

4
BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

Appeal No. 26-31/ATVAT/19-20
Misc. Application No. 60-65.....
Date of Order: July 27th, 2021

M/s. Infiniti Retail Ltd
Vikas Surya Shopping Mall, Sector -3,
Manglam Palace, Rohini,
New Delhi – 110 085... .. Appellant –Applicant

V

Commissioner of Trade & Taxes, Delhi.Respondent

Present:

Counsel for the Appellant- Applicant : Sh. Sandeep Gupta
Counsel for the Revenue : Sh. P.Tara

ORDER

(on Stay Application U/s 76(4) of DVAT Act)

1. This order is to dispose of six stay applications, misc. Applications No. 60-65/ATVAT/21-22 filed by the applicant with six appeals No. 26-31/ATVAT/19-20, and Appellant-

Narinder Kumar
27/7/21



Page 1 of 6

27/7

applicant has challenged impugned orders dated 02/01/2019 passed by the Ld. OHA, whereby the appellant has been directed to pay additional tax with interest while modifying the assessments dated 15/06/15 made by the Assessing Authority. Appellant has also challenged orders dated 02/01/09 by which penalty, imposed by the Assessing officer vide order dated 15/06/15, has been modified / reduced.

2. Applicant-dealer is a registered dealer. The revenue authorities have levied tax, interest and penalty taking into consideration mis-match between 2A and 2B.
3. While hearing the objections Ld. OHA allowed ~~the~~ some of the objections filed by the dealer. But as regards the following selling dealers, the Ld. OHA disallowed the objections while observing in the manner as under:-

“2nd Qtr.2013



“The purchasing dealer has purchased from of M/s. PE Electronics Ltd., TIN No. 0782037976, M/s. Paramount Surgimed Ltd., Tin No. 07680269758, M/s. Ferrari Video, Tin No. 07020374202, M/s. Kail Ltd. Tin No. 07150185708, M/s. Nikita Distributors, Tin No.

07380429391, M/s. Glen Appliances Pvt. Ltd. , Tin No. 07630242480, M/s. Nissan Enterprises, Tin No. 07670470893, M/s. Quick Heal Pvt. Ltd., Tin No. 07150297452, M/s. Bright Point India Pvt. Ltd. TIN No.07660264531, M/s. IMS Mercantiles Pvt. Ltd. Tin No. 07890269206, M/s. Panasonic Energy India Company Ltd., Tin No. 078100277720, M/s. Usha International Ltd., Tin No. 07040077759 of total Rs. 33,84,589/- and claimed ITC of Rs.3,41,037/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 3,41,037/- is disallowed. Hence the demand created of Rs.3,41,037/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”

3rd Qtr 2013

“The purchasing dealer has purchased from M/s. PE Electronics Ltd., Tin No.0782037976, M/s. Paramount Surgimed Ltd., Tin no. 07680269758, M/s. Carrier Media India Pvt. Ltd., Tin No. 07310412697, of total Rs. 62,56,406/- and claimed ITC of Rs.7,82,050/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 7,82,050/- is disallowed. Hence the demand created of Rs. 7,82,050/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”



4th Qtr. 2013

“The purchasing dealer has purchased from M/s. PE Electronics Ltd., Tin No.0782037976, M/s. Paramount Surgimed Ltd., Tin no. 07680269758, M/s. Carrier Media India Pvt. Ltd., Tin No. 07310412697, M/s. Digilife Distribution and Marketing Pvt. Ltd., Tin No. 07940347991, of total Rs. 66,91,439/- and claimed ITC of Rs.8,10,699/-. But the selling dealer is not shown in his 2B. The unverified ITC of Rs. 8,10,699/- is disallowed. Hence the demand created of Rs. 8,10,699/- along with interest and imposed penalty u/s86(10) of DVAT Act, 2004.”

4. Ld. Counsel for the applicant has submitted that mis-match in 2A and 2B occurred either because the selling dealers had not shown the sales made to the applicant or the sales were shown by the selling dealer under wrong head, and that in view of the invoices issued by the selling dealers, and their production before the Assessing Authority, the Assessing Authority should have given reasonable opportunity to the applicant – dealer to call the selling dealers to explain the mis-match, but principle of nature justice were not followed by the Assessing Authority. Ld.

R
27/7

L
n/7



Counsel has further contended that even the Ld. OHA did not take any step in this regard, and as such the appeals deserve to be admitted waiving the condition of pre-deposit.

5. Ld. Counsel for the Revenue has submitted that for the reasons given by Ld. OHA and the mis-match in 2A & 2B, as observed by the authorities, applicant should be called upon to deposit the disputed demand for the purpose of admission of appeals.
6. In the impugned order, Ld. OHA has observed that the purchases shown by the dealer – applicant were found to have not been shown as sale by the selling dealer in 2B and as such this was a case of unverified ITC. For the same reasons Ld. OHA imposed penalty u/s 86(10) of the Act.
7. When it is case of the applicant that trade invoices and certificates issued by the selling dealers named above are available with the applicant and same were also relied on before Ld. OHA, Ld. OHA should have made observation in the impugned order, after discussion as regards the said trade invoices and certificates. Further, in the impugned order, there is no discussion as to why the trade invoices relied on but by the applicant in support of the factum of purchase from the said selling dealers were rejected. Only the record of proceedings in



the objections would reveal if applicant was afforded reasonable opportunity to secure presence of the selling dealers.

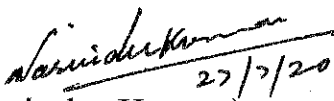
8. In view of the triable issue involved, these appeals deserve to be admitted, but subject to deposit of a part of the disputed demand towards tax, interest and penalty.
9. In the given facts and circumstances, applicant is directed to deposit 20% of the disputed demand of tax, interest and penalty in respect of each quarter under challenge in these appeals.
10. Applicant is given 25 days' times to deposit the said amount. Put up on 23/08/21 for final arguments. Counsel for the applicant to apprise Ld. Counsel for the Revenue about compliance well in time, so that appeals are listed for final arguments.
11. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 27/07/2021


(Rakesh Bali)
Member (A)



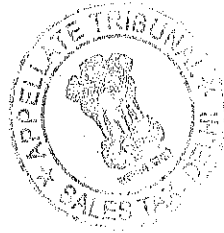

(Narinder Kumar)
Member (J)

Appeal No. 26-3/ATVAT/19-20/648-655

Dated: 28/7/21

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) VATO (L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |




PS/ PA to Member (A)