

A. O. Order

Reference No: 150083445228

Date:- 31-07-2020

OHA order

Reference No:- 81980

Date:- 01-03-2021

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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI  
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Misc. No. 42

In Appeal No : 196/ATVAT/2020-21

Date of Decision : 04/08/2021

M/s. Ases Security Pvt. Ltd.  
485/14 Sarpanch Ka Bara,  
Gali No. 6, Mandawali,  
Delhi – 110092.

..... Appellant-Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Suresh Agrawal  
Counsel representing the Revenue : Sh. S.B. Jain

### ORDER

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

1. This order is to dispose of application under section 76(4) of Delhi Value Added Tax, 2004 (here-in-after referred to as the Act), read with Regulation 28 of DVAT (Appellate Tribunal) Rules. The prayer in the application is that the said appeal filed against order dated 1/03/2021 passed by learned Spl. Commissioner – OHA, be entertained without calling upon the applicant to deposit any amount towards the impugned tax.

*Narinder Kumar*  
6/8/2021

*u/s/m.*



2. Vide impugned order dated 01/3/2021, learned OHA has upheld order dated 31/7/2020 passed by Assessing Officer whereby he levied the impugned tax upon the appellant – applicant.

3. The Applicant is registered under DVAT Act and CST Act vide Tin No. 07550329048 (Ward No. 84). The appeal pertains to tax period 2012 – 13 (4<sup>th</sup> quarter).

4. Learned counsel for the applicant submits that Assessing Officer vide order dated 31/7/2020 rejected claim of refund on the basis of ITC and when the applicant filed objections, learned OHA, dismissed the objections and upheld the levy of tax, without appreciation of the facts and without providing reasonable opportunity to the applicant – objector, and therefore, the appeal be admitted without any deposit.

On the other hand, learned counsel for Revenue has submitted that reasonable opportunity was granted to the applicant by the Revenue Authorities, but the applicant failed to furnish requisite documents, and as such present application deserves to be dismissed.

5. The impugned demand of tax of Rs. 2,86,784/- pertains to tax period 2012 – 13 (4<sup>th</sup> quarter). Record reveals that initially the turnover of the applicant was assessed on 28/12/2016 and its refund claim was disallowed. Feeling aggrieved by the said

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assessment, the applicant – dealer filed objections and learned OHA vide order dated 17/7/2017 remanded the matter to the Assessing Officer for assessment afresh so that the objector – applicant was given an opportunity to submit all the required documents for processing of his refund case. The dealer was also directed to submit all the documents necessary for processing of refund, within a period of 7 days, from the date of receipt of the said order passed by learned OHA.

6. Record further reveals that when the Assessing Officer took up the matter once again, on remand, he issued a notice u/s 59(2) of DVAT Act to the dealer to produce the books of accounts, as specified in the notice. In the order dated 31/7/2020, Assessing Officer observed that attempt was made to contact the dealer on phone but there was no response and that he had no option but to proceed ex-parte. Consequently, the Assessing Officer rejected the claim for refund and raised demand of Rs. 2,86,784/- by way of tax.

7. Once again, when the applicant – dealer filed objections u/s 74 of the Act, before the learned OHA, it was submitted that there was COVID Pandemic and as such the assessment made by the Assessing Officer was illegal. Learned OHA rejected this objection while observing that the default assessment notice was issued in July, 2020 and the said period was not a lockdown

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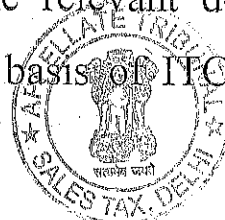


period; and that functioning of the department had started completely from June, 2020.

As regards production of documents, learned OHA observed that during pendency of objections, the applicant – dealer had filed only copy of return, which was also incomplete, and specified that no relevant document such as invoices and bank statement were produced in support of its claim u/s 9(1) of DVAT Act. The objections were, accordingly, dismissed while observing that the applicant – dealer had failed to comply with the provision of law and also because it was completely negligent.

9. Just now, in the course of arguments on this application, learned counsel for the applicant has placed on record, one page of copy of objections filed before the learned OHA. In para No. 9 of the said objections, it finds ~~was~~ mentioned that documentary evidence of transactions related to the refund were being enclosed. When we have enquired from learned counsel of the applicant as to the description of the documents which find mentioned in the said paragraph of the objections, leaned counsel for the appellant – applicant submits that the documents might have been submitted to the learned OHA, but he is not aware of the description of the said documents.

10. From the above material available on record, the triable issues in this appeal are if ~~the~~ all the relevant documents in support of its claim for refund on the basis of ITC u/s 9(1) of



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DVAT Act were made available by the dealer to the Assessing Officer and to the learned OHA, consequent upon remand and the resultant objections.

11. On the point of pre-deposit for the purpose of admission of appeal, sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.

As per first proviso to sub-section (4) of section 76, the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount, as it may direct.

As per second proviso to sub-section (4) of Section 76, no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.

12. In the given facts and circumstances, in view of the provision of section 76(4), appellant – applicant is called upon to deposit, by way of pre-deposit, 30% of the impugned demand,

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within 25 days from today, by way of condition for admission of this appeal. The application is disposed of accordingly.

13. Counsel for appellant - applicant to apprise learned counsel for the Revenue regarding compliance of this order within time so that on the next date i.e. on 6/9/2021 the appeal is taken up for final arguments on merits.

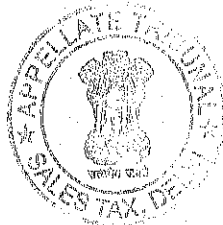
8. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 04/08/2021

  
u. g. n.

(Rakesh Bali)  
Member (A)



  
4/8/2021

(Narinder Kumar)  
Member (J)


Appeal No. 196/ATVAT/2020-21/680-687

Dated: 05/08/2021

Copy to:-

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|--|----------------|
| (1) VATO (Ward-84)   | (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)