

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

Appeal No.265-273/ATVAT/21

Date of Judgment : 15/02/2022

M/s. Apothecaries Sundres Mfg. Co.,
ASCO House,
13 Community Centre,
Mayapuri, Ph.-I,
New Delhi - 110064.

..... Appellant

V

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. P.K. Bansal.

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

JUDGMENT

1. By way of above captioned nine appeals, dealer - assessee has challenged order dated 4/8/2021 passed by learned Objection Hearing Authority (OHA) - Joint Commissioner, where by its 12 objections u/s 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act), have been dismissed by observing in the manner as :-

"In view of the above position and also considering the submissions of the objector dealer, comments of the Joint Commissioner authority alongwith all other documents available on record

Narinder Kumar
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Rakesh Bali
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and ruling thereof, this authority is of the view that since the objector dealer has failed to provide the sufficient and reasonable justification for delay in filing the objections, therefore, the aforesaid objections filed by the objector dealer cannot be entertained, and thus, hereby dismissed in aforesaid terms. Moreover, on merits also, the objector dealer has no case as seen from above as sufficient and numerous opportunities have been afforded on various occasions but the objector dealer has failed to comply due to the pretext of one reason or the other.”

2. Present nine appeals pertain to tax period Jan., Feb., March 2008-09 and April, June, July, Oct., Nov., Dec. 2009-10.
3. The objections were filed challenging the default assessments of tax and interests framed by Assessing Authority vide orders dated 01/9/2011, 8/2/2012 & 10/2/2012.
4. The Assessing Authority vide impugned orders dated 1/9/2011, 08/02/2012 & 10/2/2012, disallowed the claim of the period for refund by observing in the manner as :-

Dec. 2009

“On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 1,03,742/- in the month of Dec. 2009, the dealer not submitted required supporting documents

i.e. C.A. certificate for export, BRC etc. inspite of final notice dated 5/10/2011. Hence, in absence of required documents the refund of Rs. 103742/- for Dec. 2009-10 is disallowed."

Nov. 2009

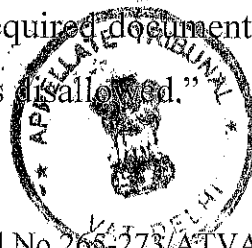
"On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 124534/- in the month of Nov. 2009, the dealer not submitted required/ supporting documents i.e. C.A. certificate for export, BRC etc. inspite of final notice dated 5/10/2011. Hence, in absence of required documents the refund of Rs. 124534/- for Nov. 2009-10 is disallowed."

Oct. 2009-10

"On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 232955/- in the month of Oct. 2009-10, the dealer not submitted required/ supporting documents (Export documents i.e. bill of lading, C.A. certificate for export, BRC etc.) inspite of final notice dated 5/10/2011. Hence, in absence of required documents the refund of Rs. 232955/- for Oct. 2009-10 is disallowed."

July 2009

"On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 78993/- in the month of July 2009, the dealer not submitted required/ supporting documents i.e. C.A. certificate for export, BRC etc. inspite of final notice dated 5/10/2011. Hence, in absence of required documents the refund of Rs. 78993/- for July, 2009-10 is disallowed."



June 2009

"On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 98836/- in the month of June 2009, the dealer not submitted required/ supporting documents i.e. C.A. certificate for export, BRC etc. inspite of final notice dated 5/10/2011. Hence, in absence of required documents the refund of Rs. 98836/- for June, 2009-10 is disallowed."

April, 2009

"As the dealer could not produce/ submit documents related to Export as export, BRC etc. and documents related ISS verification inspite of the final notice dated 5/10/2011 issued to the dealer. Hence, ITC for Rs. 53068/- is disallowed."

March, 2009

"The dealer has not submitted complete documents after the issuance of the final notice."

Feb., 2009.

"The dealer has not submitted complete documents after the issuance of the final notice."

Jan., 2009

"The dealer has not submitted complete documents after the issuance of the final notice."

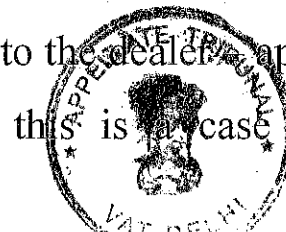
5. Since the objections filed by the dealer stand rejected by learned OHA, dealer has filed these three appeals.



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6. Arguments heard. File perused.
7. Learned counsel for the appellant has contended that this is a case where notice is stated to have been issued by the department, before issuing notice of default assessment of tax and interest, but there is nothing on to record to suggest service of notice.
8. Learned counsel for the Revenue does not dispute that when learned OHA called for comments of the concerned Assessing Authority to ascertain whether the notice u/s 59 (2) of DVAT Act was issued to the objector – dealer, the response was that as per history of section 59(2) notices only for the period from 1/4/2012 onwards are available.
9. In view of the above stand of the Revenue, before learned OHA, it could not be held that the objections were filed beyond the prescribed period of limitation. Accordingly, learned OHA fell in error in rejecting the objections of the dealer on merits as well as on the ground that same were barred by limitation.
10. In the given situation, the result is that when notice u/s 59(2) of DVAT Act intended to be issued to the dealer, appellant, was not served upon the dealer, this is a case of non




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providing of reasonable opportunity of being heard by the Assessing Authority. Consequently, the matter needs to be remanded to the Assessing Authority for decision afresh after providing to the dealer – appellant reasonable opportunity of being heard and that too in accordance with law.

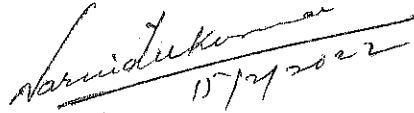
11. As a result, the appeals are disposed of and while setting aside the impugned orders passed by learned OHA, the matter is remanded to learned Assessing Authority for decision afresh after providing to the dealer – appellant reasonable opportunity of being heard and that too in accordance with law.
12. Dealer to appear before learned Assessing Authority on 3/3/2022.
13. File be consigned to 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 : 15/2/2022


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 265-273/ATVAT/21/2040-2047

Dated: 18/02/2022

Copy to:-

- (1) VATO (Ward-)
- (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)




REGISTRAR