

\$~7

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

Decided on : 19.02.2015

+ **ST.APPL. 65/2014**

THE COMMISSIONER, VAT

..... Appellant

Through : Sh. H.C. Bhatia, Special Counsel.

versus

A.K. WOOLLEN INDUSTRIES

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

C.M. APPL.17882/2014

For the reasons mentioned in the application, the delay is condoned.
The application is accordingly allowed.

ST.APPL. 65/2014

1. The question of law sought to be urged by the Revenue in this case is whether the DVAT Tribunal acted correctly in holding that in the absence of rules under Section 59(2) of the DVAT Act, 2004 (hereafter referred to as "the Act"), penalty action under Section 86(14) for non-compliance with Sections 59(1), (2) and (3) could not have been initiated and taken.

2. We have considered the submissions on behalf of the Revenue and further considered the record. The DVAT Tribunal set aside the order of the Objection Hearing Authority (OHA) and the Value Added Tax Officer (VATO) on the ground that sufficient opportunity had not been provided in the facts of the case to justify imposition of a mandatory penalty of ₹50,000/- under Section 86(14) of the Act. However, the DVAT Tribunal also stated in the impugned order in para 9 that since rules under Section 59(2) had not been yet been framed, penalty action was not justified. The DVAT Tribunal's observations in this regard are as follows:

“8. We are of the view that penalty provisions should be invoked as and when required under law and not in a routine manner as it cause unnecessary harassment to the tax-payers. This very aspect was discussed in case of Garg Electronics Vs. CTT (Appeal Nos.1793-96/ATVAT/11-12 and Appeal Nos.1797-1800/ATVAT/11-12) decided by this Tribunal on 04.04.2013 wherein observations made as under:-

“In view of the foregoing discussions, we are of the view that non-filing of returns in the given facts and circumstances where the appellant is not liable to pay tax under the DVAT Act, 2004 and without recourse taken by the Assessing Authority of issue of notice in Form DVAT-24 to be served on the dealer in the manner prescribed in Rule 62 of the DVAT Rules, 2005, in respect of the default assessment of tax and interest or re-assessment of tax to the best of the judgment of the amount of net tax due for such tax period u/s 32 of the DVAT Act, 2004 r/w Rule 36 of DVAT Rules, 2005, the Assessing Authority, i.e. AVATO, Ward-80 in the present case, has no jurisdiction to assess penalty u/s 33 of the DVAT Act r/w Section 86(9) of the DVAT Act and hence, we hold that assessment of the penalty under the DVAT Act

and the CST Act for the Year 2007-08, 2008-09, 2009-10 & 2010-11 by the Assessing Authority, in the present case AVATO is without jurisdiction.”

9. *In the present case also, we are of the view that after rectification orders, penalty order does not survive. In fact, Section 59(2) speaks of requirement of the Commissioner for the proper administration of the provisions of the DVAT Act towards dealer to produce such record or to prepare and provide any documents of which requirement's violation invite penalty u/s 86(14) of Rs.50,000/-. The word 'penalty' itself connotes a punitive action by passing an order to the extent of Rs.50,000/- u/s 86(14) of the DVAT Act, 2004. The penal orders contemplate violation of the provisions of Section 59(2) with relation to the administration of the provisions of the DVAT Act, 2004. The administration of the DVAT Act is well defined in the preamble of the Act read with the provisions of the Act as contained therein. The preamble of the Delhi Value Added Act, 2004 speaks of an Act to consolidate and amend the law relating to levy of tax on sale of goods, tax on transfer of property involved in execution of works contracts, tax on transfer of right to use goods and tax on entry of motor vehicles by way of introducing a value added tax regime in the local areas of the National Capital Territory of Delhi. The preamble read with Section 59 of the DVAT Act contemplate an action towards administration of the DVAT Act, which is levy of tax on sales of goods. In the absence of levy of tax the conjoined reading of Section 59(2) & 59(3) and Section 33 r/w Section 86(14), we are of the view that invoking of provisions of either Section 33 or Section 86(14) of the DVAT Act is not called for by the Assessment Authority.*

10. *Accordingly after considering the object of the Act in term of the preamble and considering the same as the purpose of administration of provisions of the Act, we are of the view that primarily the purpose of the Act is to collect tax in term of the preamble of the Act. The*

collection of tax under the DVAT Act means only legitimate tax. Certainly administration of the Act does not, ipso-facto, empower the Assessing Authority to impose penalty for failure of compliance or direction or requirement of the Commissioner to produce records/books of accounts etc. under Section 59(2) or for preparing and providing any documents under Section 59(3) of the DVAT Act, which has not resulted in assessment of tax by the Assessing Authority. However, in the present case as already observed after rectification order, reducing to tax liability to NIL by the VATO himself, there exists no tax effect of non-compliance of notice u/s 59(2) and 59(3) of the DVAT Act, 2004.”

3. Section 59 reads as follows:

“59. Inspection of records

Rule: Nil Form: Nil

(1) All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.

(2) The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require –

(a) any dealer; or

(b) any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organisation, any officer thereof;

to –

(i) produce before him such records, books of account,

- registers and other documents;*
(ii) *(ii) answer such questions; and*
(iii) *prepare and furnish such additional information; relating to his activities or to the activities of any other person as the Commissioner may deem necessary.*

(3) *The Commissioner may require a person referred to in sub-section (2) above, to –*

- (a) *prepare and provide any documents; and*
(b) *verify the answer to any question; in the manner specified by him.”*

4. It is evident from the above that whereas substantive powers to require production of records imply a substantive obligation to maintain books and other documents - the corresponding right of the Commissioner is located in Section 59(1); Section 59(2) is not compulsive but only enabling. This is evident from the use of the expression, “the Commissioner may”. In other words, the proceedings for violation of Section 59(1) are not dependent on the existence otherwise of rules which may or may not be framed in the given fact situation. The Court’s view is supported by the decisions – *Gannon Dunkerley and Co. and Ors. v. State of Rajasthan and Ors.* 1993 (88) STC 204; *Sudhir Chandra Nawn v. Wealth Tax Officer, Calcutta and Ors.* 1968 (69) ITR 897 (SC) and *Mahim Patram Pvt. Ltd. v. UOI* 2007 (6) VST 248. In this view of the matter, the Court is of the opinion that the DVAT Tribunal’s observations quoted above are not correct. However, given the other facts appearing from the record, this Court is of the view that interference with the ultimate order setting aside the

penalty of ₹50,000/- is not warranted. The appeal is accordingly disposed of in the above terms.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

FEBRUARY 19, 2015

