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(23)

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

Appeal No. 81/ATVAT/19
Date of decision 30/06/2021

Reconstructed vide separate order of even dated. Sh. 16/8/21

M/s. Gharaunda,
WP 483, Shop No. 7,
Wazir Pur Village,
Delhi -110035.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Manmohan Khemka
Counsel representing the Revenue : Sh. M.L. Garg

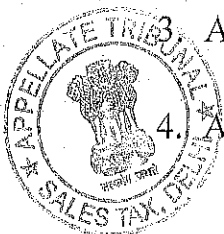
JUDGEMENT

This appeal has been filed against the impugned order dated 23/08/2019 passed by Learned Addl. Commissioner (Learned OHA).

1. Vide impugned order, the penalty of Rs. 50,000/- imposed by Ld. AVTAO (Ward No. 65), vide order dated 25/07/2017 u/s 33 of DVAT Act-2004, has been upheld and the objections filed by the appellant hearing have been dismissed.
2. The penalty came to be imposed by the Ld. AVATO for non filing of DP-1 with account details with reference notice dated 17/07/2017, issued u/s 59(2) of DVAT Act.

Arguments heard. File perused.

4. As per notice dated 17/07/2017, appellant was directed by Ld.



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AVATO to file DP-1 with bank details for the period from 01/04/2016 to 31/03/2017. Said notice purports to have been issued as Ld. AVATO was examining the matter of appellant. The appellant was required to attend the office of Ld. AVATO on 20/07/2017 at 11.50AM.

5. As is available from order dated 25/07/2017, the appellant/dealer did not appear before Ld. AVATO on the given date and time and as a result penalty of Rs. 50,000/- was imposed u/s 86(14) of DVAT Act.
6. The dealer/ appellant filed objection against the order 25/07/2017 on the ground that the proprietor has already filed DP-1 on 23/06/2015. Copy of DP-1 was annexed to the objection.
7. In the course of hearing before Ld. OHA, the appellant through its counsel filed written submission. The Ld. OHA observed that the objection petition was filed on 11/02/2018 whereas the order of imposition of penalty was passed on 25/07/2017 and further that appellant could not furnish any sufficient reason. Ld. OHA also observed that the written submission filed by the appellant were not acceptable. With these observations, Ld. OHA dismissed the objection petition.
8. During arguments before the tribunal, we have raised query, if any application seeking condonation of delay in filing the objection petition beyond the stipulated period was or was not filed. Ld. Counsel for the appellant submitted that no such application was filed. As required under the law, the appellant should have filed such application within sufficient reason seeking condonation of delay. In absence thereof, we do not find any merit in the submission of Ld.



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Counsel of the appellant that the appellant case to know of the notice dated 17/07/2017, available on the portal, only when the appellant was to access the portal in connection with issuance of C-Form. Ld. Counsel for the appellant has not been able to give the date when such access was made to the portal. Ld. Counsel has not been able to apprise of the date of application to collect certified copy of the order of penalty. In absence of these material facts, it cannot be said that there was any sufficient reason for condonation of delay in filing of the objection petition.

9. As notice above, penalty came to impose due to non filing of DP-1 with bank detail for the period from 01/04/2016 to 31/03/2017. Ld. Counsel for the appellant has referred to receipt dated 23/06/2015 issued by Department of Trade and Taxes, in proof of submission of from DP-1 on the said date. Ld. Counsel for the respondent is not in a position to deny the submission of DP-1 from by the appellant on 23/06/2015. In this situation, the notice dated 17/07/2017 should have reflected as to why again DP-1 form with bank details for the period from 01/04/2016 to 31/03/2017 was asked to be filed, when the appellant has already submitted DP-1 from on 23/06/2015. Keeping in view this fact, we find the notice dated 17/ 07/2017 appears has been issued by the department to the appellant without consulting the record available with the department.

10. It is true that in reply to the notice dated 17/07/2017, the appellant should have appeared before Ld. AVATO on 20/07/2017, but the fact remains that none appeared before Ld. AVATO on behalf of the appellant on the said date. The submission by the appellant that the online service of notice by the department on its portal cannot be set



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to the legal service of the notice, is without any merit, in view of the provisions of DVAT Act and Rule-62 of DVAT Rules-2005, which provides service of notice in this manner as one of the modes for service of document under the Act.


11. Having regard to all facts and circumstances and the foregoing discussion, when the appellant opted not to participate in the proceedings before the Ld. AVATO despite notice, we deem it to be a fit case to burden the appellant with a sum of Rs. 5000/- only instead of Rs. 50,000/- imposed by way of penalty on the appellant.

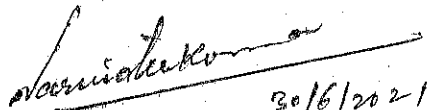
12. This appeal is disposed of accordingly.

13. Copies of this order shall be served on both the parties and the proof of service be brought on record by the Registry.

Announced in open court.

Date: 30/06/2021


(Rakesh Bali)
Member(J)


(Narinder Kumar)
Member (J)



Appeal No. 81/ArvAr/19/720-727

Dated: 17/8/21

Copy to:-

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| (1) VATO (Ward- 45) | (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)