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

\+ VAT APPEAL 1/2017, C.M. APPL.671-673/2017

COMMISSIONER OF VALUE ADDED TAX & ANR..... Appellants
Through : Sh. Satyakam, ASC with Sh. Biju Raj, VATO, Ward 92.

versus

M/S J.C DECAUX ADVERISING INDIA PTV. LTD.... Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 09.01.2017

1. The Revenue in this appeal under Section 81 of the DVAT Act, 2004 urges that the VAT Tribunal's interpretation with respect to Sections 50(2) and 9(8) is erroneous.

2. The facts of the case are that the respondent/assessee, in its return, for certain quarters in 2008-09 had claimed tax credit in respect of transactions with M/s. Jumbo Digital Prints from whom it had sourced printed banners. Concededly, the assessee/purchasing dealer had paid the VAT amounts involved. When it sought to claim credit, the VATO, in default assessment orders, denied the credit on the ground that the transactions were reflected in retail invoices and not tax invoices and, therefore, did not qualify for credit. This opinion was formed by the Objection Hearing Authority (OHA). The VAT Tribunal, however, set aside these findings on an interpretation of

Section 50, which according to it was enacted only for the administrative convenience of the Revenue. It is argued by Sh. Satyakam, learned counsel that a conjoint reading of Sections 9(8) and 50 clarify firstly that a clear distinction exists between "Tax Invoice" on the one hand and "Retail Invoice" on the other, and that if only the relevant details are found in the concerned documents and the dealer satisfies the VATO in that regard can credit be claimed.

3. This Court has considered the submissions of the Revenue as well as the reasoning of the VAT Tribunal. The Tax Invoice is defined by Section 2(zh) which refers to Section 50. Section 9 in its relevant part which deals with tax credits reads as follows:

*"9 **Tax credit***

Rules: 6, 7	***Form : Nil***	***Para (Vol.1): 10.3, 11.4***

[(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period [2] [where the purchase arises] in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making –

(a) sales which are liable to tax under section 3 of this Act; or

(b) sales which are not liable to tax under section 7 of this Act.

Explanation.- Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign *countries.]*

(2) No tax credit shall be allowed –

(a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;

(b) for the purchase of non-creditable goods;

(c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;

Explanation.- This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;

(d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act;

[3]*[(e) for goods purchased from a casual trader;]*

(f) to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.]

(g) to the dealers 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.

(3) The amount of the tax credit to which a dealer is entitled in respect of the purchase of goods shall be the amount of input tax arising in the tax period reduced in the manner described in sub-sections 4 [(4), (6) and (10)] of this section.[1]

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(8) The tax credit may be claimed by a dealer only if he holds a tax invoice at the time the prescribed return for the tax period is furnished.”

4. The relevant part of Section 50 reads as follows:

“50 ***Tax invoices***

Rule: 44	***Form : 36***	***Para (Vol.1): 13.1.3, 24.1, 24.2***

(1) A registered dealer making a sale liable to tax under this Act shall, at the request of the purchaser, provide the purchaser at the time of sale with a tax invoice containing the particulars specified in sub-section (2) of this section and retain a copy thereof:

PROVIDED that a tax invoice shall not be issued by a dealer who –
(a) is specified in the Fifth Schedule;
(b) elects to pay tax under section 16 of this Act; or
(c) is making the sale in the course of interstate trade or commerce or export:

PROVIDED FURTHER that not more than one tax invoice shall be issued for each sale:

PROVIDED FURTHER that if an invoice has been issued under the provisions of the Central Excise Act, 1944 (1 of 1944), it shall be deemed to be a tax invoice if it contains the particulars specified in sub-section (2) of this section.

Explanation.- For removal of doubts, a registered dealer shall be authorized to issue tax invoices only after a certificate of registration is issued by the Commissioner.

(2) The tax invoice issued under sub-section (1) of this section shall contain the following particulars on the original as well as copies thereof:–

(a) the words 'tax invoice' in a prominent place;
(b) the name, address and registration number of the selling registered dealer;
(c) the name and address of the purchaser and his registration number, where the purchaser is a registered dealer;
(d) an individual pre-printed serialised number and the date on which the tax invoice is issued;

[PROVIDED that a dealer may maintain separate numerical series, with distinct codes either, as a prefix or suffix, for each place of business in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;

[PROVIDED FURTHER that such numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;]

(e) description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon indicated separately;

(f) the signature of the selling dealer or his servant, manager or agent, duly authorized by him; and
(g) the name and address of the printer and first and last serial number of tax invoices printed and supplied by him to the dealer.

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(4) Except when a tax invoice is issued under sub-section (1) of this section, if a dealer sells any goods exceeding

such amount in value as may be prescribed, in any one transaction to any person, he shall issue to the purchaser a retail invoice containing the particulars specified in sub-section (5) of this section and retain a copy thereof.

(5) The retail invoice issued under sub-section (4) of this section shall contain the following particulars on the original as well as copies thereof: –

(a) the words 'retail invoice' or 'cash memorandum' or 'bill' in a prominent place;
(b) the name, address and registration number of the selling dealer, if registered;
(c) in case the sale is in the course of inter-state trade or commerce, the name, registration number and address of the purchasing dealer and type of statutory form, if any, against which the sale has been made;
(d) an individual pre-printed serialized number and the date on which the retail invoice is issued;

[PROVIDED that a dealer may maintain separate numerical series with distinct codes, either as prefix or suffix, for each place of business, in case the dealer has more than one place of business in Delhi or for each product in case he deals in more than one product or both;

PROVIDED FURTHER that such numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;]

(e) description, quantity, volume and value of goods sold and [services provided and the amount of tax charged thereon indicated separately]; and

(f) the signature of the selling dealer or his servant, manager or agent, duly authorized by him."

5. A plain and joint reading of the above provisions clarifies that the provision for tax credit is made in Section 9(1). The existence of any conditions covered by Section 9(2) acts as a prohibition for a dealer to make such tax credit. Section 9(8) imposes the condition that tax credit can be claimed after a dealer holds a tax invoice at the time of filing of return. In this case, the invoices relied upon by the purchasing dealer/assessee were described as "retail invoices". The Revenue's argument is that whilst many particulars described in Section 50(2) with respect to tax invoices are found in these documents, nevertheless, the omission to mention the TIN registration numbers of the purchasing dealer and the description of the document as a retail invoice defeated the assessee's claim for credit.

6. Having regard to the nature of the document, we are of the opinion that the strict interpretation of Section 50(2) in the facts of this case was unwarranted. One has to keep in mind the fact that Section 9(2) is the only provision which spells negative conditions or disqualifications for a dealer as it were in claiming credit. To read the provisions of the enactment as strictly as the VATO did in the present case where all the substantial and essential details existed in the document and choosing not to overlook the description (in other words, preferring form over substance) justify the ultimate conclusion of the VAT Tribunal. At the same time, this Court is also of the

opinion that the observations of the Tribunal with regard to Section 50 cannot be countenanced as it were. The rationale for the legislature to have made a distinction between retail invoices and tax invoices – imposing additional conditions in the case of the latter cannot be lost sight of. It is significant that a retail invoice has *per se* not been defined and is conditional upon the prescription by the rule or other notifications under Section 50(5). Subject to the above clarification with respect to the Tribunal's observations of Section 50, no substantial question of law arises.

The appeal is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 09, 2017/ajk