



\$~52

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

CNR No. DLHC010482942023

+ **VAT APPEAL 45/2023**

M/S SUNGLASS PALACE PVT LTD

.....Appellant

Through: Mr. Rajesh Mahna & Mr. Ruchir
Bhatia, Advs.

versus

COMMISSIONER TRADE AND TAXES DELHI

.....Respondent

Through: Ms. Urvi Mohan, Mr. Sumit Kumar &
Mr. Aakrit Bhargava, Advs.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

HON'BLE MS. JUSTICE SHAIL JAIN

ORDER

%

28.09.2026

1. This appeal is filed under Section 81 of the Delhi Value Added Tax Act, 2004 (for short 'the Act') against the order dated 06.07.2023 passed by the Appellate Tribunal Value Added Tax (for brevity 'the tribunal'). On 18.10.2024, the following substantial questions of law were framed:

“a) Whether in the absence of a transaction of 'sale' which is the taxable event under the charging Section 3 of the Delhi Value Added Tax Act, 2004, tax could be levied on goods sent on approval which were subsequently returned and even sold by the Appellant after paying the due tax?

d) Whether the impugned order is sustainable in law in as much as the stock was duly recorded in the books of the Appellant, and therefore, there was no question of any tax deficiency; at the highest, without prejudice, the case of the Respondent can be of timing difference?

k) Whether in the facts and circumstances of the case, default notice of assessment of penalty u/s 33 is sustainable in



law wherein no opportunity of hearing was provided to the Appellant before passing of the order and therefore, the same is in teeth of the judgment of this Hon'ble Court in Bansal Dye Chem?"

2. The brief facts are that the appellant was registered under the Act and was engaged in the business of sale of branded watches, jewellery and bullion. On 05.05.2010, a survey was carried out at the business premises of the appellant and a shortage of stock of Rs.2,96,11,028/- and cash of Rs.56,461/- was found.

2.1 The assessment proceedings were initiated and the appellant appeared before the VAT Officer and produced delivery note prescribed in Form-33. The default assessment was framed on 22.12.2011 creating a total demand of Rs.73,52,661/- and penalty of Rs. 59,33,498/- was imposed. The objections filed by the appellant against the assessment were dismissed on 23.06.2017. The appellant was unsuccessful before the tribunal in challenging the assessment and the penalty. Hence, the present appeal.

3. Learned counsel for the appellant contends that the grounds raised before the authorities that the goods *vis-a-vis* the shortage of stock were subsequently sold and tax was paid were not considered by any of the authorities including the tribunal.

4. Learned counsel for the respondent on instructions from the department is not in a position to refute that on subsequent sale, tax was received by the department on the goods alleged to be found short at the time of survey. However, the argument is that these subsequent sales and payment of tax were a cover-up by the appellant to overcome the proceedings initiated consequent to the survey carried out.

5. The issue involved is as to whether there can be double taxation on



the sale of goods. This aspect strikes at the root of the jurisdiction of the VAT Officer to levy tax on the shortfall of the stock found during the survey. Consequently, the impugned order cannot be sustained and the matter is remitted to the VAT Officer to proceed with the default assessment for the period of May, 2010-11 afresh taking into consideration the effect of subsequent sales, if any, of the goods found short at the time of survey.

6. The appeal is accordingly allowed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 28, 2026

Ch