

116

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

Appeal No : 133 to 136 & 137/ATVAT/2019

Date of Decision : 09/11/2021

M/s Fortune Bath & Interiors Pvt. Ltd.,
No. 145, Transport Centre,
Punjabi Bagh,
New Delhi-1100 35.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi Respondent

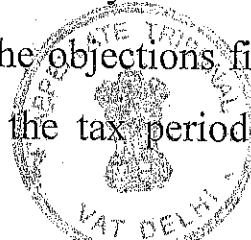
Counsel representing the Appellant : Sh. Ujjwal Jain & Sh.
B.R. Jain,
Counsel representing the Revenue : Sh. C.M. Sharma.

JUDGMENT

1. This judgment is to dispose of all the five appeals captioned above.
2. Dealer – appellant, registered vide Tin No. 07790300107, with Department of Trade & Taxes, Delhi, filed appeal No. 137 challenging order dated 18/3/2020, passed by learned Objection Hearing Authority (OHA), whereby the objections filed against the assessment dated 22/7/2014, for the tax period Jan. 2012

Narinder Kumar
9/11/2021

Rakesh Bali

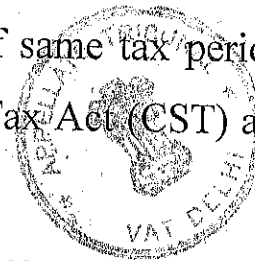


and March 2012, were rejected on the ground that the same were barred by limitation. On 22/7/2014 Assessing Authority – VATO had levied tax on the dealer for the aforesaid two tax periods and directed the dealer to pay a sum of Rs. 1,04,347/-.

3. Under sub section 4A of section 74 of Delhi Value Added Tax Act-2004 (here-in-after referred to as the Act), objections can be filed within two months of the date of service of assessment, or order or decision, as the case may be.
4. Admittedly, the assessment is dated 22/7/2014 and objections as regards tax period Jan. 2012 came to be filed on 27/12/2019 and as regards tax period March 2012, objections were filed on 11/2/2020.
5. Learned counsel for the appellant has submitted that actually the impugned order was served on 20/11/2019 and it was there after that the dealer applied for the certified copy and filed objections on 27/12/2019 and 11/2/2020 respectively, as regards levy of tax.
6. Appeals No. 133 to 136 pertain to levy of penalty by the Assessing Authority vide order dated 2/9/2014, in respect of tax period – 3rd quarter, 2013, u/s 33 read with section 86(9); assessment dated 2/9/2014 in respect of same tax period – 3rd quarter 2013, u/s 9(2) of Central Sales Tax Act (CST) and read

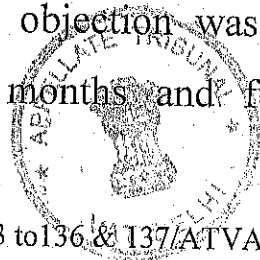
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with section 86(9); levy of penalty u/s 33 of DVAT Act, as regards tax period – 1st quarter 2014 and levy of tax penalty u/s 9(2) of CST Act for the 1st quarter, 2014. These assessments regarding penalty were also challenged by the dealer before learned OHA, and the same were dismissed vide common order dated 5/3/2020 by observing that all the four objections were barred by limitation, in view of provision of section 74(4)(a) of the Act.

7. Admittedly, the assessment regarding imposition of penalty was framed on 2/9/2014 and the dealer – appellant filed objections on 7/12/2019. Learned counsel for the appellant submits that the assessment dated 2/9/2014 came to the notice of the dealer – appellant on 20/11/2019, where upon certified copies thereof was applied and ultimately objections came to be filed on 7/12/2019.
8. Clause (a) of sub-section 4 of section 74 provides a period of two months for filing of objections in case of assessment made under this Act. A perusal of column at serial No. 9 of form DVAT 38 would reveal that the dealer – objector averred therein that the objection was being filed within the time prescribed. In the course of arguments, learned counsel for the appellant has admitted that actually the objection was filed beyond the prescribed period of two months and further



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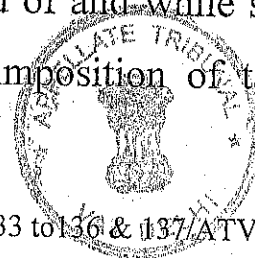
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submitted that in the given situation he was required to fill in DVAT- 39 also, to explain the delay and seek condonation thereof, but inadvertently he did not fill in the said form.

Sh B.R. Jain, counsel for the appellant submits that it was his mistake that he did not fill in DVAT-39. On this point, when we have enquired from Sh. B.R. Jain, Adv. as to since when he came into practice on tax side, the answer is that he started practice only four years prior thereto i.e. prior to the filing of these objections.

From this, we find support in the submission made by Sh. B.R. Jain, Adv. that it was his mistake that he did not fill in DVAT-39. In this situation, the dealer – appellant cannot be allowed to suffer because of mistake on the part of the counsel who had not much experience to his credit by then in this field.

9. When the objections were filed beyond the prescribed period, and Sh. B.R. Jain, Adv. made a mistake in filling in column No. 9 of DVAT -38, and in not furnishing DVAT -39, so as to seek condonation of delay on the aforesaid ground, in the interest of justice, we deem it a fit case to remand the matter to the learned OHA for decision afresh.
10. Consequently, these appeals are disposed of and while setting-aside the impugned orders as regards imposition of tax and



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penalties, the matter is remanded to learned OHA for decision afresh. Dealer – appellant to submit proper application before learned OHA seeking condonation of delay in filing of each objection and there upon the learned OHA to dispose of the matter in accordance with law, after providing sufficient opportunity of being heard, to both the sides.

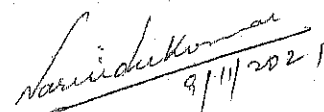
11. Parties to appear before learned OHA on 29/11/2021.
12. File be consigned to the record room. Copy of this judgment be placed in the other file of appeals No. 133-136 as well. Copy of the judgment be supplied to both the parties as per rules and one copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 09/11/2021



(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)



Appeal No. 133 to 136 & 137/ATVAT/2019/1512-19

Dated: 7/1/21

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| (1) VATO (Ward- 109) | (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. | |
| (9) Commissioner (T&T) | |




REGISTRAR