

273
BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

M.A. NO. 439/2022
Appeal No. : 1568-1569/ATVAT/2011

Date of Order: 2/5/2022

M/s. Berger Paints India Ltd.,
14/2, Okhla Industrial Area,
New Delhi.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

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

ORDER

1. This order is to dispose of application dated 19/04/2022 filed by the dealer-appellant-applicant ^{on 20/4/22} u/s 73(8) read with Section 75 of DVAT Act and Regulation 21 of DVAT (Appellate Tribunal) Regulations, 2005.

The prayer in the application is that record mentioned therein be summoned from the Revenue/Lower Authorities and dealer - applicant be given liberty to place reliance on such record to be summoned.



2. It has been alleged in the application that the disputed demand has been raised on the basis of documents seized from the premises of the applicant and the statement of the officer of the dealer, and that one of the grounds raised in the appeals is that the officers of the department did not provide to him copies of the said documents seized from the business premises of the dealer.

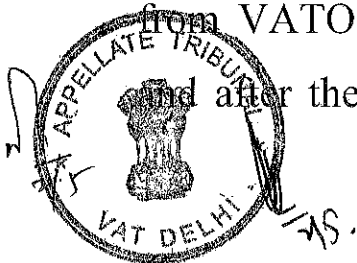
On behalf of the applicant, it has been submitted that the aforesaid documents are required to rebut the findings recorded in the impugned order, which the dealer cannot rebut in absence thereof.

While referring to the earlier proceedings before this Appellate Tribunal, learned counsel has alleged that official summoned from the office of VATO (Ward-201) appeared in these appeals and submitted that Ward's record was available, but without the seized papers, and even statement of the official of the dealer, said to have been recorded by the Enforcement Team, was not in the file maintained by the Ward.

3. On the other hand, learned counsel for the Revenue has opposed the application by filing reply thereto.

4. Arguments heard on the application. File perused.

5. As regards the submission made in the application that as per orders initially passed in these appeals, some record was summoned from VATO called for the purpose of disposal of stay application and after the disposal of the stay application, no request was made



by the dealer-applicant-appellant for production of any such record except by filing this application filed during filing arguments.

6. In this regard, order dated 05/02/2014 passed by this Appellate Tribunal would reveal that record was called for from the Department while application u/s 76(4) of DVAT Act was pending. On 05/02/2014, Appellate Tribunal took into consideration that it was for the appellant to file relevant documents along with paper book, and in case, document was not available, the dealer could seek assistance of the Tribunal, which the dealer never sought. Accordingly, the Appellate Tribunal proceeded further to hear arguments on the stay application and disposed of the same.

7. In view of the above observations made by this Appellate Tribunal in the order dated 05/02/2014, there is no merit in the contention raised by the learned counsel for the applicant that since the record was earlier not produced, same is required to be produced by the Department before this Appellate Tribunal.

8. Learned counsel for the ~~Revenue~~ has also rightly submitted that the records seized from the premises of the dealer was seized in the presence of its representative and also that it is the dealer who was to preserve the record. Ever since audit was conducted, the dealer should have preserved the entire relevant record. The contention raised by learned counsel for the applicant that only prescribed record is required to be preserved, is, therefore, without merit.

Section 78 of DVAT Act provides that the burden of proving any

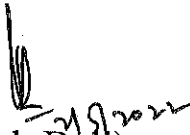



9. In view of the above discussions, we do not find any ground to issue directions to the respondent at this stage, to produce the documents mentioned therein. The application is hereby dismissed.

10. 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 : 2/5/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



mit. no. 439/2022
in Appeal No. 1568-7569/MVMT/11/4268-75

Dated: 4/5/22

Copy to:-

- | | |
|---|----------------|
| (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