

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ STA-2/2013

M/S ASIAN COMPUTRONICS & ELECS.....Appellant
Through: Mr. Balram Sangal, Advocate.

versus

VALUE ADDED TAX OFFICER & ORS. Respondents
Through: Mr. A.K. Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

% **ORDER**
16.07.2013

1. This appeal under Section 81 of the Delhi Value Added Tax Act, 2004, impugns the order dated 6.9.2012 passed by the Appellate Tribunal for Value Added Tax. Appellate Tribunal for Value Added Tax by a majority decision of two members, confirmed the penalty imposed upon the appellant under second Proviso to Clause 2 of Section 86 of the Value Added Tax Act.
2. On 14.1.2013, the following substantial questions of law were framed by this Court:

“(1) Whether, in the case of online filing of returns under Rule 27 of the DVAT Rules, 2005, it is necessary that the hard copies should also be signed and verified by the person who is required to do so under law?

(2) Whether failure to submit a signed hard copy of the electronic return would entail penalty under Section 86(10) of the DVAT Act, 2004 read with Section 9(2) of the Central Sales Tax Act, 1956?”

3. The appellant is a proprietary concern of Sh. Brij Kumar and is

registered with Value Added Tax (Delhi). The appellant was required to file quarterly returns online and also file a hard copy of the return under the Delhi Value Added Tax Act and the Central Sales Tax Act, 1956 within 25 days and 28 days respectively on expiry of each quarter.

4. The quarterly return for the third quarter ending on 31.12.2010 was filed by the appellant online on 24.1.2011. The online returns was not required to be signed. At the time of filing of the hard copy of the return for the third quarter, it is the case of the appellant that inadvertently an unsigned office copy of the said returns was tendered at the counter in place of the signed copy and the said unsigned hard copy of the returns was duly acknowledged by the department. No deficiency or correction notice/letter was issued to rectify the technical lapse.

5. It is an admitted case of the parties that both the returns, i.e, the online return and the hard copy are identical and there is no variation either in the figures of turnover of purchases and sales or the amount of tax payable.

6. The Value Added Tax authority imposed a penalty of Rs.10,000/- each on the appellant under the Delhi Value Added Tax Act and the Central Sales Tax Act. The reason for imposition of the penalty was mentioned as “returns filed without signatures”.

7. The appellant filed objections against the penalties imposed before the Objection Hearing Authority and along with objections produced the duly acknowledged copy of the unsigned hard copy and filed an affidavit affirming that the figures of both the online return and the hard copy thereof were same and tallied with the books of accounts of the appellant.

8. The Objection Hearing Authority dismissed the objections of the

appellant on the ground that the hard copy of the return was required to be duly authenticated by the signatures of the deponent/applicant under Section 29 of the Delhi Value Added Tax Act and further held that any document bearing no signatures could not be termed as true or authenticated document and was liable to be taken as a false document.

9. The appellant aggrieved by the order of the Value Added Tax authority, as confirmed by the Objection Hearing Authority, filed an appeal before the Appellate Tribunal, Value Added Tax, Delhi.

10. By the impugned order the majority members of the appellate Tribunal while dismissing the appeal of the appellant reduced the penalty to Rs.2000/- in each of the appeals. The reason given by the Members (Administrative) for imposing reduced penalty is that any document filed unsigned cannot be treated as true and authenticated. However, the said Member has found, as a fact, that the figures in the returns filed online and the hard copy are identical and there is no discrepancy in the figures in both the copies and that there was no loss to the revenue. Member (Administrative) also found that the appellant would not have gained anything by filing an unsigned copy of the returns deliberately. Having found so, the Member (Administrative), while taking a lenient view, reduced the penalty to Rs.2000/- from Rs.10000/- in each of the appeals.

11. The Member (Judicial) while agreeing that the conclusion arrived at by the Member (Administrative) has held that furnishing of an unsigned returns is an omission from the return of a material particular/matter without which the return is misleading as well as deceptive in material particulars. Having held so, the Member (Judicial) further held that it was a fit case for remission of penalty under second Proviso to Clause 2 of Section 86.

However, he held that the jurisdiction vested with the Objection Hearing Authority which had failed to exercise the same under Section 74 read with Section 86 of the DVAT Act. Thereafter, the Member (Judicial) agreed with the findings of the Member (Appellate) and in these circumstances, in terms of the majority view, the appellant has been held liable to pay Rs.2000/- as penalty in each case.

12. Chairman of the Tribunal in his minority decision held that penalty under section 86(10) should not be imposed because of language of Rule 27 and as hard copy of return was filed. Secondly, if it was a case of no-return, the 'return' cannot be treated as false, misleading or deceptive.

13. Being aggrieved by the majority view of the Appellate Tribunal, Value Added Tax, the appellant has preferred the present appeal.

14. Section 86 (10) of the DVAT Act lays down as under:

“86. Penalties
(10) Any person who—
(a) furnishes a return under this Act which is false, misleading or “deceptive in a material particular; or
(b) Omits from a return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in a material particular, shall be liable to pay, by way of penalty, a sum of ten thousand rupees or the amount of the tax deficiency, whichever is the greater.”

15. From a bare reading of Section 86(10) it is clear that only a person who furnishes the return which is false, misleading or deceptive in any material particular or omits from a returns any matter or thing which would render the returns as false, misleading or deceptive in a material particular is liable for penalty.

16. The admitted position of the revenue and also as found by the Tribunal is that the contents of the return filed online and the hard copy of the return are identical and there is no variation either in the figures of the turnover of purchases and sales or the amount of tax payable. The appellant had even filed an affidavit before the objection hearing authority to the said effect that the figures in both the returns were identical and also the same figures appear in the books of accounts of the appellant. The majority view of the Tribunal also is that neither there is any loss to the revenue nor would the appellant have gained anything by filing an unsigned copy of the return deliberately.

17. The explanation which was rendered by the appellant before the objection hearing authority that on account of a bona fide mistake an unsigned office copy of the return in place of the signed copy of the return was tendered before the authorities and the same was also acknowledged by the DAK Counter is also plausible and shows the bonafides of the Appellant.

18. In our considered view, a mere fact that the hard copy of the return is not signed would not per se by itself render the return as false, misleading or deceptive in a material particular. The non-signing of the return would be an irregularity which could have been cured by asking the assessee to submit a signed copy. No such letter or notice was issued to remedy and rectify the omission. It is not the case that unsigned return was filed for ulterior motive, by way of disguise or deception. There was no intention or desire to mislead or take, advantage of the fact that the hard copy was unsigned. In the facts of the present case, since the admitted position is that the unsigned hard copy tallied in all respects with the online copy filed by the assessee thus non-signing of the hard copy was mere an irregularity, which could have been cured. The assessee had even given a plausible reason for not filing a

signed copy. It does not appeal to reason as to why an assessee would purposely not file a signed copy of the return when admittedly the hard copy of the returns tallies with the online return filed. The appellant has accepted the hard copy and had filed an affidavit affirming and validating the return.

19. We are of the considered opinion that a mistake of not signing the hard copy would not bring the case within the purview of Section 86(10) of the DVAT Act and would not render the assessee liable for penalties envisaged therein, unless there are circumstances to suggest that the intention or desire was to mislead, or deceive the authorities.

20. No doubt, the Rules require that a return that is submitted in a hard copy should be signed and verified in accordance with the rules but non-signing to a return would be an irregularity which could be cured, more so, in case where the online and the hard copy of the return are identical and at the first available opportunity the defect was rectified by filing an affidavit.

21. In view of the above, the question No.2, accordingly answered in favour of the assessee, the appellant herein, and consequently the order dated 6.9.2012 passed by the Tribunal (VAT) is set aside and the penalties imposed are quashed. In view of our findings above and in the facts of the case, we have not answered the question No.1. No order as to costs.

SANJEEV SACHDEVA, J.

JULY 16, 2013

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SANJIV KHANNA, J.