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

M. A. No. : 337/22
Appeal No. : 128/ATVAT/2019
Date of Order: 26/4/2022

M/s. Bharti Telemedia Ltd.,
234, Okhla Industrial Area,
Phase-III,New Delhi - 110020. .....Appellant

V.

Commissioner of Trade & Taxes, Delhi .....Respondent

Counsel representing the Appellant : Sh. Nikhil Gupta.
Counsel representing the Revenue : Sh. P. Tara

ORDER

1. This order is to dispose of M.A. No. 337/22 filed by the dealer-appellant-applicant, in Appeal No. 128/19, with prayer u/s 76(5)(C) of DVAT Act read with Rule 57(A) of DVAT Rules 2005, seeking permission to place on record certain additional documents.

2. As per list, following documents are sought to be produced:

Annexure	Particulars	Page No.
1	Screenshots of a customer's profile (Dayan Shankar -3013444117/ STB No. 03393682031) who has availed DTH	3-4

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	services of the Appellant and later disconnected	
2	Screenshots from the account statement of the above-mentioned customer	5-8
3	Challan for transferring the STBs from Warehouse to Service Partner (including STB No. 03393682031)	9-10
4	Invoice dated 12.10.2013 for Activation charges raised on the customer	11
5	Recovery of STB No. 03393682031 from the above-mentioned customer's site after disconnection.	12
6	Documents for reverse logistics for STBs (including STB No. 03393682031)	13-14
10	Pre-paid Distribution Agreement with Prakash Trading Company	29-51

3. Documents at sl. No. 7 to 9 are stated to have already been submitted before the Assessing Authority and as such the same are only sought to be filed for ready reference.

4. The ground put forth in the application is that the revenue authorities never asked for the above said documents; that the appellant-applicant never submitted the similar documents with the Assessing Authority or learned OHA and that the documents are very relevant for the purpose of deciding the appeal. Learned counsel for the applicant has submitted that the

documents are relevant and necessary for adjudication of the dispute and as such same be allowed to be produced on record. In support of his submission, learned counsel has relied on decision in **Commissioner of Central Excise v. Southern Cooling Tower (P) Ltd.,** 2010 (257) ELT 543(cal.).

5. On the other hand, learned counsel for the Revenue has opposed the application on the ground that burden to prove that the dealer was not liable to pay any tax under DVAT Act, was on the dealer – appellant and as such it was required to produce all the relevant and necessary documents before the Assessing Authority and then before learned OHA, and further that these authorities were not required to ask the dealer for production of these documents. Learned counsel for Revenue has also referred to provision of section 76(5) of DVAT Act with prayer for rejection of the application.

6. The question of right to use the modem is involved in this matter. It is case of the dealer - applicant that once the services to the customer were stopped, the modem used to be collected from the customer and that the customer had no control over the goods.

7. In view of the controversy involved, no doubt the documents are relevant and necessary for adjudication of the dispute, but the ground being put forth by the dealer – applicant that it was never asked by the department or by learned OHA for production of

these documents, is not a reasonable explanation. The dealer – applicant should have produced these documents firstly before the department and then before learned OHA. Since the dealer failed to produced the documents (except documents at sl. No. 7 to 9) and same are sought to be produced for the first time, keeping in view their relevancy, the application is allowed but subject to payment / deposit of cost of Rs. 10,000/- by the dealer – applicant to the opposite party under the appropriate head.

8. 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: 26/4/2022

26/4/2022

(Rakesh Bali)
Member (A)

26/4/22

(Narinder Kumar)
Member (J)

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MA No. 337/Misc/22 | 4188-95
Appeal No. 128/ATVAT/19

Dated: 27/4/22

Copy to:-

(1) VATO (Ward-)
(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

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