

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

Stay application No. 395/ATVAT/22

Appeal No- 367/ATVAT/22

Date of order: 07/04/2022

M/s. Soni Tent House,
H-22, Main Market, Rajouri Garden,
Delhi – 110 027.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Pramod Kumar Bansal.

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 application u/s. 76 (4) ~~supported to be~~ of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) with prayer for waiving of condition regarding deposit, by way of pre-deposit, against the disputed demand.
2. The application has been filed subsequent to the filing of appeal. The appeal has been filed challenging the order dated 24/12/21 passed by Ld. Objection Hearing Authority (hereinafter referred

to as OHA), whereby penalty of Rs. 50,000/- imposed by Ld. Assessing Authority – VATO (Ward 58) has been upheld.

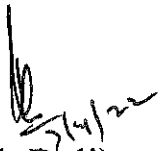
3. The penalty was imposed u/s. 33 read with Section 86 (14) of the Act vide notice of default assessment dated 01/03/2021.
4. Arguments heard. File perused.
5. In the application, it has been alleged that Assessing Authority imposed penalty without issuing notice u/s. 59(2) of DVAT Act and that the Ld. OHA upheld the same while observing that the notice u/s. 59(2) issued to the dealer was digitally signed.
6. The case of the dealer-applicant is that there is no material to suggest as to by which mode notice u/s. 59(2) of DVAT Act was served and that in the absence of due service of notice, principles of natural justice can be said to have been violated while levying said penalty.
7. Learned counsel for the applicant has placed on record, just now, copy of the notice downloaded from the portal and pointed out that it is not digitally signed, whereas learned OHA has rejected the objections while observing that notice u/s 59 (2) of DVAT Act was digitally signed and that it was a case of due service of the said notice.
8. Learned counsel for the revenue does not dispute that the notice u/s 59(2) of DVAT Act, uploaded on the portal on 05-01-2021,

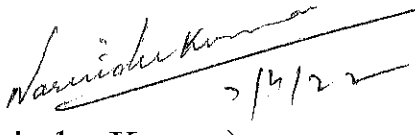
is not digitally signed and that it mentions the name of the learned VATO against the column of signatures.

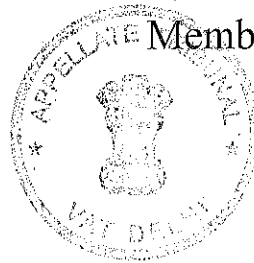
9. In the given situation, when the objector-appellant has come up in appeal on the ground that this is a case of no service of notice u/s 59(2) of DVAT Act, the application is allowed and appeal is entertained without calling upon the dealer-objector to deposit any amount by way of pre-deposit towards the amount of penalty.
10. Be put up on 28/4/2022 for final arguments.
11. 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 : 7/4/2022


(Rakesh Bali)
Member (Administration)


(Narinder Kumar)
Member (Judicial)



Stay App. No. 395/ATVAT/22/3996-4003
Appeal No. 367/ATVAT/22

Dated: 11/4/22

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