

271
BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Appeal No- 367/ATVAT/22

Date of order: 28/04/2022

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

.....Applicant

v.

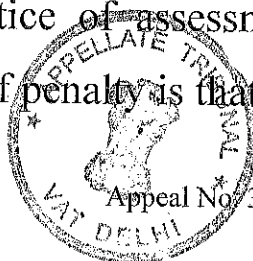
Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Pramod Kumar Bansal.
Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. Present appeal has been filed by the dealer – assessee challenging the order dated 24/12/2021 passed by Ld. Objection Hearing Authority (hereinafter referred to as OHA), whereby assessment regarding levy of penalty of Rs. 50,000/- framed by the Assessing Authority, has been upheld.
2. As per record, the penalty came to be imposed u/s 33 read with section 86(14) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act), vide notice of assessment dated 1/3/2021. The reason for imposition of penalty is that the dealer



Narinder Kumar
28/4/22

28/4/22

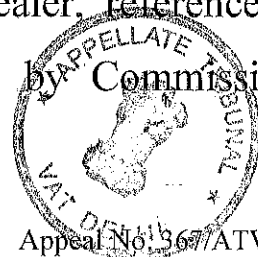
– assessee failed to appear and produce documents in compliance with notice u/s 59(2) of DVAT Act. The matter pertains to tax period – Annual 2016.

3. Arguments heard. File perused.
4. Learned counsel for the appellant has contended that notice u/s 59(2) of DVAT Act uploaded on the portal of Department of Trade and Taxes on 5/1/2021, is not a valid notice, as the same does not bears signatures of the concerned VATO.
5. Copy of notice dated 5/1/2021 downloaded by the dealer subsequently from the portal was placed on record by counsel for the appellant on 7/4/2022. Its perusal reveals that same does not bears signatures of the VATO.

This very objection was raised by the dealer – objector before learned OHA at the time of hearing on objections. While dealing with this objection, learned OHA observed that the notice u/s 59(2) of the Act was not a system generated notice and that it was digitally signed.

However, as we have already observed above, the notice dated 5/1/2021 uploaded on the portal of the department is not digitally signed one.

6. Before learned OHA, on behalf of the dealer, reference was made to circular dated 17/1/2014 issued by Commissioner,



28/4/22

28/4/22

Trade & Taxes as regards service of notices, summons or orders by authorities under DVAT Act.

Learned OHA observed that as per said circular notices, summons or orders are required to be issued by the VAT Authorities to the dealers by electronic means by pasting the same on the web page of the individual dealer, and that service of notice in this manner shall be deemed to be due service of the purpose of Rule 62 of DVAT Rules.

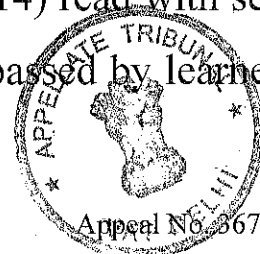
7. Keeping in view that the notice dated 5/1/2021 uploaded on the portal of the dealer was not digitally signed, it cannot be said to be a case of due service of notice upon the dealer, particularly when here it is not case of the Revenue that the dealer acted upon the said notice subsequently and produced the requisite record before the Department, so as to deny any benefit to the dealer on account of non service of notice.

Even otherwise, in the course of arguments, learned counsel for the dealer – appellant has placed on record photocopies of 4 notices of default assessments of tax and submitted that in respect of the 4 quarters of 2016-17, the assessments reveal that it was a case of no tax liability.

8. In the peculiar facts and circumstances and the discussion above, the imposition of penalty u/s 86(14) read with section 33 of DVAT Act and the impugned order passed by learned OHA,

Handwritten signature
28/4

Handwritten signature
28/4

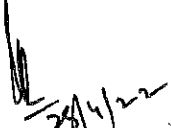



are hereby
upholding the said penalty, ~~deserve to be~~ set aside. As a result
the appeal is allowed.

9. 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 : 28/4/2022


(Rakesh Bali)
Member (Administration)


(Narinder Kumar)
Member (Judicial)



Appeal No. 367/ATVAT/22/4228-35

Dated: 29/4/22

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 4.22