

(57)

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

Misc. Application No. 114-116/ATVAT/21
In Appeal No. 226-228/ ATVAT/21
Date of order: 16/09/2021

M/s. Banaco Overseas,
B-3/9, Model Town, Part-1,
New Delhi - 110 009

.....Applicant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant
Counsel representing the Revenue

: Sh. M.K.Gandhi
: Sh. S.B.Jain

ORDER

1. This order is to dispose of three applications u/s 76(4) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act, 2004) filed by the appellant along with the above mentioned three appeals.
2. Appellant - dealer has challenged order dated 07/07/21 passed by Ld. Objection Hearing Authority (hereinafter referred to as the OHA) in respect of the 1st, 2nd and 4th Qtr. of the year 2014.
3. The impugned orders came to be passed after objections were filed by the dealer against notice of default assessment of tax and interest under CST Act issued by Assessing Authority.

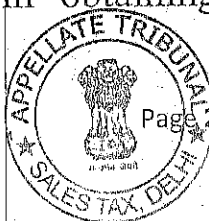


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4. The dealer - applicant is a proprietorship concern registered with Department of Trade and Taxes, vide TIN No. 07200248585, and engaged in trading of corn, corn flavours and popcorn machine etc.
5. The Assessing Authority levied tax and interest because the dealer did not file statutory C-forms. Some forms were filed by dealer-applicant before the Ld. OHA. Accordingly, Ld. OHA allowed exemption to the dealer-applicant in respect of the said C-Forms produced during hearing on objections. However, Ld. OHA levied tax and interest in respect of missing C-forms.
6. Ld. Counsel for the applicant submits that Ld. OHA did not appreciate that applicant-dealer has no control over the purchase dealers for obtaining of statutory forms and that the dealer can make only persuasive efforts. The submission is that in this situation, Ld. OHA should not have upheld the levy of tax and interest.
7. The fact remains that no additional statutory form has been filed with these appeals and the dealer is not having any other statutory forms so far. It would be for the applicant to satisfy at the time of final arguments as to what efforts were made by the applicant-dealer in obtaining the remaining statutory forms,



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which were still missing, and as to why the said missing forms have not been filed.

8. Keeping in view the decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485 and the averments put forth in the appeals, the appeals are allowed to be entertained subject to deposit of 15% of disputed demand by way of tax and interest in respect of each quarter.
9. Accordingly, the applicant is given 25 days time, from today, to deposit 15% of the disputed amount towards tax and interest by way of pre-deposit for the purpose of entertainment of appeals. Ld. Counsel for the applicant to apprise Ld. Counsel for the Revenue regarding compliance of this order of pre-deposit, so that on the next date appeals are taken up for final arguments. Otherwise, law shall take its own course.
10. All the three stay applications are disposed of accordingly. Copy of the order be sent to the concerned ward.

Announced in open Court.

Date : 16/9/2021



Narinder Kumar
(Narinder Kumar)
Member (J)

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Appeal No. 226-228/ATVAT/21

Dated: 17/9/21

Copy to:-

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|-----|---|-----|------------|
| (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