

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

Appeal No : 213/ATVAT/2021

Date of Decision : 29/12/2021

M/s Sara International (P) Ltd.,
A-31, Hauz Khas,
New Delhi-1100 16.

.....Appellant

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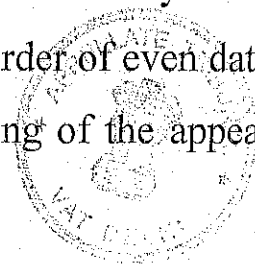
Commissioner of Trade & Taxes, Delhi

..... Respondent

C.A. representing the Appellant : Sh. Sumeet Khanna.
Counsel representing the Revenue : Sh. S.B. Jain.

JUDGMENT

1. Present appeal came to be filed by the dealer on 27/7/2021, challenging the order dated 13/1/2020 passed by learned Special Objection Hearing Authority (SOHA).
2. Since the appeal was filed beyond the prescribed period of two months, an application seeking condonation of delay was filed on behalf of the appellant. Vide separate order of even date, for the reasons given therein, the delay in filing of the appeal has been condoned.



Narinder Kumar
29/12/2021

Rakesh Bali

3. Today itself, learned counsel for the parties have advanced arguments on merits.
4. Heard. File perused.
5. Vide impugned order dated 13/1/2020, learned SOHA-V (Ward-97) directed the dealer – appellant to pay a sum of Rs. 7,65,202/- i.e. Rs. 4,47,989/- towards additional tax and Rs. 3,17,213/- towards interest, as regards tax period – Annual 2014.

Learned SOHA so directed the dealer after hearing on objections filed against the assessment framed by Assessing Authority – AVATO, on 7/3/2019, under CST Act.

As per notice of default assessment of tax and interest, a notice u/s 59(2) of Delhi Value Added Tax Act-2004 (here-in-after referred to as the Act), was issued to the dealer for submission of documents for assessment for the tax period 2014-15 but neither the dealer nor its representative appeared or produced any record, before the Assessing Authority.

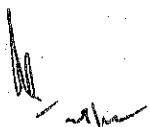
Feeling aggrieved by the assessment dated 7/3/2019, the dealer filed objections u/s 74 of DVAT Act. During hearing on objections, the dealer submitted C-forms of the value of Rs. 2,55,62,821/- and 35 F-forms of the value of Rs. 1,43,20,280/-. Keeping in view, these statutory forms produced before him,

29/12

the learned SOHA allowed exemption to the dealer in view of judgment in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, decided by Hon'ble High Court of Delhi. However, as regards, missing C-forms of the value of Rs. 1,49,32,965/-, learned SOHA levied tax on the dealer @ 3% with interest, under CST Act.

6. In the course of arguments, learned CA representing the dealer has submitted that challenge in this appeal is restricted only to the levy of interest. The submission is that on 31/12/2015 i.e. even before the default assessment of tax and interest was framed by the Assessing Authority, the dealer voluntarily deposited tax to the tune of Rs. 4,47,989/- and interest to the tune of Rs. 67,151/-. He further submits that subsequently on 19/3/2021 i.e. after the passing of the impugned order by learned SOHA, the dealer deposited a sum of Rs. 2,50,022/- towards tax and interest. On these submissions, the learned CA has urged that the Revenue is entitled to recover interest only upto the limited period i.e. until the tax and interest was deposited by the dealer, and not beyond that.
7. Learned counsel for the Revenue admits deposit of Rs. 4,47,989/- towards tax, on 31/12/2015 and another sum of Rs. 2,50,022/- on 19/3/2021 and also a sum of Rs. 67,151/- towards

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29/12



interest, on 31/12/2015.

8. We find that while making default assessment of tax and interest, Assessing Authority has not taken into consideration factum of deposit of the above said amount by the dealer on 31/12/2015. Even learned SOHA, while passing the impugned order did not take into consideration the factum of said deposit by the dealer on 31/12/2015.

As noticed above, subsequent to the passing of the impugned order by learned SOHA, dealer has deposited Rs. 2,50,022/- on 19/3/2021. Under section 42 of DVAT Act, the dealer in default shall be liable to pay interest from the date of default for so long as he continues to make default in the payment of said amount.

9. In the given facts and circumstance, we deem it a fit case to direct the Assessing Authority for fresh calculation/ assessment as regards interest, keeping in view the amount deposited by the dealer on 31/12/2015 and 19/3/2021 and the provisions of section 42 of DVAT Act.
10. Consequently this appeal is disposed of with directions to the Assessing Authority for fresh calculation/ assessment as regards interest, keeping in view the amount deposited by the dealer on 31/12/2015 and 19/3/2021 and the provisions of section 42 of

29/12

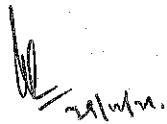
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DVAT Act.

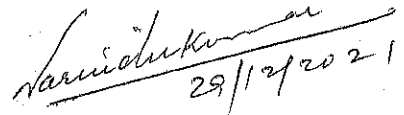
11. Parties to appear before learned OHA on 10/01/2021. ✓
12. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 29/12/2021



(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)



Appeal No. 213/ATVAT/21/1736-43

Dated: 30/12/21

Copy to:-

- (1) VATO (Ward-97)
- (2) Second case file
- (3) Govt. Counsel
- (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.
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)
- (9) Commissioner (T&T)



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