

\$~14

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

% *Date of Decision: 27th March, 2023*

+ **VAT APPEAL 6/2021 & CM APPL. 38004/2021**

RASHTRIYA TRANSPORT
CORPORATION

..... Appellant

Through: Mr. Rajesh Mahna,
Mrs. Sonia Sharma,
Mr. Mayank Kouts and
Mr. Akshay Bhatia, Advs.

versus

COMMISSIONER OF DELHI GOODS
AND SERVICE TAX

..... Respondent

Through: Mr. Anuj Aggarwal, ASC,
GNCTD with Ms. Ayushi
Bansal, Mr. Sanyam Suri
& Ms. Arshya Singh,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **27.03.2023**

VIBHU BAKHRU, J. (Oral)

Introduction

1. The appellant has filed the present appeal impugning an order dated 26.08.2021, passed by the Appellate Tribunal Value Added Tax, Delhi (hereafter '**the Tribunal**') confirming the levy of tax amounting to ₹4,91,096/- as well as levy of penalty under Section 86(14) of the Delhi Value Added Tax Act, 2004 (hereafter '**the DVAT Act**').

2. The controversy, in the present case, relates to the issue

whether the goods discovered in the appellant's godown were liable to be considered as the appellant's goods in terms of Section 3(9) of the DVAT Act.

3. The Tribunal accepted that the appellant had failed to furnish information regarding the receipts of the goods found at its godown and, therefore, the same were required to be considered as goods owned by him and held for sale in Delhi. The tax and penalty have been imposed on the basis of the said conclusion.

Question of Law

4. The only question that is required to be considered by this court is whether the Tribunal has erred in upholding the order of the Appellate Authority on the ground that the appellant had not produced necessary information in his possession in respect of the goods stored at the godown.

Factual Background

5. Briefly stated, the relevant facts necessary to address the aforesaid question are as under:-

5.1 The appellant is engaged in carrying on the business of transportation of goods under the name and style of his proprietorship concern.

5.2 The appellant is not a registered dealer under the DVAT Act.

5.3 The appellant claims that he had taken on rent a godown at 83-84, Gali No. 2, Master Mohalla, LibasPur, New Delhi.

5.4 On 09.03.2006, the Value Added Tax Officer (hereafter 'VATO') inspected the said godown and found that *lakh* / rubber was stored in the said premises.

5.5 The statement of Sh. Ram Kumar Sharma, the Manager of the godown, was recorded. He stated that he was unable to

produce the documents / books of accounts related to the goods stored in the godown. In view of the said statement, the VATO took an inventory of the said goods and passed an order sealing the godown.

5.6 Thereafter, on 09.03.2006 the concerned VATO issued the 'Goods Stop Order' noting that the appellant had not produced the documents relating to the goods kept at his place of business and that the ownership of the goods could not be verified. Thus, for protecting the interest of revenue, the VATO passed an order directing that the goods should not be moved. In addition, the concerned VATO also directed the appellant to get a confirmation regarding the ownership of the goods with complete documents for release of the same.

6. It is the appellant's case that he submitted a letter dated 13.03.2006 requesting that the godown be de-sealed. The appellant claimed that he transports goods on behalf of his customers and delivers the same to various consignees at their directions along with the requisite documents. The appellant also assured that the goods would be delivered only when the same would be released by the VATO.

Default Assessment

7. On 22.03.2006, the VATO passed an order of default assessment under Section 32 read with Section 3(9) of the DVAT Act assessing tax at the rate of 4 per cent of the value of the goods of ₹1,22,77,400/- which worked out to ₹4,91,096/-.

8. In addition, the VATO also imposed a penalty of an equivalent amount under Section 86(19) of the DVAT Act on account of goods being transported without proper documentation. Further, the VATO also imposed a penalty of ₹50,000/- under Section 86(14) of the DVAT Act for failure to

Neutral Citation Number is 2023:DHC:2322-DB
furnish all records regarding transactions of goods detained.

Proceedings before the OHA

9. The appellant filed an objection before the Objection Hearing Authority (OHA) under Section 74(1) of the DVAT Act. One of the grounds urged by the appellant was that it had produced all documents before the VATO and therefore, there was no violation of any of the provisions of the DVAT Act. The appellant also contested the levy of penalty on the ground that the goods were not under transportation.

10. It was the appellant's case that its Head Office was located in Delhi (5810, Gali No. 8, Block No. 4, Dev Nagar Karol Bagh, New Delhi) and the relevant documents were available at the said office.

11. The appellant claims that since it had produced the same before the VATO and therefore, Section 3(9) of the DVAT Act was not attracted.

12. The learned OHA did not accept the appellant's contentions. It held that since the documents had not been produced at the time of inspection, the appellant was liable to pay tax on the goods as assessed. This was on the presumption that the goods were owned by the appellant.

13. The learned OHA also rejected the contention that the goods were not in the course of transportation. The learned OHA reasoned that since the goods had left the premises of the selling dealer but had not reached the destination; the goods were required to be considered as in transit. Consequently, provisions of Section 61 of the DVAT Act, were applicable.

14. In view of the above the learned OHA passed an order dated 20.04.2006 rejecting the appellant's objections.

Appeal before the Appellate Tribunal

15. Aggrieved by the order dated 20.04.2006 passed by the learned OHA, the appellant preferred an appeal before the Appellate Tribunal.

16. It was appellant's case that the enforcement officials had sealed the premises without affording the appellant the opportunity to call for the records from the place of business.

17. The appellant also contended that the enforcement officials had not recorded the version of the Manager truthfully, and had compelled him to sign the said statement.

18. One of the principal grounds urged before the Appellate Tribunal was that neither the VATO (Border Duty) nor the learned OHA had taken into consideration the material produced by the appellant to rebut the presumption that the goods found at the godown belonged to it.

19. The Appellate Tribunal noted in the impugned order that the appellant had stated in its objection before the learned OHA that all documents had been produced before the VATO. The Appellate Tribunal also noted that the representative of the Department had asserted that the appellant had not produced any document relating to the goods in the godown "at the time of visit by the officers of the Department".

20. The Appellate Tribunal found that there was nothing on record, to suggest that the submissions recorded in the order passed by the learned OHA were wrong or contrary to record. It also noted that the Manager of the appellant had not retracted the statement, which was made at the time of inspection. Thus, the Appellate Tribunal concluded that there was nothing on record to rebut the presumption under Section 3(9) of the DVAT Act.

21. In so far as the levy of penalty under Section 86(19) of the

DVAT Act is concerned, the Appellate Tribunal accepted the appellant's contention that the goods in question were not required to be considered as "being carried" by a transport and therefore, the penalty could not be levied under Section 86(19) of the DVAT Act.

22. However, the penalty imposed under Section 86(14) of the DVAT Act was upheld.

Reasons and Conclusion

23. Before proceeding further, it is relevant to refer to Section 3(9) of the DVAT Act. The same is set out below:

"3. Imposition of tax

xxxx

xxxx

xxxx

(9) *If any person who transports goods or holds goods in custody for delivery to or on behalf of any person, on being required by the Commissioner so to do, fails-*

(a) to furnish any information in his possession in respect of the goods; or

(b) fails to permit inspection thereof,

then without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, are owned by him and are held by him for sale in Delhi and the provision of this Act shall apply accordingly.

xxxx

xxxx

xxxx"

24. The plain reading of Sub-section (9) of the Section 3 of the DVAT Act indicates that if a person who transports or holds goods in custody fails to furnish any information in respect of the goods in his possession, on being required to do so by the Commissioner, it would be presumed that he is the owner of the goods.

25. Undisputedly, the presumption under Section 3(9) is a rebuttable presumption. Further, the said presumption would arise only if a person who is in custody of the goods fails to

produce the information in his possession in respect of the goods.

26. It is the appellant's case that it had, in fact, produced relevant documents to show the ownership of the goods in question and therefore, no such presumption could be drawn.

27. Admittedly, there is no dispute that at the time of inspection of the godown, the appellant's Manager had not produced the relevant documents. However, the record indicates that the appellant had produced the relevant documents at a subsequent stage prior to the order of default assessment. There appears to be no real dispute that the appellant had done so. The appellant has produced photocopies of the documents that were filed before the VATO Enforcement at the time of the default assessment or prior, thereto. These were also produced before the Appellate Tribunal.

28. It is the appellant's case that although the documents were not produced at the time of inspection of the godown, they were produced immediately thereafter. According to the respondents, the same does not negate the presumption under Section 3(9) of the DVAT Act; the respondents contend that the documents are required to be produced immediately at the time of inspection and not thereafter.

29. Thus, the first and foremost question that was required to be addressed by the learned OHA and the Appellate Tribunal was whether the production of the documents immediately after the inspection would be sufficient to rebut the presumption under Section 3(9) of the DVAT Act. However, neither the learned OHA nor the Appellate Tribunal had addressed this question. Both the Authorities have proceeded solely on the basis that since the documents were not produced at the time of inspection, the presumption of Section 3(9) of the DVAT Act is attracted.

30. It is material to note that Section 3(9) of the DVAT Act does not specifically provide a time-frame for submission of documents. It merely contemplates a presumption as to the ownership of the goods if the person in custody of goods *fails to furnish any information in possession in respect of the goods on being required to do so by the Commissioner.*

31. It is the appellant's contention that there was no failure to produce the documents and information in respect of the goods; it was merely a failure to produce at the time of inspection. The appellant had produced documents within a reasonable time after the inspection of the godown.

32. It is also not disputed that the appellant's godown and its office were located at different places and the respondents do not dispute that it was permissible for the appellant to keep the documents at its office instead of at the godown.

33. In our view, it would be open for a person found in custody of goods to produce the relevant information in its possession in respect of the goods within a reasonable time on being required to do so by the Commissioner. The question as to what is a reasonable period of time for providing information is necessarily required to be determined in the facts of each case. In the given facts of the present case, the question as noted in paragraph no. 4 above is required to be answered in the affirmative; that is, in favour of the appellant and against the Revenue.

34. It is material to note that none of the Authorities have even examined whether the documents produced by the appellant established the ownership of the goods in question.

35. We do not consider it apposite to the address this question in this appeal. It would be apposite for the Appellate Tribunal to

consider the same at the first instance.

36. In view of the above, we consider it apposite to set aside the impugned order to the extent that it holds that the presumption under Section 3(9) of the DVAT Act is applicable in the facts of the present case and penalty is leviable under Section 86(14) of the DVAT Act, in the given facts.

37. The appellant's appeal is restored to the Appellate Tribunal. The Appellate Tribunal shall consider the documents as produced by the appellant and take an informed decision on the appellant's appeal. The Appellate Tribunal is requested to dispose of the same as expeditiously as possible, preferably within a period of eight weeks from today

38. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 27, 2023

'KDK'