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

Appeal No : 113-116/ATVAT/2018

Date of Judgment : 11/11/2021

M/s Bansal Perfurators,
199/2A Gali No. 1,
Padam Nagar,
Old Rohtak Road,
Delhi-1100 08.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Rahul Gupta.

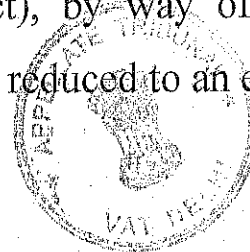
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. These appeals have been filed by the dealer registered vide Tin No. 07870068039, challenging the order dated 02/05/2018 passed by learned Objection Hearing Authority (OHA), whereby penalty imposed by the Assessing Authority – VATO (Ward-41) under section 86(9) of Delhi Value Added Tax Act (here-in-after referred to as the Act), by way of notices of assessment u/s 33 of DVAT Act, was reduced to an extent.

Narinder Kumar
11/11/2021

Rakesh Bali



2. Assessing Authority levied penalty on the ground that the dealer – appellant had failed to furnish return under DVAT Act & CST Act, in respect of 1st & 2nd quarter 2014-15, within the stipulated time. The Assessing Authority imposed penalty to the tune of Rs. 31,500/- under each Act as regards 1st quarter and Rs. 30,500/- under each Act, as regards 2nd quarter.
3. While disposing of the objections, learned OHA was of the view that the penalty be calculated @ Rs. 200/- per day. Accordingly, the penalty of Rs. 31,500/- each was reduced to Rs. 12,600/- under each Act in respect of 1st quarter and penalty of Rs. 30,500/- each was reduced to Rs. 12,200/- under each Act, for the 2nd quarter.
4. Feeling dissatisfied with the impugned order, dealer has filed these appeals.
5. Learned counsel for the appellant has contended that delay in filing of the returns occurred as the dealer was suffering from sciatica and spondylitis pain, during the relevant period, and further that even though the entire data was made available by him to the accountant, the accountant was careless and did not file the returns within the prescribed period.
6. Another submission put forth by learned counsel for the appellant is that the notices of assessment u/s 33 of DVAT Act

are invalid as the same were system generated and unsigned, whereas in view of decision by our own Hon'ble High Court, there are directions regarding the manner in which such like orders are to be served on the dealer, but those directions were not followed.

7. Learned counsel for the Revenue has pointed out that learned OHA, while dealing with objections, reduced the amount of penalty from Rs. 500/- per day to Rs. 200/- per day and as such lenient view has already been taken in the matter.

In reply, learned counsel for the appellant has submitted that the rate of penalty per day has been reduced by learned OHA, keeping in view, the amendment in the law as was prevalent on the date of issuance of notice of penalty. Learned counsel for Revenue has pointed out that the amendment was subsequently made and as such it was not effective retrospectively i.e. as on date of issuance of notices u/s 33 of the Act.


8. On going through the impugned order, we find that learned OHA has nowhere dealt with the fact of late filing of the return, as alleged by the objector. When the dealer put forth specific averment that the returns came to be filed late as he was suffering from sciatica and spondylitis pain during the relevant period, and due to the carelessness of the accountant, learned OHA should have decided the same while giving reasons.

Since this fact has not been considered at all by learned OHA while passing the impugned order, it is difficult for us to decide the legality / illegality of the impugned orders as regards the said ground.

9. In the given situation, we deem it a fit case to remand the matter to learned OHA for decision afresh. Consequently, while disposing of the appeals, we set aside the impugned order dated 2/5/2018 and remand the matter to learned OHA for decision afresh on the objections filed by the dealer, after providing opportunity to both the sides, of being heard, and in accordance with law. Parties to appear before learned OHA on 30/11/2021.
10. File of review application and record of appeals 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 : 11/11/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 113-116/ATVAT/2018/1528-35

Dated: 29/11/21

Copy to:-

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| (1) VATO (Ward-41) | (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