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

Misc. Application No. : 271/21  
Appeal Nos. : 311-316/ATVAT/21  
Appeal Nos. : 304-310/ATVAT/21  
Date of Order: 28/2/2022

M/s. J.K Agencies,  
B-52, First Floor, Naharpur,  
Sector-7, Rohini, Delhi-110085.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

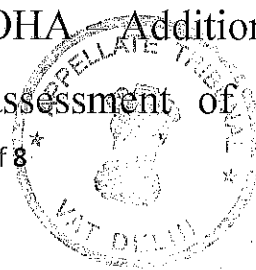
.....Respondent

Counsel representing the Appellant : Sh. Sanjeev Saxena  
Counsel representing the Revenue : Sh. S. B. Jain

**ORDER**

**(on Stay Application U/s 76(4) of DVAT Act)**

1. This order is to dispose of common application filed by the dealer, a proprietorship concern, with Appeals No. 311-316 with the prayer that recovery of the demand of tax, interest and penalty be stayed.
2. Dealer is feeling aggrieved by the common order dated 12/10/2021 passed by learned OHA Additional Commissioner whereby notices of default assessment of tax, interest and



*Narinder Kumar*  
28/2/22

*Rakesh Bali*  
28/2/22

penalty dated 09/01/2016 issued by the Assessing Authority – VATO (Audit), for the tax period 2011-12 have been upheld and Objections No. 156405 & 156406 dated 27/04/2016 filed by the dealer against the said assessment of tax, interest and penalty have been dismissed.

3. Vide assessment order dated 09/01/2016, issued u/s 32 of DVAT Act, Assessing Authority had directed the dealer- assessee to pay a sum of Rs. 9,95,517/-.

The said assessment was based on the reasons that it was a case of suppression of sale of :

Rs. 5,00,000/- ;	as regards tax period - May 2011;
Rs.16,00,139/-,	as regards tax period – June 2011;
Rs. 6,38,323/-,	as regards tax period – July 2011;
Rs. 25,640/-,	as regards tax period – Nov. 2011;
Rs. 3,99,999/-,	as regards tax period – January 2011;
Rs. 6,88,732/-,	as regards tax period – March 2012.

4. It may be mentioned here that the Assessing Authority also levied penalty on the dealer, u/s 86 of DVAT Act, because of tax deficiency and non production of stock register and sales invoices noticed by him.



Demand of tax, interest and penalty, as per tax period, reads as under:

Tax Period	Tax	Interest	Total	Penalty u/s 86(10)	Penalty u/s 86(14)
Annual 2011	--	--	--	--	50,000
May 2011	62,500	42,509	1,05,009	62,500	
June 2011	2,00,018	1,33,574	3,33,592	2,00,018	
July 2011	2,04,792	1,34,153	3,38,945	2,04,792	
Nov. 2011	3,205	1,939	5,144	10,000	
Jan. 2012	50,000	28,973	78,973	50,000	
March 2012	86,091	47,763	1,33,854	86,091	
Total	6,06,606	3,88,911	9,95,517	6,13,401	50,000

5. Feeling aggrieved by the said assessment, the dealer filed objections u/s 74 of DVAT Act.

Learned OHA rejected the objections while observing in the manner as :

“As per DR, Perusal of DP-1 and the returns in Form DVAT-16 furnished for F.Y 2011-12 shows that the dealer is trading in items viz. Namkeen Dalmoth Potato Chips, Papad and Others, whereas the taxpayer has submitted credit note mentioning **Bengal Mixed Sweets - Returned** which is inconsistent with items mentioned in DP1 and in DVAT-16.

As per DR, the dealer has not reported any sale return in DVAT-16 during F.Y 2011-12.



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Mix. App No:- 271/12  
in Appeal No. 311-316/ATV/NT/21 / 2096-2103  
304-310/ATV/NT/21  
Copy to:-

Dated: 02/03/2022

- (1) VATO (Ward-63)
- (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