

Appeal No. 333-334/ATVAT/21

Date of decision: 25/2/2022

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

.....Appellant

V

Commissioner of Trade & taxes, Delhi

.....Respondent

Counsel representing the Appellant : Mohd. Wahaj Ahmad Khan.

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

### JUDGMENT

1. The above captioned appeals have been filed by the dealer having Tin No. 07360014630, challenging order dated 8.11.2021 passed by Ld. Objection Hearing Authority (OHA) - Special Commissioner.
2. Vide impugned order, learned OHA disposed of objections filed by the dealer u/s 74 (4) of Delhi Value Added Tax, 2004 (hereinafter referred to as the DVAT Act). Learned OHA reduced the quantum of penalty imposed by the Assessing Authority, vide order dated 19/8/2015, as regards tax period -

2<sup>nd</sup> Quarter 2014 -15, under DVAT Act and CST Act, to Rs. 30,000/- (under DVAT Act) and Rs. 5,000/- (under CST Act).

As is available from the assessment orders passed by the Assessing Authority, penalty was imposed because of late filing of returns i.e. after a delay of 122 days.

3. Learned counsel for the dealer – appellant has submitted that this is a case where there was no tax liability and as such Assessing Authority should not have levied penalty, even though the return was filed after 122 days. As regards delay, learned counsel for the dealer – applicant has submitted that papers delivered to him by the dealer got mixed with other documents, and as such returns could not be filed in time. Accordingly, learned counsel has urged that the impugned order as regards penalty be set-aside.

In support of his submission, learned counsel has referred to decision in **M/s. JAS Corporate Services v. Commissioner of Trade & Taxes, Delhi**, (2014) 52 DSTC 676 - (Delhi).

4. ~~Herein~~ ✓ ✓ learned counsel for the Revenue has submitted that keeping in view the reduction in the quantum of penalty by the learned OHA, and the period of quantum in filing of the returns, the impugned order deserves to be upheld.

5. As noticed above, it is not case of the dealer – appellant that the



returns were filed within the prescribed period. The dealer admits that returns were filed after 120 days of the prescribed date. Learned counsel for the dealer – appellant had put forth same submission before learned OHA owing up non filing thereof, on the ground that the papers submitted to him by the dealer had got mixed up with other documents. Learned OHA observed in the impugned order that even though in the course of arguments, it was submitted by the learned counsel for the dealer that he had enclosed his affidavit, no such affidavit was placed on record.

6. However, today in the course of arguments, counsel for the appellant has filed his own affidavit to explain the delay in filing of returns.
7. In **M/s. JAS Corporate Services's** case (supra), this Appellate Tribunal reduced the amount of penalty imposed on the grounds of late filing of returns, taking into consideration that the dealer therein had deposited the tax timely and that was a case of no loss to the Revenue.

In that case as regards the first quarter of 2013-14, there was delay of 132 days in filing of the return, whereas in respect of second quarter, return was filed after 45 days.

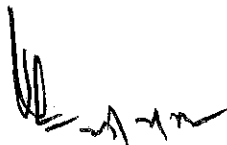
8. As regards deposit of tax, learned counsel for the Revenue does not dispute that for the second quarter of 2014-15, the dealer deposited tax in excess. It is not the case of the Revenue that

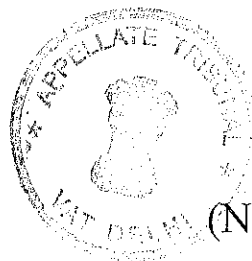
there was any delay on the part of the dealer to deposit tax.

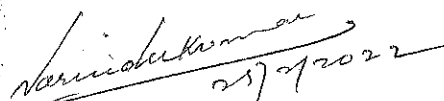
9. Keeping in view all the facts and circumstances of the case i.e. delay of 122 days in filing of the returns, under each Act and that there was no delay on the part of the dealer in depositing the tax, we deem it a fit case to further reduce the quantum of penalty from ~~reduce~~ Rs. 30,000/- (under DVAT Act) to Rs. 2,000/- and from Rs. 5,000/- (under CST Act) to Rs. 2,000/-.
10. It may be mentioned here that the dealer has, by way of pre deposit and in terms of order dated 4/1/2012 passed in these appeals, deposited a sum of Rs. 3,500/-. The said amount shall be adjustable.
11. With further reduction in the quantum of penalty, the appeals are disposed of.
12. 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 : 25/2/2022

  
(Rakesh Bali)  
Member (A)



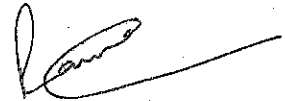
  
(Narinder Kumar)  
Member (J)

Appeal No. 333-334/MTVMT/21/2088-95

Dated: 28/2/22

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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**