$~16 & 17

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

\+ **VAT APPEAL 22/2016, C.M. APPL.33773-33774/2016**

\+ **VAT APPEAL 23/2016, C.M. APPL.33777-33778/2016**

HIND POCKET BOOKS PVT LTD ..... Appellant

versus

COMMISSIONER OF VAT & ANR. ..... Respondents

Through : Sh. Vasdev Lalwani, Sh. Mukul Gautam, Sh. Rohit Gautam and Sh. Mohit Gautam, Advocates, for the appellants, in Item Nos. 16 and 17

Sh. P. Roychaudhuri, ASC, for Revenue.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 16.09.2016

The following question of law arises for consideration:

"Did the VAT Tribunal fall into error in holding that the sale of used cars by the appellant was subjected to VAT levy?"

Admit.

Issue notice. Sh. P. Roychaudhury, ASC accepts notice.

The assessee is primarily engaged in the printing and sale of books. It is not in dispute that such activity is exempt from levy of Value Added Tax (VAT) [hereafter referred to as "VAT levy"]. When it sold used cars, the VAT authorities contended that the sale was subjected to VAT levy and sought to assess it. The appellant's objections were rejected by the Objection Hearing Authority (OHA)/Additional Commissioner. Therefore, it appealed to the VAT Tribunal which by the impugned order rejected the same.

It is contended that the VAT Tribunal fell into error in holding that even though the sale of the used cars was not *per se* connected with the business of the assessee, nevertheless since the VAT Act – as contra-distinguished with the provisions of the erstwhile Delhi Sales Tax Act made a distinction in the definition itself between "capital asset" and an "asset", and especially since the definition of "sale" was cast in the widest terms, the transaction was subjected to tax levy.

The appellant relies upon the decision of *M/s. Anand Decors and Ors. v. Commissioner of VAT* 2013 (51) DSTC 559 (Del). The Court, in that case, extensively dealt with and analysed various provisions of the DVAT Act and compared it with the erstwhile Sales Tax Act, including the definition clauses, and taking note of Section 6(3) together with Section 9 expressed its opinion as follows:

> *"............It is only when the registered dealer uses the capital goods exclusively for sale of non-taxed goods that this requirement of sub-section (3) to Section 6 is not satisfied. If the capital goods are used for purposes of taxed and non-taxed sale of goods, this requirement for claiming exemption under Section 6(3) would be satisfied. The last requirement is that the dealer should not have taken tax credit in respect of capital goods. Once the aforesaid requirements are satisfied, the sale of such capital goods is treated as exempt from tax. To crystallize, the four conditions stipulated in Section 6(3) of the DVAT Act, to claim exemption are:*
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> *(1) There should be sale of capital goods;*
> *(2) The said capital goods should have been used by the dealer from the time of purchase till sale;*
> *(3) The purpose for which the capital goods were used should be for making sale of taxable goods or taxable goods and non-taxable goods. The capital goods should*

not be exclusively used for making sale of non-taxable goods.
(4) The dealer should not have taken tax credit in respect of such capital goods under Section 9.

12. The aforesaid interpretation to Section 6(3) is in consonance and accord with the underlining principle and objective of a VAT Legislation. VAT prevents cascading effect of taxation and also reduces tax evasion. The White Paper on State level VAT Act by the empowered committee of State Finance Ministers dated 27th January, 2005, under the heading "justification of VAT and background" has elucidated that in the earlier structure the inputs were first taxed and then after the commodity was produced with input tax load, output was taxed again. This caused unfair double taxation. VAT ensures set off is given for input tax as well tax paid on the previous purchases. The essence of VAT Act is to give set off of tax paid earlier and this is given effect to, through concept of input tax credit/rebate. VAT or Value Added Tax is based on the value addition to the goods and related VAT liability of the dealer is calculated by deducting input tax credit from the tax collectable on sales during the specified period.

13. The State Legislations relating to VAT may provide for inclusion of capital goods or industrial inputs in some cases. The definition of capital goods and the manner and mode of input tax credit in relation thereto varies from State to State in terms of the applicable enactment. The justification and reason given for including and giving tax credit in respect of capital goods, which do not form a part of the stock in trade, is that it leads to capital formation of the country, when depreciation is made deductible from the tax base and, therefore, tax paid on capital goods used directly or indirectly for the purpose of business should be set off against VAT liability. These are, however, areas in the realm of Legislation. The *courts only interpret the Statutes as enacted. Therefore, we are not concerned with the rationale behind of allowing input tax credit on capital goods or the reason for denying input tax credit under sub-section (2) to Section 9. Albeit what is discernible is that a dealer is given tax credit for the goods purchased or used as inputs, which are set off from the tax payable on the turnover which would include the sale price received on the sale. Therefore, when input tax credit is granted in respect of capital goods under section 9(9), consequences emanate and ensue on the sale of the said capital goods. But section 9(9) of the DVAT Act is not applicable and appellant dealers were/are not entitled to input tax credit on motor vehicles. Once this is clear, we can appreciate the legislative mandate in granting exemption in respect of sale price paid in respect of capital goods provided the conditions mentioned section 6(3) of the DVAT Act are satisfied. Therefore, the requirements; the capital goods should have been used by the dealer; that the capital goods should have been used for the purposes of business of the assessee and the said business should not be restricted or exclusively relating to non-taxable goods and the assessee should not have taken or granted tax credit on the capital goods. In the cases of the appellants, if these conditions are satisfied then the sale price received by the appellant dealers on sale of used motor vehicles would not be included in the turnover for it would be exempt from tax under Section 6(3) of the DVAT Act. Therefore, in view of the accepted and admitted facts, section 6(3) of DVAT Act would be applicable and the benefit cannot be denied.*

14. At this stage, we must deal with two other contentions raised by the counsel for the State/Revenue. The first contention was that the last part of Section 6(3) would not apply if the dealer cannot be granted tax credit in terms of Section 9(2) of the DVAT Act. In other words, *the submission of the Revenue is that the assessee voluntarily should not have taken input tax credit, though he was entitled to claim input tax credit under Section 9(1) of the DVAT Act. The argument is farfetched and is to be only noted to be rejected. This is not the intention of the Legislature and it is even difficult to perceive and accept that this could be the intention behind the words used in Section 6(3) of the DVAT Act. Rationality and the common sense would affirm that every dealer would like to mitigate his tax liability and avail input tax credit. This was the effect and purpose behind input tax credit in the VAT legislation. Only when the dealer is not entitled to input tax credit, he would not claim benefit of input tax credit. The interpretation put forward by the Revenue is too narrow and is not pragmatic or realistic. This interpretation is certainly not the intention of the Legislature. This is equally not approvingly reflected in the words used in section 6(3) of the DVAT Act. The Legislature was also conscious that goods in the Schedule VII are not creditable goods. They did not expressly or impliedly excluded "capital good" mentioned in schedule VII from application of the section 6(3) of the DVAT Act."*

This Court is of the opinion that the decision in *Anand Decors (supra)* clearly covers the facts of this case, but it is not as if the cars which were put to use for the purpose of the business of the assessee had a nexus with the printing and sale of the books. It could well have used the car for transportation or for other purpose.

Having regard to these facts and furthermore as held by *Anand Decors (supra)* since the tenor and structure of the statute did not entitle the assessee to input credit for the purchase of vehicle, we are of the opinion that the outcome has to be in its favor. The question of law is answered in favor of the assesse and against the VAT authority.

The appeals are consequently allowed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 16, 2016
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