conducted, even to confirm the assessment under review or serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to section 32 and 33 of this Act. Having regard to the decision in H.G. International's case (supra) and provisions of Section 58, decision in Cantonment Executive Office &Anr's case (supra) also does not come to the aid of the appellant.

On Merits

Transitional Sales and Levy of Tax

18. As noticed above, while framing assessment for the tax period from 01/04/2005 to 30/06/2005, the Assessing Authority observed that during this tax period, the dealer had claimed tax credit on transitional stock, but it did not produce annexures and other details regarding purchases of tax-borne-items, and as such said claim could not be verified. The Assessing Authority, accordingly, disallowed the claim for tax credit.

Assessing Authority also observed that the dealer had shown less purchase of Rs. 1,801/-. Accordingly, the Assessing Authority treated said purchases as local sale and levied tax.

On the basis of 3 retail invoices, the dealer was found to have claimed ITC for Rs. 2,407/-, but the Assessing Authority disallowed this claim.

While making assessment for the tax period - from 01/07/2005 to 30/09/2005, the Assessing Authority observed that during said quarter, the dealer had shown excess purchases worth Rs. 13,426/- and claimed excess ITC. Accordingly,the Assessing Authority, disallowed excess ITC claimed to the tune of Rs. 1,678/-.

Learned Assessing Authority also disallowed ITC for Rs. 421/-, claimed on the basis of the retail invoices specified in the assessment.

While framing assessment for the tax period -from 01/10/2005 to 31/12/2005, the Assessing Authority observed that the dealer had shown less purchases to the tune of Rs. 1,24,503/-. Accordingly, the Assessing Authority treated the same as local sale and subjected the same to tax.

The Assessing Authority disallowed ITC for Rs. 1,260/- claimed by the dealer on the basis of 4 retail invoices.

While making assessment for the tax period from 01/01/2006 to 31/03/2006, the Assessing Authority disallowed ITC claim of

the dealer to the tune of Rs. 634/- put forth on the basis of 6 retail invoices specified therein.

19. Challenging the assessment for the Ist Quarter of 2004-2005, Counsel for the appellant has submitted that as on 31/03/2005, stock of the firm was to the tune of Rs. 33,68,290/-, out of which, creditable input stock for transitional purposes was of the value of Rs. 13,39,308/-.

Counsel for the appellant has further submitted that this being the first return under VAT Act, after transition from Sales Tax Act to DVAT Act, by mistake the appellant reflected a sum of Rs. 13,39,308/- as ITC for the opening stock as on 01/04/2005. As further submitted, actually ~~tax~~ ITC of Rs. 61,027/- only should have been reflected.

It has been pointed out by counsel for the appellant that the above said mistake was rectified by the appellant on 28/07/2006 in the return pertaining to first quarter of next year and that too without any notice from the department. Counsel for the appellant has urged that due to this reason, no assessment of tax and interest should have been framed on this aspect.

In support of this contention, counsel for the appellant has relied on decision in **Srivenkateshware Tradex Pvt. Ltd. v. Commissioner**, DVAT &Anr., WP(C) No. 10015/2019, decided by our own Hon'ble High Court on 25/03/2022.

20. On the other hand, counsel for the Revenue has submitted that from the claim of the appellant, it can safely be said that in the return, the appellant claimed excess ITC on false facts.

As regards the return pertaining to first quarter of next year, counsel for the respondent has submitted that the dealer alleges to have depicted fresh claim of lesser ITC amount only in the said return, but without taking any step for rectification of the deficiency in the earlier return. The contention is that even if, it is stated to be a case of mistake, the dealer should have revised the return after removing the deficiency, if any, and since no such step was taken, the department correctly observed that the assessee furnished a return which was false, and consequently framed the assessment of tax and interest, which has been rightly upheld by the OHA.

21. Section 28 of DVAT Act, at the relevant time, provided for correction of deficiencies in the return furnished, on its discovery by the dealer. In this way, the dealer had the opportunity to remove discrepancy and furnish a revised return within the next four years. No such step was taken by the dealer-appellant on discovery, as claimed, that it was by mistake that wrong figure of the ~~transactional~~ transitional stock was reflected in the return initially submitted.

22. Claim of the appellant, as per para 9 and 10 of the appeal read as under:

> "9.The actual input tax credit on the creditable closing stock was Rs. 61,027/- and if this was taken as on 01/04/2005, then the net liability for each quarter will be as follows:
>
> | Quarter | Carried forward | Output tax payable |
> |---|---|---|
> | First | 62,203/- | nil |
> | Second | 34,189/- | nil |
> | Third | | CST: 28627 |
> | Fourth | | CST: 38167 |
>
> 10. The above mistakes were put up before the Management in third week of July and after going through the papers, the appellant, suo moto, deposited the deficient taxes along with interest under section 42 of the DVAT Act as follows on 30/07/2007:
>
> **Third Quarter** 34,708/- (including interest of 6,141/-)
>
> **Fourth Quarter** 1771 for VAT (including interest 267/-)
>
> 44,943/- for CST (including 6,776/- Int.)"

23. As per case of the appellant, it was bona fide mistake, which led it to claim opening ITC as Rs. 13,39,308/-as regards transitional stock. Appellant claims that only the tax payable (as depicted in

the table above) was adjusted from this amount, whereas the balance was carried forward.

As put forth in the appeal, it was in the third week of July, that the above said mistakes were brought to the notice of the management and it led to deposit of the deficient amount of tax, with interest, on 30th July, 2007.

24. There is merit in the contention raised on behalf of the Revenue that appellant has not placed on record any material to show as to why steps were not taken by the appellant immediately to put forth correct figure of ITC claim, by rectifying the return or removing the deficiencies, as provided under section 28 of DVAT Act. Admittedly, the claim regarding ITC was reversed by the dealer only after audit by the department, and not of its own or prior to the audit. This fact speaks volumes against the dealer, particularly when no stock register was produced by the dealer before the Department.

25. In the given circumstances, appellant failed to bring on record any material to satisfy the OHA and the Appellate Tribunal, that it was a case of bona fide mistake on its part; that correct figure was shown by it in the return of the first quarter 2006-07 and that no step could be taken by the appellant prior thereto.

The Appellate Tribunal has put a specific query to counsel for the appellant as to whether in the computations, it was

specifically mentioned by the dealer that claim of excess ITC in the previous return was as a result of mistake. Counsel for the appellant has not replied this query.

In view of the above discussion, there is no merit in the contention raised by counsel for the appellant that the return furnished to the department for the 1st Quarter of 2006-07 having been accepted, actual figure of ITC on the basis of actual figure of transitional stock as per said return shall be deemed to have been accepted by the department.

Decision in Srivenkateshware Tradex Pvt. Ltd.'s case (supra), cited on behalf of the appellant is distinguishable on facts. Therein, the Commissioner, DVAT, had denied issuance of prescribed statutory Form 'C' to the petitioner. Hon'ble High Court observed that that was not a case where there was a default or concealment or adverse material found by the Commissioner suggesting inaccurate particulars in the returns, and rather a case where all the documents and particulars were furnished correctly except that the purchases were inadvertently misdescribed as High Seas instead of Form 'C' purchases, and furthermore no Form 'C' was found missing. Accordingly, the petitioner was held entitled to issuance of Form 'C' while observing that the technical reason of failure of the electronic

system to generate 'C' Form could not deprive the appellant from issuance of Form 'C'.

Herein, as noticed above, admittedly the dealer did not put forth correct figures pertaining to transitional stock. Therefore, the above decision also does not come to the aid of the appellant.

Penalty (Tax period – 2005-06)

26. Counsel for the appellant has contended that while levying penalty, the Assessing Authority did not record any finding that it was a case of furnishing of false return, misleading return or deceptive return, and as such, all the penalties u/s 86(10) deserve to be set aside.

As regards penalty imposed u/s 86(11) of DVAT Act, counsel for the appellant has contended that since the dealer deposited the tax due and did not carry forward the excess ITC earlier claimed, no such penalty deserved to be levied.

Counsel for the appellant has referred to the provisions of section 86(13) of DVAT Act and pointed out that it has variouslimbs, but while framing assessment under this provision of law, Assessing Authority did not specify as to due to violation of which of the limbs the penalty was levied, and as such penalty levied under this provision of law deserved to be set aside.

27. Firstly, as regards penalties under section 86(10), on perusal of assessments of penalty, it transpires that the Assessing Authority specifically mentioned that the penalty was being imposed due to the difference in the amount of the purchases and the amount of ITC claimed. Therefore, there is no merit in the contention raised on behalf of the appellant that said penalties deserved to be set aside.

28. One of the penalties levied for the tax period i.e., 01/04/2005 to 30/06/2005 is u/s 86(11) of DVAT Act. As per clause (b) of sub-section (11), where a dealer claims a greater tax credit u/s 14 of DVAT Act than is allowed, such dealer shall be liable to pay, by way of penalty, an amount equal to the amount of tax credit so claimed or ten thousand rupees, whichever is the greater.

It was for the appellant to satisfy as to why provisions of clause (b) of sub-section (11) of section 86 are not attracted. Admittedly, the appellant initially claimed excess ITC. As regards the claim of the appellant that the dealer was entitled to claim ITC, on the actual figure of transitional stock i.e. Rs. 61,027/-, dealer-appellant has not placed on record any document to suggest if said figure was also a correct figure. Even, in the course of arguments, counsel for the appellant has not been able to point out any

document to suggest that said figure put forth in the return of the next year was correct.

Furthermore, in the assessment for the tax period 01/04/2005 to 30/06/2005, the Assessing Authority clearly observed that dealer could not produce the annexure and other details of purchases of tax borne items, to support the claim of transitional stock.

From the assessment of penalty for the tax period 01/04/2006 to 30/06/2006, it transpires that the dealer was not maintaining the stock register. No explanation has been put forth as to why the dealer was not maintaining the stock register. In absence of stock register, it cannot be said that the above said figure of Rs. 61,027/- furnished by the dealer was the actual figure.

29. Another contention raised on behalf of the appellant is that before imposing penalties, the Assessing Authority did not serve any notice upon the dealer-appellant.

30. In **Sales Tax Bar Association (Regd.) v. Govt. Of Nct Of Delhi & Ors on 7 December, 2012** our own Hon'ble High Court clearly observed that the scheme of the statute (DVAT Act) itself is first allowing a unilateral assessment by the assessee, thereafter a unilateral assessment by the Assessing Officer and thereafter providing for a bilateral assessment after opportunity of hearing. As further held, with such a statutory

scheme, it cannot be said that the post decisional hearing will be farcical or a sham. Moreover such hearing is in exercise of quasi judicial power and is subject to an appeal to the Tribunal.

Herein, the dealer filed objections u/s 74 of DVAT Act. The hearing provided while adjudicating objections was in continuation of the process of framing of assessment, and as such it cannot be said that the dealer got an opportunity of being heard during objections, as per decision in Sales Tax Bar Association's (Regd.) case (supra).

As such, there is no merit in the contention raised by counsel for the appellant that the assessment of penalties deserve to be set aside.

31. It needs to be specified here that neither any other argument has been advanced nor any other ground has been pressed by counsel for the appellant.

Result

32. In view of the above findings, all the three appeals deserve to be dismissed. Same are hereby dismissed, while upholding the impugned assessments and the impugned order.

33. Copy of judgment be placed in the files of connected appeals. One copy of the judgment be supplied to each party as per

rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

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

Narinder Kumar 2/2/2024

(Narinder Kumar)
Member (J)