(2009) 01 DEL CK 0052

In the Delhi High Court

Case No : STA 17 of 2008

Commissioner of Sales Tax APPELLANT

Vs

Jitender Mittal Engineers and Contractors RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 01 DEL CK 0052

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Avnish Ahlawat and Latika Chaudhary, for the Appellant; S.K. Sarwal, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.—In this appeal on behalf of the revenue, the order dated 28.07.2008 passed by the Appellate Tribunal, Value Added Tax (hereinafter referred to as ''the Tribunal'') in appeal No. 63-64/ATVAT/07-08 is under challenge. The respondent was issued a notice for default assessment of tax and interest u/s 32 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as ''the said Act'') and a demand of Rs. 5,19,945/- including an element of interest of Rs. 67,819/- was created for furnishing a return which was incomplete and incorrect. The Value Added Tax Officer also issued notice of imposition of penalty and ultimately imposed a penalty under Sections 86(12) and 86(10) of the said Act.

2. Aggrieved by the order passed by the Value Added Tax Officer, the respondent filed objections before the Joint Commissioner- III, who heard the objections and rejected the contentions of the respondent/dealer and upheld the orders passed by the Value Added Tax Officer. Thereafter, the respondent filed appeals before the Tribunal. Although the matter was taken up for hearing by the Tribunal on the application of stay u/s 76(4) of the said Act, since, at the outset, the learned Counsel for the respondent herein had raised the objection that the order passed by the Joint Commissioner- III was beyond time inasmuch as the respondent/

dealer''s objections ought to have been disposed of within a period of eight months, this issue was taken up. It was contended that the date of filing of objections was 10.10.2006 and that the objections were ultimately decided by an order dated 22.06.2007 by the Joint Commissioner- III. This was 12 days after the expiration of the period of eight months from the filing of the objections. It was contended that the matter was covered by the Tribunal''s decisions in the case of Behl Construction in appeal No. 402/ATVAT/06-07 dated 24.04.2008 and in Aravali Aluminium Pvt. Ltd. in appeal Nos. 275-280/ATVAT/07-08 dated 22.05.2008.

3. The Tribunal, after having heard the counsel for the parties, accepted the contention of the learned Counsel for the respondent/dealer and allowed the appeals, following its decisions in Behl Construction and Aravali Aluminium Pvt. Ltd.

4. The appeals arising from the said decisions of the Tribunal in Behl Construction and Aravali Aluminium Pvt. Ltd. were also subject matters of appeals before this Court in STA 12/2008 and STA 13/2008 (respectively). In those appeals, the following substantial questions of law were framed:

1. Where on the expiry of time specified in Section 74(7) of the Delhi Value Added Tax Act, 2004 the Commissioner has not exercised either of the options set out in Section 74(7)(a) or 74(7)(b), whether the objection pending before the commissioner shall be deemed to be allowed?

2. Whether the Tribunal was correct in law in providing a mandatory period of eight months, within which the Commissioner has to dispose of the objection pending before him u/s 74(7) of DVAT Act, particularly, when no such stipulation is provided by the statute? By a detailed judgment delivered today itself, we have answered both the questions of law in favour of the revenue and against the respondents/dealers. The orders passed by the Tribunal in Behl Construction and Aravali Aluminium Pvt. Ltd. have been set aside.

5. In these circumstances, for the same reasons, we set aside the impugned order and allow the appeal. The questions, as framed in STA 12/2008 and STA 13/2008, are also answered in the present appeal in favour of the appellant/revenue and against the respondent/dealer. The parties are left to bear their own costs.