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

Appeal No : 171-172/ATVAT/2019  
Date of Decision : September 17, 2021

M/s. Julta & Co.  
269, Rajouri Apartments,  
Rajouri Garden,  
New Delhi - 110027.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. Rohit Gautam.

Counsel representing the Revenue

: Sh. P. Tara.

### JUDGMENT

1. The above captioned appeals have been filed by the dealer company - appellant, challenging order dated 22/12/2020 - passed by Sh. Anand Kumar Tiwari, Addl. Commissioner - learned Objection Hearing Authority (OHA). Matter pertains to the year 2016-17.
2. Vide impugned order, learned OHA has dismissed the objections filed by the dealer - appellant and upheld the two notices of default assessments framed by the Assessing Authority on 18/6/2018.

*Narinder Kumar*  
17/9/21

3. Before the Assessing Authority, the dealer – appellant claimed tax exemptions, while filing the return for the year 2016-17 towards labour, services and other like charges. Vide order dated 18/6/2018, the Assessing Authority allowed certain exemptions, but at the same time, levied tax, interest by way of notice of default assessment under section 32 of Delhi Value Added Tax Act, 2004, (here-in-after referred to as the Act) and also imposed penalty u/s 86(10) read with section 33 of DVAT Act. Said two notices of default assessment were challenged by way of objections. The objections having been dismissed by learned OHA, thereby not allowing any further exemption as per claim of the dealer, present appeals have been filed.

4. Arguments heard. File perused.

5. In the course of arguments, learned counsel for the appellant has pointed out that in compliance with directions issued by learned OHA, during hearing on objections, the dealer – appellant filed copies of all ledger accounts, original cash vouchers and original purchase bills with other expenses bill, but even then learned OHA did not allow full exemption to the dealer – appellant, as per its claim, and rather upheld exemptions only to the extent of 5% against the charges under section 5(2) of DVAT Act and Rule 3 (1) of DVAT



17/19

Rules, 2005, and as such the impugned order deserve to be set aside.

6. Learned counsel for Revenue has referred to provisions of section 5(2) of DVAT Act and Rule 3 (1) of DVAT Rules, 2005 and submitted that in order to avail exemptions in respect of charges towards labour, services and other like charges, the dealer is required to maintain proper records such as invoices, vouchers, challan or other documents evidencing payment of such charges, to the satisfaction of the Commissioner, and since the dealer did not file any such document evidencing payments, the notices of default assessments of tax, interest and penalty have been correctly issued and then upheld by the learned OHA, and as such the appeals deserve to be dismissed.

7. In reply, learned counsel for the appellant has referred to copy of the letter dated 7/10/2020 (available at page 2<sup>1</sup> of the appeal), vide which the dealer – appellant filed copies of ledger accounts, original cash vouchers and original purchase bills with other expenses bills. This fact is not being disputed by learned counsel for the Revenue.

8. The appellant is alleged to have executed a Works Contract awarded by DMRC. When original cash vouchers and original purchase bills with other expenses bills, issued by



DMRC, in addition to ledger accounts, were admittedly submitted by the dealer during hearing on objections, Learned OHA should have dealt with the same and recorded findings on the entries, if any, evidencing payments towards charges as per claim of the dealer. But, in the impugned order, learned OHA has nowhere discussed these documents produced during hearing on objections, so as to record his findings on the significant point involved in the matter.

9. In the given situation, the impugned orders passed by learned OHA deserve to be set aside, and we have no option but to order for remand of the matter to the learned OHA for decision afresh, after taking into consideration the relevant material, out of the documents which were produced before learned OHA vide letter dated 7/10/2020, and keeping in view of provisions of section 5(2) of the Act, and 3(1) of DVAT Rules, 2005.

10. As a result, while disposing of both these appeals, and setting aside the impugned order dated 22/12/2020 passed by learned OHA, the matter is remanded to the learned OHA for decision afresh, after taking into consideration the relevant material, out of the documents which were produced before learned OHA vide letter dated 7/10/2020, while keeping in view of provisions of section 5(2) of the Act, and 3(1) of DVAT



77/3

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Rules, 2005, and after affording to the dealer a reasonable opportunity of being heard.

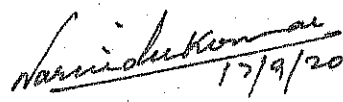
11. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : September 17, 2021



  
17.9.21.  
(Rakesh Bali)  
Member (A)

  
17/9/2021  
(Narinder Kumar)  
Member (J)

Appeal No. 171-172/ATVAT/2019/1096-1103

Dated: 20/9/21

Copy to:-

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|-----|--|-----|------------|
| (1) | VATO (Ward-110)  | (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