

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

Appeal No.262-264/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

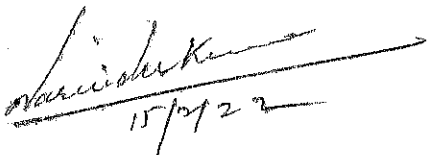
Counsel representing the Appellant : Sh. P.K. Bansal.

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

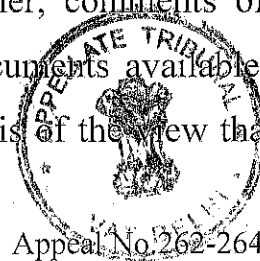
JUDGMENT

1. By way of above captioned three 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 ward authority alongwith all other documents available on record and ruling thereof, this authority is of the view that since the


15/2/22



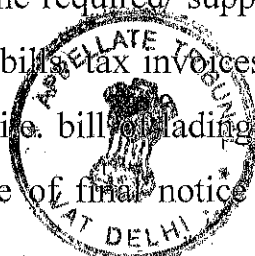


objector dealer has failed to provide the sufficient and reasonable justification for delay in filing the objections, therefore, the aforesaid objections filed by the objector dealer cannot be entertained, and thus, hereby dismissed in aforesaid terms. Moreover, on merits also, the objector dealer has 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 three appeals pertain to tax period January, February 2009-10 and April 2010-11. The objections were filed challenging the notices of default assessments of tax and interests issued by Assessing Authority vide orders dated 10/2/2012, 10/2/2012 and 16/7/2012.
3. The Assessing Authority vide impugned orders dated 10/2/2012, 10/2/2012 & 16/7/2012 disallowed the claim of the period for refund, by observing in the manner as :-

Jan. 2009-10

“On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 72,234/- for the month of Jan. 2009-10, the dealer has not submitted the required/ supporting documents i.e. DVAT-30-31, purchase bills, tax invoices, sale bills alongwith Grs (Export documents i.e. bill of lading, C.A. certificate for export, BRC etc.) inspite of final notice dated



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5/10/2011. Hence, in absence of required documents the refund of Rs. 72234/- is disallowed.”

Feb. 2009-10

“On scrutiny of record i.e. DVAT-16, it observed that the dealer has shown refund of Rs. 99,644/- for the month of Feb. 2009-10, the dealer has not submitted the required 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. 99,644/- is disallowed.

April, 2010

“in response to the notice 14/6/2012 present Sh. Abhishek Accountant on behalf of the firm the dealer has stated that there refund for the period Nov. 2010 is not due and same has been through revised return copy of the revised return submitted 19/7/2012. The same is disallowed.”

4. Since the objections filed by the dealer stand rejected by learned OHA, dealer has filed these three appeals.
5. Arguments heard. File perused.
6. It may be mentioned here that in the notice of the default assessment, as per table, the same pertains to tax period April, 2010 but in the body of the notice, the period mentioned is of Nov. 2010. Therefore, it cannot be said that Sh. Abhishek, Accountant of the dealer appeared before the Assessing Authority in respect of the said claim of refund for tax period April, 2010. Consequently, the matter needs to be decided afresh by the Assessing Authority.



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7. As regards other two notices of default assessments, 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 providing of reasonable opportunity of being heard by the Assessing Authority. Consequently, the matter needs to be

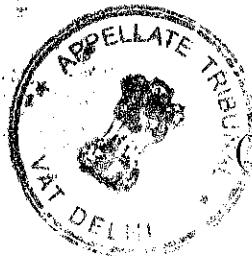
remanded to the Assessing Authority for decision afresh after providing to the dealer – appellant reasonable opportunity of being heard and that too in accordance with law.

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. 262-264/ATVAT/21/2032-39

Dated: 18/2/22

Copy to:-

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|---|----------------|
| (1) VATO (Ward-) | (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. | |




REGISTRAR