

Appeal No. 333-34/ATVAT/21

Date of decision: 4/1/2022

M/s New India Glass Company,
289, Fatehpuri,
Delhi – 110 006.

.....APPELLANT

V

Commissioner of Trade & taxes, Delhi

.....RESPONDENT

Counsel representing the Appellant : Sh. Wahaj Ahmad Khan.

Counsel representing the Respondent : Sh. M. L. Garg.

JUDGMENT

1. This order is to dispose of application filed on behalf of the Dealer-Appellant, u/s 76(4) of DVAT Act with prayer for entertainment of appeals No. 333-34/21.
2. The appeals have been filed challenging order dated 8.11.2021 passed by Ld. OHA-Special Commissioner, while disposing of objections filed by the dealer u/s 76 (4) of DVAT Act, thereby reducing the amount of penalty imposed under DVAT and CST Act, for the Tax Period-2nd Quarter 2014-15.

Narinder Kumar
4/1/22

3. The objections were filed by the dealer challenging levy of penalty of Rs. 50,000/- each u/s 33 of DVAT Act and u/s 9(2) of CST Act. The ground for levy of penalty was late filing of return i.e. 122 days after due date.
4. While disposing of the objections Ld. OHA reduced the penalty to Rs. 30,000/- and Rs.5,000/- each Act.
5. Still feeling dissatisfied the dealer has come up in appeal, which is accompanied by the application u/s 76(4) of DVAT Act.
6. The only ground put forth by the Dealer-Appellant in the application is that the appellant firm is not in a position to deposit the amount of penalty, due to poverty.
7. It may be mentioned here that the objections were filed by the appellant before Ld. OHA beyond prescribed period of limitation. Ld. OHA instead rejecting the objections on the ground that same were barred by limitations, disposed of the same on merits.
8. Admittedly, returns were filed by the dealer 122 days after the prescribed date. Ld. Counsel for the Dealer-Appellant submits that the papers delivered to him by the dealer got mixed with other documents and as such returns could not be filed in time.
9. While disposing of objections, Ld. OHA has observed that in the course of arguments, Ld. Counsel for the Dealer-Assessee-Appellant submitted before him that his affidavit (of the

Counsel) was submitted to explain delay in filing of the return, but actually no such affidavit was placed on record.

10. Keeping in view the submission of Ld. Counsel for the appellant that because the papers got mixed with the other documents at his office and returns could not be filed in time, we deem it a fit case to entertain the appeals and to direct the Dealer-Appellant to deposit 10% of the disputed demand, particularly when no material has been placed on record that the appellant firm is facing financial constraints.
11. Consequently this application is disposed of and appeals are entertained subject to deposit of Rs. 3500/- by the Dealer-Appellant within 15 days from today. Counsel for appellant to apprise the Registry and Ld. Counsel for the Revenue regarding compliance with this order, so that appeals are taken up on the next date for final arguments.
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.

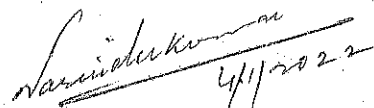
Announced in open Court.

Date : 04/01/2022


(Rakesh Bali)

Member (A)




(Narinder Kumar)

Member (J)

Appeal No. 333-334/TTVAT/21/1776-83

Dated: 5/1/22

Copy to:-

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| (1) VATO (Ward-22) | (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