Northern India Motor Company Vs Commissioner Vat, Department of Trade and Taxes

Court: Delhi High Court

Date of Decision: Aug. 25, 2009

Acts Referred: Delhi Sales Tax Act, 1975 â€" Section 5
Delhi Value Added Tax Act, 2004 â€" Section 14, 28, 28(2), 74, 81

Citation: (2009) ILR Delhi 219 Supp : (2009) 25 VST 466

Hon'ble Judges: Valmiki J Mehta, J; A.K. Sikri, J

Bench: Division Bench

Advocate: Bhagwat Prasad, for the Appellant; Rajesh Mahna, for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.
The present appeal u/s 81 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as Ã¯Â¿Â½the ActÃ¯Â¿Â½) has

been filed by the appellant against the order dated 28.02.2008 passed by the Appellate Tribunal, VAT rejecting the claim of the appellant for tax

credit on transitional stock.

2. The facts of the case are that the appellant was carrying on business of resale of auto parts. It was registered with both under the Delhi Sales

Tax Act, 1975 and Delhi Value Added Tax Act, 2004. The appellant claimed a tax credit of Rs. 49,424/- u/s 14 of the Delhi Value Added Tax

Act, which Section allows tax credit on notified first point goods including auto parts dealt in by the appellant subject to the following conditions:

(a) Stock held on 31.03.05 was of trading goods, raw material and packing material.

(b) Stock related to goods purchased from a registered dealer during the period 01.04.04 to 31.03.05.

(c) The stock had borne tax u/s 5 of Delhi Sales Tax Act.

(d) The claim of the tax credit was made by submitting statement on DVAT-18, and DVAT-18A before 31.07.05.

3. Since the appellant held stock of Rs. 732554/- which were tax paid goods it was entitled to a tax credit of Rs. 49424/-. On account of the fact

that the appellant has not claimed the input tax on the transitional stock in the return Form DVAT-16 therefore he was not allowed input tax credit

on the transitional stock. To rectify his mistakes, the appellant filed objections u/s 74 of the Act before the competent authority and claimed a

refund or adjustment against future tax liability of Rs. 49,424/-. The competent authority rejected his objections vide order dated 21.02.2006 and

the appeal against that order was also dismissed by the impugned order of the VAT Appellate Tribunal.

4. The learned Counsel for the appellant submitted that he had filed the return for the period 01.04.2005 to 30.06.2005 on 26.07.2005 wherein

he did not mention the details of input tax credit on transitional stock in the return Form DVAT-16 however being entitled to refund/adjustment of

the same u/s 28(2) of the Act he filed the objections before the competent authority but the same have been wrongly dismissed by the impugned

order inasmuch as the expression Ã¯Â¿Â½tax paidÃ¯Â¿Â½ should include not only actual tax paid but credit available for such tax already paid by the

assessee. Section 28 of the Act is reproduced below:

Section 28 Correction of deficiencies

(1) If, within four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and

he has as a result of the mistake or error paid less tax than was due under this Act, he shall, within one month after the discovery, furnish a revised

return and pay the tax owed and interest thereon.

(2) If, within four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and

he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the

manner and subject to the conditions stipulated in Section 74 of this Act.

5. The sole contention raised by the counsel for the appellant before this Court is that the expression Ã¯Â¿Â½mistake or error paid more tax than was

due under the ActÃ¯Â¿Â½ should be read including to mean not Ã¯Â¿Â½actual paymentÃ¯Â¿Â½ of tax but even a credit which is lying to the account of the

assessee. The counsel for the respondent when confronted with this position that a hyper technical interpretation which was adopted by the

Tribunal in taking the tax paid as an actual tax which had been paid but not a credit on tax which is available to the assessee should not be

accepted, did not vary strenuously oppose the stand of the appellant. We also feel that a pragmatic interpretation of the provision, the intention of

which is to give benefit to the assessee in tax which was not due and which he is entitled to refund of, then, the expression in Section 28(2) should

include tax available as a credit and the expression appearing in Section 28(2) should be interpreted to include a credit lying to the account of the

assessee.

6. In view of the interpretation given above we accept the appeal and hold that the appellant is entitled to the benefit of the input tax credit of Rs.

49,424/- and hold that the same was available to the appellant on the transitional stock.

7. The appeal is disposed off accordingly.