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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

M.A. No. 185 of 2021, m

Appeal No. 196/ AT VAT/2020-21

Date of order-24.09.2021

M/s Ases Security Pvt. Ltd.
485/14, Sarpanch Ka Bara, Gali No.6,
Mandawali, Delhi-110092.

.....Applicant

V

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant
Counsel representing the Revenue

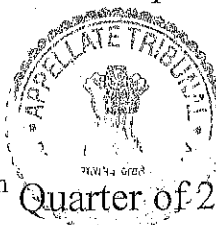
: Sh. Suresh Agrawal
: Sh. S.B. Jain

ORDER

1. This order is to dispose of application filed today on behalf of the appellant with prayer that the appellant be allowed to file Memorandum of Evidence and supporting documents in terms of Rule 57 A(8) of DVAT Rules. BY way of this application, applicant wants to place on record following additional evidence:

(a) All the purchases & Sale Invoices pertaining to the 4th Quarter of 2012-13;

(b) Annexures 2A & 2B for the 4th Quarter of 2012-13.



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24/9/21

Rakesh Bali
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2. As averred in the application, appellant-applicant was unable to adduce evidence in support of its claim of ITC before Ld. O.H.A, owing to COVID Pandemic and also other sufficient and reasonable cause.

3. Ld. Counsel for Revenue has opted to straightway argue the application without filing any reply thereto.

Arguments heard. File perused.

4. Appellant has filed Appeal No. 196/20, challenging the order dated 01.03.2021, passed by Ld. Objection Hearing Authority (hereinafter referred to as OHA). Vide impugned order, Ld. OHA upheld order dated 31.07.2020, passed by Assessing Authority. Vide said order dated 31.07.2020, the Assessing Authority had levied tax on the dealer-appellant. This notice of default assessment levying the tax came to be passed after the matter was remanded by Ld. OHA vide order dated 17.07.2017 while disposing of the objections earlier filed under Section-74, against notice of default assessment initially issued by the Assessing Authority dated 28.12.2016 under Section-32 of DVAT Act.

5. The matter pertains to 4th Quarter of the year 2012-13.

6. Ld. Counsel for the appellant has argued on the application that due to COVID Pandemic and also other sufficient reasons, the dealer



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failed to produce evidence i.e. Purchase and Sale invoices and Annexure 2(a) & 2(b) pertaining to the 4th Quarter of 2012-13 and that, therefore, the prayer of the applicant be allowed.

The above reason is being given only to justify non-production of said documents before Ld. OHA.

Following are the relevant provisions of law, on the point of furnishing of evidence for the first time before the Tribunal:

Rule 57 A(8) of DVAT Rules, 2005:

“Every appeal where fresh evidence is sought to be produced, shall be accompanied by a memorandum of evidence sought to be produced, stating clearly the reasons why such evidence was not adduced before the authority against whose order the appeal is being preferred.”

Rule 57 C (2) of DVAT Rules, 2005:

“The Appellate Tribunal shall not, for the first time receive in evidence on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred”.

Section 76(5) of DVAT Act, 2004:

“In proceedings before the Appellate Tribunal –

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- (a) the person aggrieved shall be limited to disputing only those matters stated in the objection;
- (b) the person aggrieved shall be limited to arguing only those grounds stated in the objection; and
- (c) the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.”

7. As noticed above, the impugned order passed by Ld. OHA is dated 01.03.2021. The objections were filed before Ld. OHA on 30.10.2020. Ld. OHA has observed in the impugned order that during hearing on objections, the petitioner placed on record only a copy of return which was also incomplete and further, that no relevant documents such as invoices, Bank Statement etc. were produced by the dealer-objector. Ld. OHA went on to observe that dealer had not placed on record necessary evidence in respect of his claim of ITC under Section 9(1) of DVAT Act. Ld. OHA, therefore, concluded that objector had not complied with the provisions of law, time and again, and was completely negligent.

8. It is not that the dealer-objector was before the Ld. OHA for the first time. As noticed above, even earlier, the dealer-objector filed objections before Ld. OHA on 17.02.2017 and said objections were disposed of vide order dated 17.07.2017 providing opportunity to the dealer-objector to appear before the Assessing Authority within 07 days

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on the issuance of the said order, with all the documents necessary for the purposes of processing of refund.

9. The said order of remand was passed by the Ld. OHA while appreciating the contention on behalf of dealer-objector that the ends of justice would be met if dealer was given an opportunity to submit all required documents for processing of its refund.

10. Once, Ld. OHA vide order dated 17.07.2017, sent the matter to the Assessing Authority for assessment afresh, and at the same time directed the dealer to be in attendance before the Assessing officer within 07 days with all the documents, it was obligatory for the dealer to produce all the documents before the Assessing Authority within given time.

11. However, assessment dated 31.07.2020 framed by Assessing Authority would reveal that on remand of the matter, the dealer-objector was issued a notice under Section 59(2) of the DVAT Act to provide the books of accounts as mentioned in the notices but, there was no response from the dealer. As noticed above, it was obligatory for the dealer itself to appear before the Assessing Authority within 07 days of the issuance of the order dated 17.07.2017, but, the dealer failed to appear before the Assessing Authority even when a notice was issued by the Assessing

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Authority. Attempt was also made by the office of Assessing Authority to contact the dealer on phone, but, there was no response from the dealer.

12. Fact remains that the dealer-assessee neither of its own appeared before the Assessing Authority within 07 days of issuance of the order dated 17.07.2017 nor, it produced any of the documents. It is significant to note that the Ld. OHA during hearing on objections observed that objector was in possession of his documents.

In case, the objector was in possession of the required documents, no explanation has been put forth before us, as to why the dealer failed to produce the said documents before the Assessing Authority after remand of the matter, despite issuance of notice under Section 59 (2) of DVAT Act.

13. For the Second time, dealer filed objections on 30.10.2020, challenging the assessment made on 31.07.2020. But, even during the said objections, the dealer failed to submit the relevant documents like invoices, bank statement etc. What was produced by the dealer-objector before the Ld. OHA, was only incomplete copy of return. There is nothing in the impugned order to suggest, if any explanation was put forth by the dealer-objector before the Ld. OHA during hearing on objections, for non production of the documents in support of ITC claim.

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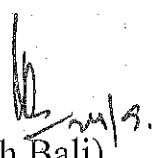
14. In the given facts, we find that the dealer has failed to explain any good or sufficient cause for non-production of the documents before the Assessing Authority after remand of the matter vide order dated 17.07.2017. We further find that the ground of COVID Pandemic for non-production of the necessary documents, only before Ld. OHA in support of objections dated 30.10.2020, is not sufficient cause for non-production of the documents.


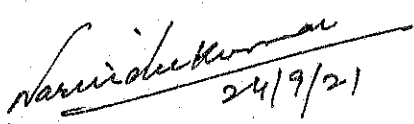
15. As a result, this application to placed on record additional evidence deserves to be dismissed for want of sufficient cause, despite repeated opportunities. Accordingly, the prayer is hereby dismissed.

Put up for arguments on main appeal on 30.9.21.

Announced in open Court.

Date : 24/09/2021


(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)

Appeal No. 185/ATVAT/2001 / 1199-99
196/ATVAT/2021

Dated: 27/9/21

Copy to:-

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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. | |


REGISTRAR

