

PS

(92)

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

Appeal No. 91/ATVAT/19-20

Date of Order: 02/09/2021

M/s. Shree Sanwaliya Industries Pvt. Ltd.,
M-1 & M-2, Ground Floor,
Jagat Ram Park
Delhi – 110092.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : None.
Counsel representing the Revenue : Sh. P. Tara

ORDER

1. Appellant company – dealer filed present appeal pertaining to tax period – 4th quarter of the year 2016.
2. Assessing Officer - VATO had issued a notice on 24/4/2018 u/s 59(2) of Delhi Value Added Tax, 2004 (hereinafter referred to as ‘the Act’), whereby the appellant was asked to appear before him and produce all documents regarding sale/purchase with books of accounts, for the year 2016-17. Said notice is stated to have been issued by the

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Assessing Officer to the appellant on the basis of letter dated 21/2/2018 from Dy. Commissioner State Tax, Division 5, Allahabad.

3. Vide order dated 3/5/2018 , VATO – SOHA (hereinafter referred to as the Assessing Officer) made assessment and levied additional tax with interest, raising total demand of Rs. 9,51,53,996/-.

4. Said notice is stated to have been issued by the Assessing Officer to the appellant on the basis of letter dated 21/2/2018 from Dy. Commissioner State Tax, Division 5, Allahabad. Vide said letter dated 21/2/2018, it was informed that M/s Uttam Trading Company, registered vide Tin no. 09512900697 had intimated the State Tax Division-5, Allahabad that their password had been hacked; that C-form No. 09101726075950 worth Rs. 6,77,69,162.60 had been down- loaded illegally, in the name of M/s. Shree Sanwaliya Industries Pvt. Ltd, Laxmi Nagar, Delhi – 110092, for transaction stated to have been made in 4th quarter of 2016-17. It was also informed vide letter dated 21/2/2018 that the said concern - M/s Uttam Trading Company had lodged FIR. Copy of the FIR was also forwarded with the said letter.

5. Feeling aggrieved by assessment order dated 03/5/2018, the appellant filed objections dated 16/10/2019. Vide impugned order dated 04/12/2019, learned VATO (ward 84), disposed of the objections while allowing exemption to the appellant as regards some of the



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statutory forms, but as regards missing statutory forms worth Rs. 20,65,24,107/-, levied tax @ 10.5%, with interest.

The relevant portion of the impugned order reads as under -

“Other two forms Sl. No. 09021824017664 amounting of Rs. 7,34,57,588/- and Sl. No. 09021828017596 amounting of Rs. 13,46,29,431/- issued by M/s S.S. Trading Company, Tin No. 09388806836, submitted by the dealer in hearing are not mentioned in his annexure 2B (Sale Summary).

Therefore, it seems that the dealer has also concealed this sales to M/s S.S. Training Company of total amount of Rs. 20,80,87,019/- which also taxed @ 2% with interest.”

“One C form no. 091017260755950 for Rs. 6,77,69,163/- issued by M/s Uttam Trading Company, Tin no. 09512900697 is taxed @ 10.5% alongwith interest by the then Assessing Authority vide reference no. 150082613676 dated 03/05/2018 on the basis of letter received from Dy. Commissioner State Tax, Division 5, Allahabad, No. 806/U.P. State/Tax/Division5/Allahabad/2017-18 is upheld.

However this C form amount Rs. 6,77,69,163/- is already included in the missing C forms amounting of Rs. 20,65,24,107/- now. The case is assessed accordingly.”

6. Vide order dated 2/07/2021 passed by this Tribunal, on application u/s 76(4) of the Act, the appeal was ^{allowed to be entertained} ~~admitted~~ subject to deposit of 30% of tax and interest, by way of pre-deposit, by the appellant within 30 days. However, the appellant did not comply with



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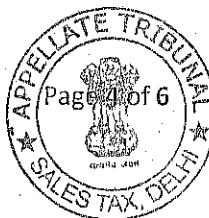
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the said order. There upon, Revenue department filed an application for dismissal of the appeal on the ground that they dealer had not complied with the order u/s 76(4).

At the time of disposal of the application filed by the Revenue, counsel for the appellant sought some time to comply with the order dated 2/7/2021. Accordingly, in the interest of justice, by way of another opportunity, appellant was allowed to deposit amount of 30%, by way of pre-deposit by 31/8/2021, but this opportunity was g-ranted subject to deposit Rs. 10,000/- as costs payable to the Revenue. The application filed by the Revenue was disposed of accordingly. The appeal was adjourned to 31/8/2021.

7. On 31/8/2021, none appeared on behalf of the appellant despite wait. Appeal was adjourned to 2/9/2021 while observing that in case it is found that the appellant had not compl^{-ied} with the order dated 12/8/2021, vide which one more opportunity was granted for compliance with the order dated 2/7/2021, law shall take its own course.

8. Today again, no one has appeared on behalf of the appellant. Yesterday, copy of challan dated 30/8/2021 was submitted to the staff, in proof of deposit of Rs. 10,000/- i.e. towards costs. But the order dated 12/8/2021 regarding deposit of 30% amount by way of pre-deposit, has not been complied with.

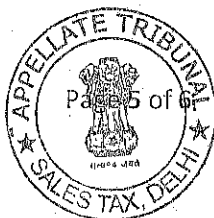


9. Learned counsel for the Revenue submits that due to failure of the appellant to comply with the order u/s 76(4) of the Act, despite opportunities, the appeal be dismissed.

10. As noticed above, initially the appellant was granted time vide order dated 2/7/2021 to deposit 30% of the disputed amount, as described therein, within a period of 30 days, but the appellant failed to comply with the said order. Again the appellant was afforded an opportunity vide order dated 12/8/2021, to comply with the order regarding deposit of 30% amount by way of pre-deposit, but the appellant has not availed of the said opportunity. Yesterday, only an application was presented to the staff, on behalf of the appellant, seeking extension of 15 days time for compliance with the order u/s 76(4). No reason has been mentioned in the application as to why the order dated 12/8/2021 has not been complied with or as to why the extension of period has been sought.

No one has appeared on behalf of the appellant, despite wait till 1.10 PM, even though the appeal has been called twice. No representative has been sent by the appellant or its counsel to appear and explain non compliance with the order dated 12/8/2021.

11. In the given situation, we find that appellant has failed to comply



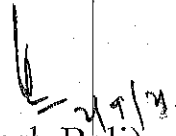
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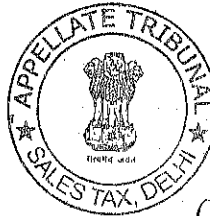
with the order u/s 76(4) of the Act, to deposit 30% of the amount, by way of pre-deposit, despite ample opportunities. On account of failure on the part of the appellant to comply with the said order, the appeal cannot be entertained, and as the same is hereby dismissed.

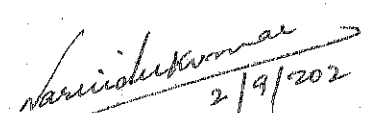
12. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 02/09/2021


(Rakesh Bali)
Member (A)



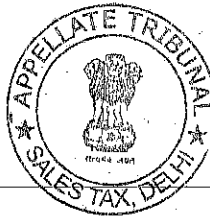

(Narinder Kumar)
Member (J)

Appeal No. 91/ATVAT/19-20/918-925

Dated: 3/9/21

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| (1) | VATO (Ward-84) | (6) | Dealer |
| (2) | Second case file | (7) | Guard File |
| (3) | Govt. Counsel | (8) | AC(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. | | |




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