

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

Appeal No. 107/ATVAT/23
Date of Judgment: 12/10/2023

M/s UNO International.
Khasra No. 378 Min,
1st Floor M.S. Complex,
Above ICICI Bank, Old Delhi,
Gurgaon, Kapashera-110037.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Khursheed Ahmad and
Sh. M.A. Ansari
Counsel representing the Revenue : Sh. C. M. Sharma.

Judgment

1. On 29/08/2023, Appeal No. 107/ATVAT/23 came to be presented before the Registry. This appeal was accompanied by an application u/s 76(4) of DVAT Act. On 04/09/2023, said application was got dismissed as having been withdrawn.
2. Dealer-appellant is engaged in the business of "optical goods" since its incorporation as a partnership firm w.e.f. 14/12/2011.

Narinder Kumar
12/10/23



3. Dealer-appellant is feeling aggrieved by order dated 03/07/2023, passed by learned Appellate Authority- OHA- Special Commissioner, whereby its objections filed u/s 74 of DVAT Act have been dismissed, for the reasons recorded therein.
4. The objections were filed by dealer-objector challenging order dated 26/08/2021, passed by learned AVATO, whereby its application seeking refund of Rs. 15,31,661/-, as regards 4th quarter of the year 2013-14 was disposed of, and the dealer was held not entitled to refund of the said amount.
5. In the order dated 26/08/2021, for rejection of refund claim of the dealer, learned AVATO observed in the manner as:

“Whereas, on scrutiny of return/ application, it has been noticed that the dealer has availed ITC of Rs. 17,53,250/- on account of purchases of Rs. 1,40,26,001/- made from M/s Deepak Optical (Tin 07330425102).

M/s Deepak Optical (Tin 07330425102) has paid Rs. 68,157/- in tax in cash to the Government and adjusted rest of his liability through ITC.

Whereas, on further scrutiny of purchases made by M/s Deepak Optical (TIN 07330425102), it has been noticed that M/s Deepak Optical (TIN 07330425102) has made purchases, during the relevant period and tax paid by its suppliers during the said relevant period as under:-

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07620348458	Garg Traders	280960	14048	7301
2	07580450330	Jain Trading Co.	3308230	406028	Nil
3	07256899896	NK International	1852000	231500	Nil
4	07210425944	Shubam Trading	3858140	466117	Nil



12/10

		Co.			
5	07950473552	Super Trading Company	1644000	205500	Nil
6	07760450328	A-One International	3492700	436587	Nil
			Total ITC	17,59,780/-	

On further scrutiny of chain of transactions, dealer-wise transactions have been examined and following are the findings:-

- (i) M/s Garg Traders Tin No. 07620348458 has been cancelled w.e.f 12/06/2014. Further the purchases made by M/s Garg Traders and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07670433742	Sun India Impex	20,87,175	1,38,986/-	Nil

- (ii) M/s Jain Trading Co. Tin No. 07580450330 has been cancelled w.e.f. 01.08.2014. Further the purchases made by M/s Jain Trading Co. and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07770478694	Ganesh Enterprises	47626875	2381343	Nil
2	07320699963	SHRI Hari Trading Co.	9955508	1244438	Nil

- (iii) M/s N.K. International Tin No. 07256899896 has been cancelled w.e.f. 09.10.2013. Further the purchases made by M/s N.K. International and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07216901664	Sharma Sales Corporation	12694004	918675	2500
2	07956901063	Tirupati Sales Corporation	6256937	312846	2500



12/10/10

- (iv) M/s Shubham Trading Co. Tin No. 07210425944 has been cancelled w.e.f. 06.06.2014. Further the purchases made by M/s Shubham Trading Co. and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07770478695	Ganesh Enterprises	44343781	2217189	Nil
2	07320699963	Shri Hari Trading Co	66942105	8367763	Nil

- (v) M/s Super Trading Company Tin No. 07950473552 has been cancelled w.e.f. 02.09.2014. Further the purchases made by M/s Super Trading Company and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07216901664	Sharma Sales Corporation	38668825	3060553	Nil
2	07956901063	Tirupati Sales Corporation	18408208	920410	Nil

- (vi) M/s A-One International Tin No. 07760450328 has been cancelled w.e.f. 04.06.2014. Further the purchased made by M/s A-One International and tax paid by its suppliers during the relevant period are as under:

S. No	Tin No.	Name of the Dealer	Purchases (Rs.)	Input Tax	Tax Paid in cash (Rs.)
1	07770478695	Ganesh Enterprises	72424798	3621239	Nil
2	07320699963	Shri Hari Trading Co	14471602	1808950	Nil

"Whereas, from the 3rd stage of verification it is seen that all six above dealers have made purchases from following dealers only :-

S.No.	Tin No.	Name of the Dealer
1	07670433742	Sun India Impex
2	07770478695	Ganesh Enterprises
3	07320699963	Shri Hari Trading Co
4	07216901664	Sharma Sales Corporation



12/10

5	07956901063	Tirupati Sales Corporation
---	-------------	----------------------------

Whereas, the Government has not received the tax which has to be refunded till 3rd stage verification, therefore to safeguard the revenue of the Government, 4th Stage verification have been done as under :-

- (i) M/s Sun India Impex Tin No. 07670433742 has been cancelled w.e.f. 31.12.2014. Further the purchases made by M/s Sun India Impex and tax paid by its suppliers during the relevant period are as under :-

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
1	07560417458	Kumar Enterprises	12,07,415	60,370	Nil (Return not filed)
2	07320369963	Shri Hari Trading Co	1,92,86,503	9,64,325	Nil
3	07770478695	Ganesh Enterprises	26,18,369	3,27,296	Nil

- (ii) M/s Ganesh Enterprises Tin No. 07770478695 has been cancelled w.e.f. 13.08.2014. Further the purchases made by M/s Ganesh Enterprises and tax paid by its suppliers during the relevant period are as under :

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
1	07820379776	JNB Traders	1,58,98,000	19,87,250	3,88,16,139
2	07320369963	Shri Hari Trading Co.	31,16,50,990	2,21,53,416	Nil
3	07070391877	AM	1,66,45,696	20,80,712	7,45,065

- (iii) M/s Shri Hari Trading Co Tin No. 07320369963 has been cancelled w.e.f. 29.12.2009. Further the purchases made by M/s Shri Hari Trading Co and tax paid by its suppliers during the relevant period are as under :

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
-------	---------	--------------------	----------------	-----------------	------------------------



12/10

1	07770478695	Ganesh Enterprises	16,62,14,743	1,16,28,824	Nil
2	07740240625	Shri Bala Ji enterprises	3,13,35,822	15,66,791	Nil (No purchase)

- (iv) M/M/s Sharma Sales Corporation Tin No. 07216901664 has been cancelled w.e.f. 29.05.2015. Further the purchases made by M/s Sharma Sales Corporation and tax paid by its suppliers during the relevant period are as under:

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
1	07566906467	Sharma Marketing India	6,13,77,932	44,59,774	Nil

- (v) M/s Tirupati Sales Corp Tin no. 07956901063 has been cancelled w.e.f. 16.10.2013. Further the purchases made by M/s Tirupati Sales Corp and tax paid by its suppliers during the relevant period are as under:

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
1	07566906467	Sharma Marketing India	3,71,23,767	20,22,756	Nil

Whereas, from the 4th stage of verification it is seen that all five above dealers have made purchases from dealers :-

S.No.	Tin No.	Name of the Dealer	Remark
1	07560417458	Kumar Enterprises	Return not filed, hence bogus ITC passed, cancelled w.e.f. 28/03/2012
2	07320369963	Shri Hari Trading Co	Circular trading
3	07770478695	Ganesh Enterprises	Circular trading



12/10

4	07740240625	Shri Bala Ji enterprises	No purchase
5	07566906467	Sharma Marketing India	Nil Tax

Whereas, the Government has not received the tax in cash till 4th stage verification therefore 5th Stage verification have been done as under :-

Purchases of M/s Sharma Marketing India Tin no. 07566906467
(The dealer is also cancelled w.e.f. 01.07.2014)

S.No.	Tin No.	Name of the Dealer	Purchase (Rs.)	Input Tax (Rs.)	Tax Paid in cash (Rs.)
1	07206895219	Motley	9,15,22,145	56,33,160	Nil

Whereas, M/s Motley Tin no.07206895219 is a cancelled dealer w.e.f. 27.07.2013, hence the ITC passed by him is inadmissible.

It is noted that Value Added Tax is based on value addition and it is a chain of transaction where dealer/petitioner can claim input tax credit against the output tax paid by the seller. However, in the present case, most of the dealers are cancelled dealers and ITC have been generated through circular trading/fake invoicing.

It is also seen that there is a clear collusion between the above dealers to pass inadmissible ITC.

In view of the above facts, it is noted that most of the dealers as analyzed above in the chain is not depositing tax actually, but adjusting their liability through ITC only through a chain of dealers and all the transactions are nothing but a circular trading seems to be on papers only to defraud the Government by claiming refund.

Therefore, the dealer is not entitled for the refund to the tune of Rs. 15,31,661/- for the 4th Quarter 2013-14 and hence the refund claimed by the dealer is hereby rejected."



17/10

6. Appellant has challenged the rejection of the refunds on the ground that no notice was served upon it before passing of the said order after 7 years, 4 months and 25 days. Counsel for the appellant has contended that as per guidelines contained in circular dated 15/06/2005, issued by the STO (Policy), refund order in DVAT 22 is required to be passed within a period of 15 days from the date of receipt of return office, without fail, unless the return of the dealer is picked up or any additional information is sought for audit. Counsel for the appellant has also submitted that as per said circular intimation is required to be given by the audit wing of the department/designated VAT authority of the wing/VATO concerned in the Audit wing, to the concerned VATO in the operation wing within 10 days from the receipt of return in different office. Counsel for appellant has placed reliance on decision in **Bansal Plywood & Laminates v. Commissioner of Trade & Taxes, Delhi**, (2018) 56 DSTC 152 (Delhi) and also referred to the extract from the decision in **Swaran Darshan Impex Pvt. Ltd. v. Commissioner VAT**, WP(C) 3817/2010 decided by our own Hon'ble High Court on 03/06/2010, available in para 14 of the said decision.
7. Section 38 of DVAT Act being relevant is reproduced for ready reference :-



12/10

"Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to [sub-section (4) and sub-section (5)] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

(a) refunded to the person, -

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period."

8. As per provisions of Section 38, in the case where a person is assessed quarterly, the refund is to be made to the dealer within two months after the date on which the return is



dh
12/10

furnished or the claim for the refund is made. It is for the dealers to elect if the payment of amount of refund is to be made in cash or as to whether the said amount is to be carried forward to the next tax period as a tax credit for that period.

Herein, the dealer-applicant claimed refund by filing return. In sub-section (3) of Section 38, expression "shall" has been used. It means refund has to be made within two months from the date of the return. This is not a case where the Commissioner/Assessing Authority demanded any security from the dealer as a condition for payment of refund.

9. In the assessment framed on 26/08/2021, the Assessing Authority observed that on scrutiny of return, it was noticed that the dealer had availed of ITC of Rs. 17,53,250/- on account of purchases made from M/s Deepak Optical, and further that the said supplying dealer was found to have paid in cash tax to the tune of Rs. 68,157/- and adjusted rest of its liability through ITC. This is also not a case where any notice u/s 58 or 59 of DVAT Act is stated to have been issued to the dealer, so as to attract provision of sub-section (4) of Section 38 of DVAT Act. A perusal of copy of objections filed by the dealer against the impugned order passed by Assessing Authority would reveal that specific objection was raised that no notice was served upon the dealer before passing the same



dh
12/10

and without providing any opportunity of being heard to the assessee.

10. Since it is not case of the revenue that any notice u/s 58 of the Act was issued to the dealer advising him that an audit/investigation/enquiry was to be conducted or any addition information was to be sought u/s 59 of the Act, ~~Therefore~~, the revenue was required to refund the amount within 2 months after the date of furnishing of return, vide which refund was claimed, *on being found entitled to it, as per law.*
11. Before learned OHA, a preliminary objection was raised on behalf of the objector that the learned AVATO had passed order dated 26/08/2021 after the expiry of period of 4 years as envisaged u/s 34 of DVAT Act.

Learned OHA rejected the said contention while observing that provision of section 34 prescribing period of 4 years applies where assessment is made or carried out by the Assessing Authority, but this is a case where Assessing Authority rejected the refund claimed by the dealer.

Another contention raised on behalf of the objector, before learned OHA was that there was no mismatch in Annexure 2A and 2B for the tax period- 4th quarter 2013-14 other than for a sum of Rs. 1,566.20/-. On behalf of the objector, reliance was



dh
12/10

placed on decision in M/s On Quest Merchandising India Pvt. Ltd. v. Govt of NCT Delhi.

Learned OHA dismissed the objections by observing in the manner as:

"10. It is seen that on the twin test of no mismatch in Annexure 2A-2B report as well as reading down of section 9(2)g of the DVAT Act by Hon'ble High Court of Delhi it is clear to hold that unless and until bonafide of ITC and transactions are under doubt, the dealer deserves the benefit of ITC and incase the bonafides of purchases are doubtful, it would be necessary to go into other details of transactions to verify the bonafides of purchases. Also, in cases where circumstantial evidences do not support the bonafides of the purchases, Assessing Authority has to proceed invoking section 40A of the DVAT Act. However, in the given facts of the case and on careful perusal of refund order, the Ld. AVATO has clearly pointed out the collusion between the selling dealer and purchasing dealers in the entire chain of transactions by generating the fake/illegitimate ITC only to defraud the Government exchequer and also the Circular Trading has also been well established in the instant case which existed on paper only. Further, it is also observed that suppliers in the extended transactions had not reported their transactions in the DVAT return and therefore, needless to say, if purchases were not reported by the suppliers then how the ITC could have passed to further dealers. Hence, it is a clear case of collusion/connivance among the purchasing and selling dealers indulged in a series of transactions and the Assessing Authority has correctly rejected the refund claim of the Objector Dealer.

12/11



11. It is also submitted that the issue involved in the instant case has been dealt by various judicial forums. For instance, the Hon'ble High Court of Punjab & Haryana in *Gheru Lal Bal Chand v. State of Punjab* has held that no liability can be fastened on the purchasing registered dealer on account non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established. In the present case, it is very much evident from the conduct of the parties that the illegitimate/Bogus ITC were passed in entire chain of suppliers on papers only which resulted into the loss to the Government Exchequer and thus, the impugned order passed by the Assessing Authority does not require any sort of interference of this Authority.

12. Further, on the aspect of no opportunity of being heard, it is relevant to refer to the decision of the Hon'ble High Court in the matter of *Sales Tax Bar Association (Regd.) v. GNCTD*, WP(C) No. 4236/2012. The Hon'ble Court in its decision in *Sales Tax Bar Association (Supra)* has observed that even if during the proceedings before the VATO, being a unilateral proceeding, no prior notice has been provided, the said defect, if any, can be cured by providing sufficient opportunity during objections proceedings being a bilateral proceedings. In view of the above judgment of Hon'ble High Court, it is noted that even considering that no hearing had been provided to the objector-dealer before issuing impugned notice, sufficient opportunity of being heard has already been provided to him during the present proceedings. Moreover, it is worthwhile to mention here that the Ld. AR for the Objector dealer despite of being granted sufficient opportunities has still failed to justify the claim of ITC



12/10

which in itself is not sustainable and untenable in the eyes of law.

13. In view of the above, objections filed by the objector-dealer are disposed of in the following terms:

- i) Objection Ref. No. NIL dated 27/12/2021 is hereby dismissed for reasons mentioned herein above.
- ii) Consequently, impugned refund rejection order dated 26/08/2021 passed by the learned AVATO for the tax period 4th quarter, 13-14 as per the reasons mentioned herein above is upheld."

12. In **Quest Merchandising India Pvt. Ltd.'s case (supra)**, while dealing with the provisions of section 40 of DVAT Act, our own Hon'ble High Court observed in the manner as:

"While denial of ITC could be justified where the purchasing dealer has acted without due diligence, i.e. by proceeding with the transaction without first ascertaining if the selling dealer is a registered dealer having a valid registration, denial of ITC to a purchasing dealer who has taken all the necessary precautions fails to distinguish such a diligent purchasing dealer from the one that has not acted bonafide. This failure to distinguish bona fide purchasing dealers from those that are not results in Section 9 (2) (g) applying equally to both the classes of purchasing dealers. This would certainly be hit by Article 14 of the Constitution as explained in several decisions which will be discussed hereinafter."



Handwritten signature and date 12/12

“.....41. The Court respectfully concurs with the above analysis and holds that in the present case, the purchasing dealer is being asked to do the impossible, i.e. to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealer and therefore avoid transacting with such selling dealers. Alternatively, what Section 9 (2) (g) of the DVAT Act requires the purchasing dealer to do is that after transacting with the selling dealer, somehow ensure that the selling dealer does in fact deposit the tax collected from the purchasing dealer and if the selling dealer fails to do so, undergo the risk of being denied the ITC. Indeed Section 9 (2) (g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer.”

“53. In light of the above legal position, the Court hereby holds that the expression „dealer or class of dealers” occurring in Section 9 (2) (g) of the DVAT Act should be interpreted as not including a purchasing dealer who has bona fide entered into purchase transactions with validly registered selling dealers who have issued tax invoices in accordance with Section 50 of the Act where there is no mismatch of the transactions in Annexures 2A and 2B. Unless the expression „dealer or class of dealers” in Section 9 (2) (g) is „read down” in the above manner, the entire provision would have to be held to be violative of Article 14 of the Constitution.

54. The result of such reading down would be that the Department is precluded from invoking Section 9 (2) (g) of the DVAT to deny ITC to a purchasing dealer who has bona fide entered into a purchase transaction with a registered selling dealer who has issued a tax invoice



De
12/10

reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

55. Resultantly, the default assessment orders of tax, interest and penalty issued under Sections 32 and 33 of the DVAT Act, and the orders of the OHA and Appellate Tribunal insofar as they create and affirm demands created against the Petitioner purchasing dealers by invoking Section 9 (2)(g) of the DVAT Act for the default of the selling dealer, and which have been challenged in each of the petitions, are hereby set aside."

13. Section 40A of the DVAT Act provides as under:

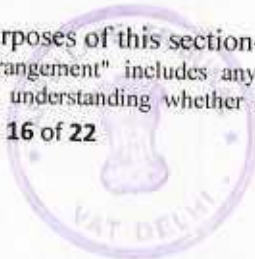
"40A. Agreement to defeat the intention and application of this Act to be void.

(1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may, by order, declare the arrangement to be null and void as regard the application and purposes of this Act and may, by the said order, provide for the increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement, whether or not such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counteract any tax advantage obtained by that dealer from or under the arrangement.

(2) For the purposes of this section-

(a) "arrangement" includes any contract, agreement, plan or understanding whether enforceable in law or

22
1/1/10



not, and all steps and transactions by which the arrangement is sought to be carried into effect;

(b) "tax advantage" includes, -

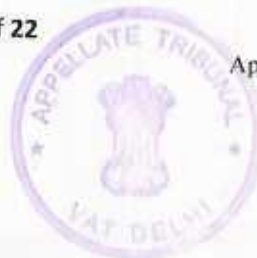
(i) any reduction in the liability of any dealer to pay tax,

(ii) any increase in the entitlement of any dealer to claim input tax credit or refund,

(iii) any reduction in the sale price or purchase price receivable or payable by any dealer."

14. So as to record satisfaction, as provided u/s 40A of DVAT Act, department is required to collect evidence in respect of collusion and to find out if any other party was involved or if any contract was identified by the dealer-appellant with any such party, but no such effort was made to collect any such evidence. Furthermore, as required u/s 40A, in case of any arrangement, same is required to be declared null and void. However, no such declaration by the department is found on record. There is ~~no~~ [✓] nothing on record to suggest that Deepak Optical Co. was associated in any enquiry in this regard.

Counsel for the respondent has submitted that it was for the dealer-appellant to call or summon representative of Deepak Optical Co. in support of its claim. I do not find any merit in this contention raised on behalf of the revenue. When the enquiry was required to be conducted by the Department, it was for the Department to associate all concerned like dealer-appellant and the supplying dealer. No such step appears to have been taken in this matter either by Assessing Authority/^{AVATO} or by OHA while conducting enquiry. In the impugned order



12/10

passed by the ^{AVATo -} Assessing Authority, more stress has been laid on the "extended dealers," as regards transactions between Deepak Optical Co. and such extended dealers.

In absence of any thorough inquiry or investigation into the matter by the learned Assessing Authority or learned OHA, this is a case where provisions of section 40A of DVAT Act could not be attracted. Therefore, findings recorded by learned ^{AVATo -} Assessing Authority and learned OHA, in this regard, are set aside.

15. Counsel for appellant has contended that availing any fake credit by M/s Deepak Optical could not be made basis for rejection of the refund to the appellant, without being established by any material that there was any collusion between the two. Further, it has been contended that the purchasing dealer is required to take the only precaution that selling dealer is a registered dealer, and since Deepak Optical was a registered dealer, payment of refund could not be denied to the dealer-appellant.
16. On the other hand, counsel for the respondent has submitted that registration of Deepak Optical stood cancelled w.e.f. 18/07/2014. In this regard, he has placed reliance on copy of Form DVAT-11 placed before this Appellate Tribunal for the first time. In the course of arguments, counsel for Respondent



Handwritten signature
12/10

has submitted for the first time a paper book accompanied by certain enclosures, while submitting that most of the documents mentioned in the Index ^{relating to demands due from supplying & extended dealer} were already available before the authorities below.

However, counsel for the respondent is unable to state if document in respect of cancellation of M/s Deepak Optical's formed part of the ^{Refund-claim} assessment/proceedings or not. No application has been filed in respect of said additional document sought to be submitted vide this paper book.

In this regard, counsel for respondent referred to provisions of Section 76 of DVAT Act which according to him requires that only the person aggrieved is to seek permission for production of additional documents.

As per document available at page 39 of the paper book, registration of Deepak Optical's Co. was cancelled on 18/07/2014 after show cause notice dated 17/07/2014. Respondent has not placed on record that the dealer-appellant was within the know of the factum of cancellation of registration of Deepak Optical's Co. on 18/07/2014. There is no reference in the impugned order passed by ^{AVATO-} Assessing Authority that any such order dated 18/07/2014 was within the know of the Assessing Authority/ AVATO who passed the



12/10

impugned order refusing the refund. Had the AVATO relied on said document, it must have been specifically mentioned in the impugned order. Even otherwise, the forwarding letter dated 19/09/2023 for GSTO (Ward - 62) to GSTO (Ward - 96) would reveal that this document has recently collected vide said letter. There is nothing on record to suggest that dealer – appellant or Deepak Optical Co. was ever questioned or inquired about the factum of cancellation of registration of the latter on 18/07/2014.

Counsel for the appellant has rightly submitted that refund was claimed in the return pertaining to 4th Quarter 2013-14 and that even if the registration of Deepak Optical Co. was cancelled on 18/07/2014, refund could not be denied, the order of cancellation being of a subsequent date. Fact remains that the dealer – appellant entered into transaction with Deepak Optical Co. while latter was a registered dealer. It is not the allegation of the department that the dealer – appellant entered into transaction with Deepak Optical Co. in respect of any item which did not find mention in the certificate of registration or in respect of which Deepak Optical Co. could not run business or deal.

17. As noticed above, ~~in provisions of section 40A and decision in~~ Quest Merchandising India Pvt. Ltd.'s case (supra), it was



12/10

held that in the event that a selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the defaulting selling dealer and not to deny the purchasing dealer the ITC.

Applying the said decision to the facts and circumstances of this case, and in view of the findings already recorded above that provisions of section 40A of DVAT Act did not come into application in this case, the reasons recorded by learned AVATO and learned OHA for declining the claim of the dealer-appellant for refund, deserve to be set aside.

18. In view of the above discussion, the impugned order passed by AVATO rejecting the refund of Rs. 15,31,661/- as claimed in the return for the 4th Quarter, deserves to be set aside. For the same reasons, the impugned order passed by learned OHA upholding the rejection of the refund, also deserves to be set aside.
19. No other argument has been advanced or pressed by counsel for the parties.

nh
12/10



Result

20. As a result, this appeal is hereby allowed and the impugned orders passed by learned AVATO and learned OHA, whereby refund of Rs. 15,31,661/- for the 4th Quarter 2013-14 has been rejected to the dealer-appellant, are hereby set aside.
21. File be consigned to record room. 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 : 12/10/2023.



Narinder Kumar
12/10/2023
(Narinder Kumar)
Member (Judicial)