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

Appeal No- 277/ATVAT/2012

Date of Order : 25-04-2022

M/s. Food Processing Equipment Co.Pvt. Ltd.,
A-3/6, Laxmi Building, Acharya Niketan,
Mayur Vihar, Delhi – 110 091.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

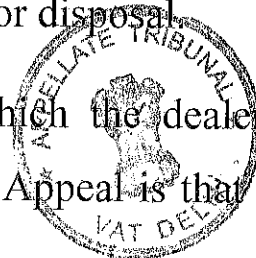
Counsel representing the Appellant : Sh. Rajesh Jain.
Counsel representing the Revenue : Sh. P. Tara.

ORDER

1. This order is to dispose of application NO. MA 39/14 filed by the dealer petition under regulation 6 and 20 of Delhi Vat (Appellate Tribunal) Regulations, 2005 along with affidavit.

2. It may be mentioned here that in the course of final arguments, Learned Counsel for the appellant pointed out that application MA No. 39/14 filed by the dealer to raise an additional ground and to place on record additional document, was pending for disposal. During the pendency of this appeal, it was never pointed out to the court that the said application was pending for disposal.

As regards the additional ground, which the dealer-appellant seeks to take as ground (f) in the Memo of Appeal is that same is to



Narinder Kumar
25/4/2022

[Signature]

the effect that the appellant is entitled to exemption from tax on the transaction(s) of sale made by the dealer-appellant in the course of import, in view of provision of Section 7 (c) of DVAT Act and further that the sales and entry to cover u/s. 5(2) of the Act nor same could be considered for abatement under Rule 3 of DVAT Rules.

3. Learned Counsel for the dealer-appellant has submitted that this additional ground is sought to be raised in view of the decision in **M/s. ABB Ltd v. Commissioner Value added Tax, 2012 (55) VST I.**

In the prayer in the application is that the dealer –appellant be permitted to adduce documents referred in clause (a) to (i) of this application, by way of additional documents, so that the same are taken into consideration for the purpose of ground (f), sought to be taken.

4. Learned Counsel for the Revenue has strongly opposed the application, by straightway raising arguments.

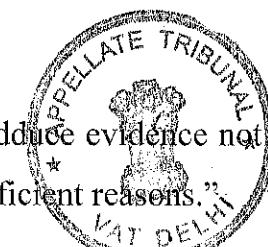
5. Section 76 (5) of DVAT Act reads as under:-

“76 (5) In proceedings before the Appellate Tribunal

(a) the person aggrieved shall be limited to disputing only those matters stated in the objection;

(b) the person aggrieved shall be limited to arguing only those grounds stated in the objection; and

(c) the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.”



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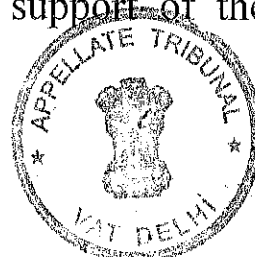
6. Admittedly, the ground now sought to be taken as ground (f) is sought to be taken for the first time in this appeal as said point, ground or objection was never raised before the Learned Assessing Authority or before Learned OHA.

While referring to the above said provision of Sub Section (5) of Section 76, Learned Counsel for the Revenue has contended that when admittedly no such ground was taken in the Memo of Appeal and before the Learned OHA and also before the Learned Assessing Authority, the prayer made by the appellant to take this additional ground deserves to be declined.

In the application it has been alleged that while placing details of taxable turn over, the dealer-appellant did not exclude the component of the sale price which was inextricably and integrally connected to the import of plant and machinery from M/s. BANSS, Freund Gmbh and ITEC Gmbh etc.

Further it has been alleged that before claiming abatement of 25%, while furnishing the details of taxable turn over, the dealer had not deducted value of goods imported for the purpose of execution of the said contract.

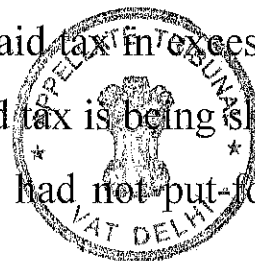
While referring to this averments, Learned Counsel for the dealer has contended that the application to place this additional ground and to file additional documents in support of thereof be allowed.



On the other hand, Learned Counsel for the Revenue has rightly pointed out that this is a case where, on remand of the matter by the Learned OHA to the Learned Assessing Authority, the dealer filed 'Nil' returns, and as such it remains unexplained as to how this averment has been made in the application that bills on taxable turnover was placed but the applicant could not seek exemption u/s. 7 of DVAT Act as regards the said imports.

Learned Counsel for the Revenue has also rightly pointed out that this appeal has been filed after second round litigation before Learned OHA. The assessment initially made by Learned Assessing Authority was set aside and matter was remanded by Learned OHA to the Learned Assessing Authority vide order dated 31/12/2008. As noticed above, the dealer filed 'Nil' returns before the Learned Assessing Authority. In this way despite opportunity provided by the department to the dealer, he did not ~~claimed~~^{claim} any such exemption at the time the opportunity was granted to it, surprisingly even before Learned OHA, no such submission regarding exemption u/s. 7(c) of DVAT Act on the basis of import of goods was raised on behalf of the dealer, in any of the two objections i.e. the one filed against initial assessment and other against the subsequent assessment dated 20/07/09.

7. Learned Counsel for the Revenue has pointed out that in the Memo of Appeal, the dealer claimed to have paid tax in excess as Rs. 69,024/-, but in this application, the excess paid tax is being shown by the dealer as Rs. 4,94,27,295/- and the dealer had not put forth any



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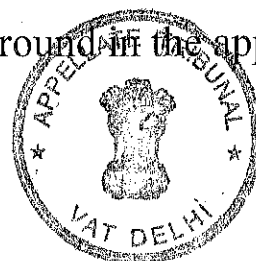
explanation in the application regarding this increase in the figure as regards the excess tax said to have been paid.

Learned Counsel for the dealer-appellant has submitted that under the fiscal statute, it is for the department to levy tax in accordance with law and that when no such exemption was allowed, the dealer can claim the said exemption by taking the additional ground at this stage.

8. As regards amendment of pleadings, Learned Counsel made reference to decision in **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das**, 2012(281) E.L.T 161 (s.C.)

9. In **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das**'s case (supra) pertained to the question of grant of ground of amendment under order 41 of CPC, Hon'ble Apex Court observed that amendment ought to be allowed which specify that the same shall not work injustice to the other party and the same is necessary for the purpose of determining the real question in controversy.

On the other hand, Learned Counsel for the Revenue has rightly pointed out that the dealer-appellant having filed 'Nil' returns before Learned Assessing Authority and have not raised the said ground before Learned Assessing Authority or before Learned OHA, is not entitled to relief of introducing of this fresh ground in the appeal.




10. As regards prayer for production of the documents, Learned Counsel for the dealer-appellant has submitted that the same are necessary for adjudication of the matter in dispute.

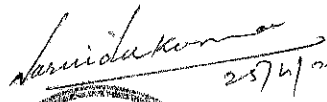
On the other hand Learned Counsel for the Revenue has rightly referred to decision in **Commissioner Trade & Taxes v. M/s. Ahuwalia Contractors (India) Ltd.** (Civil) No. 9631-9632 of 2017, decided by the Hon'ble Apex court on 04/10/17. The documents are sought to be placed on record in support of additional ground (f) as discussed above, no such ground was taken by the dealer-appellant on the earliest opportunity available with him, i.e. before the Learned Assessing Authority and then before the Learned OHA. It is not that these documents came in to existence subsequent to the framing of the assessment or disposal of the objections. These documents are dated 29/09/05, 12/12/05 and 15/03/2006. Assessments were made /framed on 20/07/2009 and objections against the said assessment were filed on 12/05/2008. There is no explanation as to why these documents were not produced by the dealer earlier before the department or before the Learned OHA.

11. In view of the above discussion, the application filed by the dealer with prayer for taking of additional ground (f) in the Memo of Appeal and for production of additional documents mentioned in clause (a) to (i) of the said application, deserves to be dismissed. The same is hereby dismissed.

Announced in open court.

Date: 25-04-2022.


Rakesh Bali
Member (A)


Narinder Kumar
Member (A)



MA, No. 39/ATVAT/14/4156-63
Appeal No. 27/ATVAT/12

Dated: 28/4/22

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

