

\$~8

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

% *Date of Decision: 20.01.2023*

+ **VAT APPEAL 24/2022**

M/S MAHADEV ENTERPRISES Appellant

Through: Mr. Rahul Gupta & Ms. Preeti
M, Adv.

versus

COMMISSIONER OF VAT & ANR. Respondents

Through: Mr. Avishkar Singhvi, Mr. Naved
Ahmed & Mr. Vivek Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 17.05.2022 (hereafter 'the impugned order'), passed by the Appellate Tribunal, VAT (hereafter 'the Tribunal') in Appeal no.82/ATVAT/2019. The appellant further prays that the Tribunal be directed to decide the appellant's appeal on merits including the question of law raised by the appellant.

2. The appellant had filed the aforementioned appeal before the Tribunal impugning an order dated 25.09.2019, passed by the learned Objection Hearing Authority – Additional Commissioner, Delhi (hereafter 'the OHA'). In terms of the order dated 25.09.2019, the OHA

had rejected the objections filed by the appellant against the assessment order for tax and interest relating to the fourth quarter of the year 2013-14, and levy of penalty in respect of the third quarter of the year 2015-16. The appellant's objections were dismissed on the ground that the same were filed beyond the period of limitation.

3. The notice for default assessment of tax and interest dated 01.12.2017 was issued by the assessing authority as the appellant (dealer) had failed to produce the relevant documents along with tax invoices despite notices dated 14.09.2016 and 14.05.2017. The assessing officer had, accordingly, disallowed the input tax credit claimed by the dealer to the extent of ₹1,11,469/- and consequently, imposed a tax of an equivalent amount. The assessing officer had also examined the penalty of ₹10,000/- in respect of the third quarter of the year 2015-16.

4. It is the appellant's case that its application before the OHA was not barred by limitation as he had not received the notices dated 14.09.2016 and 14.05.2017. The appellant has also filed a copy of the form DVAT-38, whereby the appellant had raised the said ground that it had not received the notice and therefore, was unaware as to when the documents were to be produced. The appellant had also sought one more opportunity for producing the said relevant documents.

5. The learned counsel appearing for the appellant also points out that 14.05.2017 was a Sunday and no notice could be issued on that date.

6. The appellant also contended that the notices were required to be signed by the concerned assessing officer and, in the present case, no

notice bearing the signature of the assessing officer was available on record.

7. The learned counsel appearing for the respondent has countered the submissions that the notices were required to be signed by the concerned authority. He states that, in terms of Section 100A(2) of the Delhi Value Added Tax Act, 2004, any communication prepared on an automatic data processing system is not required to be personally signed by the authority, if it is properly served on the dealer or the noticee.

8. According to the learned counsel for the appellant, provisions of Section 100A(2) of the Delhi Value Added Tax Act, 2004 do not support the stand of the respondent. He submits that although the electronic communications may not be required to be personally signed, in terms of Section 100A(2), the said communications must necessarily be authenticated by the digital signature of the concerned authority.

9. The learned Tribunal did not decide the controversy, but remanded the matter to the learned OHA. This was, essentially, for the reason that one of the contentions advanced on behalf of the appellant was that the learned OHA had not put the issue of limitation to the appellant and therefore, the appellant did not have the opportunity to respond to the same.

10. We find no infirmity with the decision of the Tribunal in remanding the matter to the learned OHA. It would be apposite for the learned OHA, in the first instance, to decide the contentious issues, including the issue whether the notices were required to be digitally signed as contended by the petitioner.

11. The Tribunal has also granted an opportunity to the appellant to

file an application for seeking condonation of delay. In this regard, it is clarified that if any such application is filed, it would be without prejudice to the appellant's contention that his objections were filed before the learned OHA within time as he had not received the notices dated 14.09.2016 and 14.05.2017.

12. The appeal is dismissed with the aforesaid observations.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 20, 2023
Ch



सत्यमेव जयते