

BEFORE, DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

Misc. Application No. 279/21 In
Appeals No. 125-126/ATVAT/21
Date of Order : Dec.28th, 2021.

M/s. Gupta Brothers India,
232, Jor Bagh,
New Delhi – 110 003

..... Applicant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel for the Appellant- Applicant
Counsel for the Respondent

: Sh.V.K.Gupta.
: Sh.C.M.Sharma.

ORDER

1. This order is to dispose of application No. 279/21 filed by the Dealer-Appellant-Applicant seeking condonation of delay in filing appeals No. 125-126/18.
2. It may be mentioned here that in this application, it has been alleged that the same has been filed as per directions of the Tribunal, but, as rightly pointed out by learned counsel for the Revenue, this averment in the application is false and against

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record. We never issued any direction to the dealer for filing of such an application.

It may be mentioned that the appeals came to be presented on 13.7.2018. These were scheduled to be taken up on 28.8.2018 for notices.

With the appeals, application u/s 76 (4) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) was also filed. On 13.9.2021, when the said application under section 76(4) was taken up, for hearing of arguments, Counsel for the Revenue pointed out that the appeals were barred by limitation. At that moment, Counsel for the applicant submitted that no such application was filed, but at the same time, he expressed that he intended to file application in this regard. Accordingly, matters were adjourned to 7.10.2021.

We have referred to the background in which present application seeking condonation of delay came to be filed, just to highlight that no direction was given by this Tribunal to the applicant for filing of such application, and rather, it is the Counsel for the appellant who expressed intention to file the same, when it was so pointed

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by Counsel of the Revenue that the appeals were barred by the limitation.


3. It is noteworthy that the application has been signed by the counsel, and not by the applicant.

As to who is sign such an application, Regulation 3 of Delhi VAT (Appellate Tribunal) Regulations, 2005 provides that it shall be signed by the appellant or the applicant.

4. The dealer-applicant has alleged in the application that the impugned order is dated 4.9.2017. This assertion is against record because as per record the impugned order is dated 21.9.2017.
5. As regards condonation of delay, undisputedly, as provided u/s 76 (2) of DVAT Act, 2005, subject to the provisions of Section 77 of the Act, no appeal can be entertained unless it is made within 2 months from the date of service of decision appealed against.

Admittedly, the appeals were presented on 13/7/2018. The impugned orders were passed by Ld. OHA much before that i.e. on 21/9/2017.


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Section 77 empowers the Tribunal to admit an appeal under section 76 of the Act after the prescribed period of limitation, if the appellant satisfies the Tribunal that he had "sufficient cause" for not preferring the appeal within such period.

In the application, the ground for condonation of delay is that Sh. Tarun Kapoor, CA, who was dealing with the matters of the dealer since long, did not get the impugned orders and further that even the dealer/assessee did not receive the same, and ultimately, the learned counsel now representing the dealer in this matter was engaged, who applied for supply of certified copy and then preferred the appeal with this application.

During arguments, learned counsel for the applicant has referred to three affidavits i.e. one of Sh. Tarun Kapoor, CA; the other of Sh. Pranesh Gupta, one of the partners of the firm-appellant; the third of the learned counsel representing the applicable in these proceedings.

No other material or document has been placed on record or sought to be produced on this application. Rather, straightway arguments have been advanced on the application.

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In the course of arguments, the contention raised by learned counsel for the applicant is that this is a case where the CA engaged by the dealer-applicant in connection with VAT and income tax matter was at fault, in having not collected the impugned orders passed by OHA. He has so argued while referring to the affidavits of the partner of the firm and the CA and urged for condonation of delay because of mistake on the part of CA.

In support of his contention, learned counsel for the applicant has referred to decisions in **Rafiq & Anr. v. Munshilal & Anr**, 1981 SCR (3) 509; **Ram Kumar Gupta & Ors. v. Har Prasad & Anr**, civil appeal No. 7648-7649 of 2009 decided by Hon'ble Apex Court on 18/11/2009 and **Commissioner, VAT v. India International Centre**, ST Appeal No. 1 of 2010 decided by our own Hon'ble High Court on 19/11/2010.

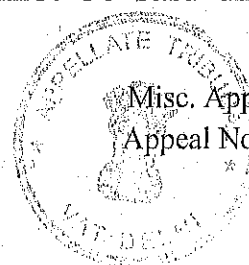
6. It is well settled that sufficient cause for condonation of delay needs to be shown to the court in order to persuade the court to exercise the discretion judiciously. In **Vijay Baburao Shirke's** case, [2021] 92 GSTR 300 (AAAR), on the point of condonation of delay, it has been observed that liberal construction of the expression "sufficient cause" is intended to advance substantial justice. This expression itself presupposes no negligence or

inaction on the part of the appellant and also implies the presence of legal and adequate reasons. The concerned party is required to show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the court without any unnecessary delay. Court is to take into consideration whether such delay could easily be avoided by the appellant acting with normal care and caution.

Here, in his affidavit, Sh. Tarun Kapoor, CA, has testified that while he was engaged in connection with VAT & Income Tax matters pertaining to dealer, for the Tax Period 2010-2011, he failed to collect copy of the impugned order, and further that he asked his client to collect the same at his own end.

Sh. Pranesh Gupta, one of the partners of the Dealer-Applicant, too has testified in his affidavit that their C.A Sh. Tarun Kapoor, who was dealing with their matters for a long time regularly, unfortunately failed to collect the copy of the impugned order.

It is significant to note that none of the two deponents has testified that the impugned order was never received by any of them. Learned counsel for the Revenue has rightly submitted that in absence of such deposition, it cannot be said that the impugned



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order was never received by the dealer and its Chartered Accountant. Onus to prove this fact was on the dealer-applicant, but the dealer has failed to do so. Therefore, the averment of the applicant that the impugned order was never received either by the CA or by the firm remains only an averment.

7. Ld. Counsel for the Revenue has referred to the following endorsement appended to the impugned orders :-

“No. F. SCTT-I/T&T/1798 dated 21.9.2017

1. M/s Gupta Bros. India, 232, Jor Bagh, New Delhi-110003.
2. Sh. Tarun Kapoor, CA & Counsel for the Objector, B-7, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002.
3. Departmental Representative (Sh. Vikas Gupta, Asstt. Commr., Ward-100)
4. A.C., Ward-98
5. Guard file.”

The contention raised by the Ld. Counsel for the Revenue is that as per this endorsement copies of the impugned order were dispatched not only to the dealer at its given address i.e. 232, Jor Bagh, New Delhi-110003 but also to Sh. Tarun Kapoor, CA & Counsel for the objector at his address B-7, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi-110002, by Speed Post, and



as such it cannot be said that the impugned order was not received by Sh. Tarun Kapoor or by the dealer.

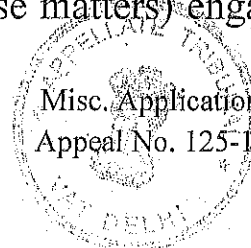

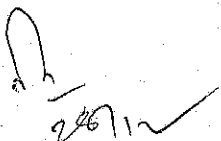
As noticed above, dealer has failed to establish that the impugned order was never received either by the CA or by the firm or that there was any change of address of anyone of them.

Ld. Counsel for the applicant has submitted that it is for the revenue to prove service of the impugned order on the dealer and the CA, but there is no proof that the order was served upon the dealer or its CA.

On the other hand, Ld. Counsel for the revenue has submitted that when a perusal of the impugned order makes it evident that copies there upon were dispatched by speed-post, and there is no merit in the contention of learned counsel for the applicant that the impugned order was not served upon the dealer or its CA.

8. We have gone through the certified copy of the impugned order. As per note, on the top, in the right side corner of the impugned order, words "By Speed Post" have been specifically typed.

In his affidavit, Shri Tarun Kapoor, CA has attributed the delay to himself and, further testified that Sh. Vinod Kumar Gupta, Advocate (representing applicant in these matters) engaged by the




applicant, collected/obtained certified copy of the order on 17.5.2018 after having applied for the same.

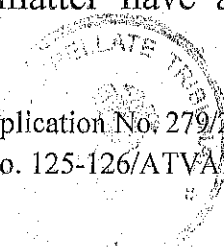
But the fact remains that Sh. Tarun Kapoor, CA of the applicant has nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post.

9. Sh. Pranesh Gupta partner of the dealer firm has also attributed the delay to Sh. Tarun Kapoor, CA by testifying that their CA failed to collect the copy of the impugned order. He too has nowhere testified that no copy of the impugned order passed by Ld. OHA was received by him at the given address by speed post.
10. Learned counsel for the Revenue has also rightly pointed that nowhere in the affidavits CA Sh. Tarun Kapoor or Sh. Pranesh Gupta, partner of the dealer firm, has testified as why the former had to apply for certified copy of the impugned order . There is also nothing on record to suggest as to on which date certified copy of the impugned order was applied for.

When CA of the firm has attributed the fault to himself and partner of the firm and learned counsel arguing this matter have also


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attributed the fault to the CA, submitting that the CA failed to collect copy of the impugned order, and there is no affidavit to the effect that impugned order was never received, by them, the averment in this regard remains a bald assertion.

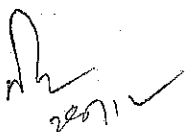
In **Rafiq & Anr's. case (supra)**, Hon'ble Court observed that it is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanour of his agent. For whatever reason the Advocate might have absented himself from the Court, the innocent litigant could not be allowed to suffer injustice for the fault of his Advocate. Hon'ble Court further observed that the problem that agitated was whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his age. The answer obviously was in the negative. The case is distinguishable on facts as it is not a case of non appearance of the counsel or CA before any authority.

In **Ram Kumar Gupta's case (supra)**, counsel for the appellants Sh. Gupta could not appear before the learned Judge of the Hon'ble High Court as at that point of time, he was designated as Additional Advocate General of the State and for that reason, it

was not possible for him to appear at the time of hearing of the writ petition as well as for restoration of the writ petition. There ~~is~~ no delay was caused by the appellants in filing the application for restoration of the writ petition. In any view of the matter, Hon'ble Court was of the view that the appellants could not be punished for the lapses even if there was any, as the appellants had engaged a learned counsel to appear and contest the writ petition. The case is therefore distinguishable on facts.

Decision in India International Centre's case is also distinguishable on facts.

Had Sh. Tarun Kapoor been a new entrant to the field, it would have been a different matter. As per case of the applicant, the firm was having assistance of the CA-Sh. Tarun Kapoor since long. In the course of arguments, on our query, learned counsel for the applicant has submitted that Sh. Tarun Kapoor was in practice as CA for the last 4 years prior to handling with the present matter. With sufficient practice to the credit of the CA and in view of the version that the CA was dealing with their matters since long, it cannot be said that it is a case of mistake on the part of CA.

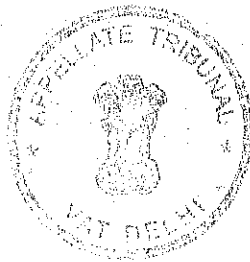


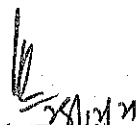
Learned counsel for the Revenue has rightly submitted that failure has been attributed to CA of the firm only to get relief in this application.

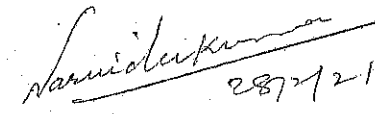
11. In view of the above discussion, when applicant has failed to bring on record any material to suggest that the impugned order was not communicated to the Dealer-Applicant and its Learned CA, by speed post, vide endorsement dated 21.9.2017, and in the two affidavits it has been testified that learned CA failed to collect the copy of impugned order, but no "sufficient cause" has been proved by the appellant-applicant to explain the delay in filing these appeals, this application seeking condonation of delay deserves to be dismissed. We order accordingly.
12. 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 : 28/12/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Misc. App No:- 279/ATVAT/21 / 1730-27
Appeal No. 125-126/ATVAT/21

Dated: 29/12/21

Copy to:-

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|---|----------------|
| (1) VATO (Ward-98) | (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) | |



[Signature]
REGISTRAR
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