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

Appeals No : 08-11/ATVAT/2019
Date of Decision: 13.08.2021

M/s. Honeywell Automation India Ltd.,
17 Ground Floor, Amrit House,
Sant Nagar, East of Kailash,
New Delhi – 110065. ..... Appellant

v.

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

Counsel representing the Appellant : Sh. Dharmendra Anand.CA.
Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

1. The appellant, a limited company, registered vide Tin No. 07690186090 has filed present 04-appeals against orders dated 25/03/2019, passed by learned Special Objection Hearing Authority (in short SOHA).

2. Vide impugned order, learned SOHA disposed of objections filed by the appellant – objector against notice of default assessment of tax and interest issued by Assessing Officer – AVATO on 07/01/2019, 18/01/2019 & another other order dated 18/01/2019, u/s 32 of DVAT Act (here-in-after referred to as the Act), and also

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against separate order passed while imposing penalty u/s 33 of the DVAT Act. The order of penalty pertains to the year 2014. Other 3 orders pertain to 1st quarter, 3rd quarter and 4th quarter of the year 2014.

3. In the notice of the default assessment of tax and interest for the 1st quarter, u/s 32 of the Act, AVATO observed in the manner as –

> "That cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure-2B filed by respective selling dealer 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 per clause (c) and (d) of sub section (1) of section 32 of Delhi Value Added Tax Act, 2004."

Other two orders in respect of 3rd and 4th quarter are on same lines and on the same ground.

In the notice of assessment of penalty u/s 33 DVAT Act, Assessing Officer-AVATO directed the appellant-dealer to pay a sum of Rs. 8,40,420/- by way of penalty on the aforesaid ground.

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4. While disposing of the objections filed by appellant – objector vide impugned orders, learned OHA observed that purchase was confirmed from **M/s D.R.N. Technology**, whereas purchases from other different dealers remained unverified, and as such, he disallowed the ITC claim of the appellant regarding the other purchases. As a result, amount of penalty was reduced to Rs. 5,58,765/- from Rs. 8,40,420/-.

Hence, these appeals.

5. Arguments heard. File perused.

6. Learned counsel for the appellant has referred to the provisions of section 9 of the DVAT Act and then to the decision in **Suvasini Charitable Trust v. Government of NCT of Delhi &Another**, W.P. (C) 4086/2013, decided by our own Hon'ble High Court on 26/10/2017, to submit that Revenue 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 had issued a tax invoice reflecting the TIN number. Therefore, the contention raised by Learned Counsel for the appellant is that the appeals be allowed and the impugned orders be set aside, and as a result the appellant be allowed refund of the tax, interest, penalty already deposited under protest.

7. Learned Counsel for the Revenue has submitted that section 9(1) of the Act, which provides for tax credit, is subject to the provisions of subsection (2) of section 9, and that in view of clause

(g) of the sub-section, when the appellant - purchasing dealer failed to justify the mismatch regarding the sale/purchase, as depicted in 2A & 2B, the appeals deserve to be dismissed, and the appellant is not entitled to claim ITC as prayed.

8. Section 9(2)(g) of the Act provides that no tax credit shall be allowed to the dealer or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.

9. In **Suvasini Charitable Trust'** case (supra), particularly in para 28 to 30, Hon'ble High Court observed in the manner as :-

> "At the outset, it requires to be understood that Section 2 (1) (r) of the DVAT Act implicitly recognizes that when the buyer pays the seller the price for purchase of goods, such price is inclusive of the DVAT for which the seller is liable" to pay to the Government. Which is why, it talks of payment by the buyer of the liability that is essentially that of the seller. VAT is an indirect tax, the incidence of which can be passed on and is in fact passed on by the seller to the purchaser.
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> To be eligible for ITC, the purchasing dealer who, apart from being registered under the DVAT Act, has to take care to verify that the selling dealer is also a registered dealer and has a valid registration under the DVAT Act. The second condition

is that such registered selling dealer has to issue to the purchasing dealer a "tax invoice" in terms of Section 50 of the DVAT Act. Such tax invoice would obviously set out the TIN number of the selling dealer. The purchasing dealer can check on the web portal of the Department if the selling dealer is a fictitious person or a person whose registration stands cancelled. As long as the purchasing dealer has taken all these steps, he cannot be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the Government or has lawfully adjusted it against his output tax liability. The purchasing dealer can, of course, ascertain if there is any mismatch of Annexures 2A and 2B but, assuming it is on account of the seller's default, there is little he can do about it.

Another difficulty that the purchasing dealer would face is that he would have no access to the return filed by the selling dealer particularly since under Section 98 (1) of the DVAT Act those particulars are meant to be confidential. Under Section 98 (3) (j) of the DVAT Act, it is possible for the Commissioner, where he considers it desirable in the public interest, to publish such information. That hinges on the Commissioner placing those details in public domain. If the Commissioner has not placed such information in the public domain, then it is next to impossible for the purchasing dealer to ascertain the failure of

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the selling dealer to make a correct disclosure of the sales made in his return."

In para 34, Hon'ble High Court went on to observe that denial of ITC would be justified where the purchasing dealer has acted without diligence, but denial of ITC to a bona-fide to a purchasing dealer who has taken all the necessary precaution fails to distinguish such a diligence purchasing dealer from the one that has not acted bonafide dealer.

10. Here, as finds mentioned in the impugned order, the appellant-objector presented before the Learned OHA, AR, documents like Tax invoice issued by the dealer, Annexure 2B of selling dealer, Annexure 2A of purchasing dealer, copy of ledger A/c of purchasing dealer, copy of ledger A/s of selling dealer, stock Register etc.

The Assessing officer has not levied tax, interest and penalty on the ground that the purchasing dealer was not diligent or that he is not a bonafide purchasing dealer. The tax, interest and penalty have been levied/ imposed because of mismatch of 2A & 2B. It is also not case of the Revenue that the purchasing dealer and selling dealer were in collusion with each other or that the invoices submitted by the appellant-purchasing dealer are false and fabricated. In the given circumstances, the result is that the Revenue department was precluded from invoking provisions of section 9(2) of the DVAT to deny ITC to the appellant- purchasing dealer who bona-fide entered into a purchase transaction with the registered selling dealer, who in turn issued tax invoices reflecting the TIN number. Applying the

ratio in Suvasini Charitable Trust's case (supra), to the facts and circumstances of present case, it is held that the appellant is entitled to claim ITC, which has been rejected by the Assessing officer and also by the learned SOHA.

For the aforesaid reasons, it is held that learned Assessing officer should not have imposed penalty on the aforesaid ground of mismatch, and that learned SOHA fell in error in upholding imposition of penalty to the tune of Rs. 5,58,765/-on the said ground.

11. In view of the above discussion, all the four appeals are allowed and the impugned orders passed by learned SOHA are hereby set aside so far as levy of tax, interest for the 1st, 3rd & 4th quarter, 2014 and imposition of penalty for the tax period annual 2014, are concerned. Revenue to take consequential steps in accordance with law as regards refund, while taking into consideration the claim of the appellant-dealer as regards the ITC allowed vide this judgment.

12. File be consigned to the record room. Copy of the order be sent 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: 13/08/2021

13/8/2021

(Narinder Kumar)
Member (J)

Appeal No. 0811/ATVAT/2019/731-743 Dated: 17/8/2021

Copy to:-

(1) VATO (Ward- 89)
(2) Second case file
(3) Govt. Counsel
(4) Secretary (Sales Tax Bar Association)
(5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch.
(6) Dealer
(7) Guard File
(8) VATO (L&J)

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PS/ PA to Member (A)