Credit Note viz-a-viz Input Tax Credit: Delhi Tribunal

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In the case of ***Spectrum Light & Electricals and Others v. Commissioner of Trades & Taxes, Delhi, in Appeal Nos. 145-164/ ATVAT/ 12-13 dated 28-Jul-14***, the Hon'ble Delhi Tribunal, VAT, dealt with a matter as under:-

A. FACTS OF THE CASE

(i) The default assessment of tax, interest and penalty was created by the Ld. Assessing Authority (AA) against the appellants by reversing the Input Tax Credit (ITC) on credit note received by them, which was stated to be in the nature of incentives received from suppliers.

(ii) On objections filed before the Objection Hearing Authorities (OHA), the OHA's rejected the objections and upheld the orders of assessment of tax, interest and penalty.

B. CONTENTIONS OF THE APPELLANTS

(i) The Ld. AA's and Ld. OHA's grossly erred in law in not considering the certificates issued by the suppliers, confirming that VAT payable by them has not been reduced on account of credit notes issued by them.

(ii) That the credit notes are not in terms of Section 51 of the Act.

(iii) That since the selling dealer has not reversed its output tax; therefore, the reversal of ITC would amount to double taxation.

(iv) That invoking the provisions of Section 51(a) and Section 40A is unlawful.

(v) That the sale of goods at lower price than the purchase price was due to the incentive scheme laid down by the seller. But, the provisions of Section 10(5) are not applicable on transactions prior to 1-Apr-10.

(vi) That the provisions of Section 8(c) read with Section 51 are legislated with reference to single invoice.

(vii) That the Ld. AA while considering the definition under section 2(r) has apparently ignored the term 'represents tax for which the seller dealer is liable' under the Act.

(viii) There is no deeming provision to deem the value addition. The goods under the adverse circumstances may even be sold at loss.

(ix) That the imposition of interest and penalty are contrary to law and against the principles of natural justice.

(x) That the appellants placed reliance mainly to the cases of *Andhra Agencies v. State of Andhra Pradesh [2009] 19 VST 1 (SC), Priya Agencies v. Commercial Tax Officer [2008] 14 VST 293 (Ker), Prabhu Dayal Om Prakash v. Commissioner Trade & Taxes, Delhi-Delhi Tribunal in Appeal No. 617-620 & 734-765/ ATVAT/ 09-10 dt. 28-Sep-11* and many more cases.

(xi) The appellants sell goods at competitive retail market prices and in no way reduce the output tax liability.

C. CONTENTIONS OF REVENUE

(i) Post sale discounts are not provided under the DVAT Act.

(ii) Adjustments are permissible for situations referred to in Section 8.

(iii) The methods of first booking sales at agreed price and then reducing sale price is a device to reduce sale price/ turnover and the resultant output tax, which is not permissible.

(iv) Credit notes are meant for rectifying error in the original sale invoice and not to be used as a tool to reduce or evade tax liability.

(v) Credit notes reduce output tax of the claimant dealer and enhance his claim for input tax credit.

(vi) Effect of credit/ debit notes can be given only if it is curative in nature and not of substantially altering sale price and if the notes are exactly in the form prescribed in Rule 45 of the DVAT Rules, 2005.

(vii) Conditions contained under section 51 read with rule 45 are since not met, adjustments to tax are, therefore, not permissible *[Page 17 Para 6]*.

(viii) As regards sellers not reversing their output tax, they have not submitted any detailed documents to confirm their submissions.

(ix) There is always a chain and it remains un-established whether the chain of ITC was broken or not at any stage and simple certificate of the seller dealer is not a substantial evidence to rely upon.

(x) The revenue placed reliance on the judgement of the Hon'ble Madras High Court in the case of *Jayam & Co. v. Assistant Commissioner [2013] 65 VST 260 (Mad) and Crompton & Greaves Ltd. v. Assistant Commissioner of Commercial Taxes [2013] 61 VST 5 (Cal)* and also referred to the Circular dated 19-Dec-13 issued by the department.

D. COURT'S OBSERVATIONS

(i) The methods adopted by the dealers while issuing Credit Notes and its affect on Revenue is well explained elaborately by Their Lordships of the Madras High Court in the case of *Jayam & Co. v. Assistant Commissioner [2013] 65 VST 260 (Mad.)*.

(ii) There remain no doubt that the purpose of introduction of Section 10(5) w.e.f. 1-Apr-10 is to clarify the applicability of other related provisions. The reference made to the relevant sections along with Section 40A further makes it clear that the purpose of introduction of Section 10(5) was only to clarify the existing provisions and as such it has got a retrospective effect.

(iii) The arrangement of issue of credit note is nothing but a plan in collusion with the partner in transaction which could easily be termed as tax advantage in terms of Section 40A.

(iv) This Tribunal is of the considered view that the appeals filed by the appellants are devoid of any merit and substance.

(v) The Court sustained the levy of interest by relying upon the decision of the jurisdictional High Court in the matter of *CST v. STAT [2001] 10 STT 53*.

E. CONCLUSION

(i) The appeals stand disposed off in the above terms, i.e., the appeals in the respect of default assessment of tax & interest are dismissed, being devoid of any merit and substance and the appeals in respect of assessment of penalty under section 80(10) or 86(12) as the case may be, are penalty accepted as the same is remitted to 50% of the amount of penalty.

F. AUTHOR'S REMARKS

(i) The submission made by the respondents at C(vi) above that effect of credit/ debit notes can be given only if it is curative in nature and not of substantially altering sale price and if the notes are exactly in the form prescribed in Rule 45 of the DVAT Rules, 2005, instead of helping the contentions of revenue rather supports the view of the appellants.

(ii) The Tribunal is a final fact finding authority but the facts of the case are not read in the orders. If the facts could have been given citing an example the revenue would not have proved the dent in the exchequer.

(iii) The submission made by the respondents at C(vii) above that conditions contained under section 51 read with rule 45 are since not met, adjustments to tax are, therefore, not permissible *[Page 17 Para 6]*, instead of helping the contentions of revenue rather supports the view of the appellants.

(iv) Invoking section 40A by the Hon'ble Court is contrary to the judicial system since the court failed to bring on record the observations made by the Ld. AA in this regard.

(v) The retrospective application of Section 10(5) is contrary to the legislature's intention.

(vi) The highest fact finding authority could have brought on record the quantum of loss due to the alleged transactions of the credit notes.

The views expressed herein are personal views of the authors and do not necessarily represent the views of the NIRCs