

Application No. 128 - 139/ATVAT/21

Date of Order : 3/9/2021

M/s. Universal Marketing,
Khasra No. 46/04,
Village Khera Kalan,
New Delhi.

..... Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Applicant : Shri S. Sangal,
Counsel representing the Respondent : Shri C. M. Sharma,

ORDER

This order is to dispose of applications No 128-139 filed by the applicant with prayer for condonation of delay in filing of appeal Nos 214-225.

2. It may be mentioned here that appellant has challenged assessment of tax and interest of all the 4 quarters for the year 2012-2013, 2013-14, 2014-15.

3. The impugned orders are dated 30.1.2018 passed by Ld. SOHA vide which objections filed by the dealer-appellant-applicant against orders dated 3.3.2017 passed by Assessing Authority were disposed of.

Narinder Kumar
3/9/2021

4. Vide impugned orders on production of some statutory forms, Learned SOHA allowed exemption in respect of such statutory forms but as regards the missing statutory forms, he levied tax with interest under CST Act, in respect of each quarter of the aforesaid years i.e. 2012-13, 2013-14, 2014-15.

5. As noticed above, the impugned order passed by Learned SOHA are dated 30.1.2018. All these appeals have been filed on 28.7.2021.

6. It may be mentioned here that initially no application seeking condonation of delay was filed with the appeals. These were filed subsequently on 23.8.2021.

7. Arguments heard. File perused.

8. U/s 76 (2) of Delhi Value Added Tax Act 2004 (here-in-after referred to as Act), subject to provisions of section 77 of the Act, no appeal shall be entertained unless it is made within 2 months from the date of service of the decision appealed against.

9. Section 77 of the Act provides that the Appellate Tribunal may admit appeal u/s 76 of the Act, after the period of limitation laid down in that section, if the Appellant satisfies the Appellate Tribunal that he had sufficient cause for not preferring the appeal within such period.

10. Herein, Appellant - Applicant has prayed in the applications for condonation of delay on the following grounds :-

“That the balance ‘C’ forms could not be produced as the original and duplicate parts were in the office of the previous Advocate, who was handling the case. But somehow they got misplaced in his office. It’s only after a lot much exercise the Advocate could lay hands on the “Duplicate’ portion of ‘C’ Forms.

That as soon as the said duplicate part of ‘C’ Forms were received by the petitioner firm they have approached this Hon’ble ATVAT by way of filing appeal.”

11. Learned counsel for the appellant has referred to the said grounds and submitted that in view of the said cause, delay in filing of appeals be condoned and appeals be entertained.

12. Ld. Counsel for the Revenue has opposed the applications by contending that there is no merit in the ground put forth in the applications for condonation of delay. Ld. Counsel for the Revenue has submitted that even if it be assumed that the balance statutory forms had got misplaced in the office of the previous counsel engaged by the dealer, the dealer should have filed appeal within the prescribed period of limitation, but the dealer has filed the appeal much beyond the prescribed period of limitation, and as such the applications deserve to be dismissed.

13. During pendency of the applications seeking condonation of delay, on 1.9.2021, counsel for the appellant-applicant has filed affidavits of Sh. Praveen Kumar Bhandula, Chartered Accountant.

However, neither in the applications nor in the affidavit, it

Handwritten signature
3/9

Handwritten signature
3.9.21

finds mentioned as to during which period the missing statutory forms, including the duplicate, got misplaced by the said CA and as to during which period whitewash was got done in the office of the CA. It also does not find mentioned in the affidavit or in the applications as to on which date the said duplicate statutory forms were found and as to on which date the same were delivered by the office of CA to the dealer.

14. It is significant to note that no document has been filed in support of these applications to suggest that Sh. Praveen Kumar Bhandula was representing the dealer during objections. As per impugned order dated 31.12.2018 passed by learned SOHA, Sh. V. K. Gupta, Advocate represented the dealer in those objection proceedings and presented some of the statutory forms, on the basis of which exemption was allowed. In the affidavit, Sh. P. K. Bhandula, CA has not testified that even during the objections against the aforesaid assessments, he was representing the dealer before Ld. SOHA.

15. Even otherwise, when we have enquired from learned Counsel for the appellant if the dealer should have filed the appeals against the impugned order within the prescribed period of 2 months, even if some of the remaining statutory forms were missing and not available, learned Counsel for the appellant candidly admits that all these appeals should have been and could be filed even without the remaining statutory forms. In view of this

13
3/9/21

29.11

fact, that the appeals should have been and could be filed even without the remaining statutory forms, which were not available with the dealer, for any reason, the ground put forth by the dealer that it preferred to file appeals only when the duplicate forms were received from the previous advocate, cannot be said to be a 'sufficient cause' for not preferring the appeal within the prescribed period.


16. Since appellant-applicant has failed to satisfy this Tribunal that the dealer had sufficient cause for not preferring the appeals within the prescribed period and there is un-explained delay of about 3 years, 4 months and 27 days, the applications deserve to be dismissed.

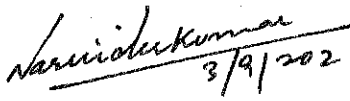
As a result all these applications seeking condonation of delay in filing of the appeals are hereby dismissed.

14. 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 : 03/09/2021


(Rakesh Bali)
Member (A)

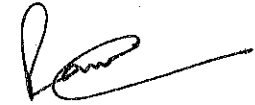

(Narinder Kumar)
Member (J)

Application
Appeal No. 128-139/DT/DT/21/944-951

Dated: 8/9/21

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-) | (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. | |



REGISTRAR