

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

Appeal Nos. 325-331/ATVAT/21

Date of decision: 6/5/2022

M/s. Naveen Motor Agency,  
1/35, Chowk Ramya, Ram Bazar,

Mori Gate, Delhi.

*(Through legal Representative)  
of Dealer*

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Representing the Appellant : Sh. Sunil Minocha,

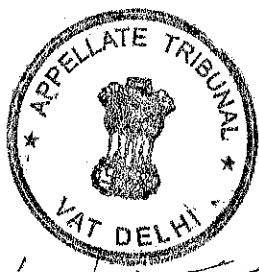
VAT Practitioner

Counsel representing the Revenue : Sh. P.Tara

**JUDGMENT**

1. This common judgment is to dispose of seven appeals captioned above, filed by the dealer u/s. 76 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act).

2. The dealer has filed appeals, feeling aggrieved by the order dated 05/03/2020 passed by the Ld. Additional Commissioner – Objection Hearing Authority (hereinafter referred to as OHA), whereby seven objections filed by the dealer u/s. 74 of DVAT Act, in respect of tax periods 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarter of 2010-11 (all under DVAT Act); 3<sup>rd</sup>



Quarter 2011-12 (DVAT Act) and (CST Act) ; and 1<sup>st</sup> quarter of 2012-13 (under DVAT Act) have been dismissed, being barred by limitation.

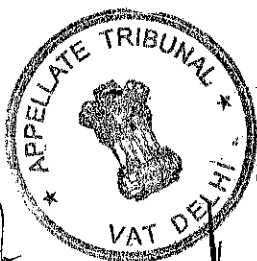
3. ✓ The objection No. 431295 pertained to assessment framed under CST Act relating to tax period 3<sup>rd</sup> quarter 2011-12. Rest of the objections were against assessments framed under DVAT Act.

✓ It may be mentioned here that objection No. **431291**, pertaining to 3<sup>rd</sup> Quarter 2011-12 was filed to challenge imposition of penalty of Rs. 10,000/-, u/s. 33 of DVAT Act read with Section 86(10) of DVAT Act. Objections No. **431295** related to 3<sup>rd</sup> qtr. 2011-12 and objection No. **431296** related to 1<sup>st</sup> qtr. of 2012-13 and imposition of penalty.

4. All the above appeals have been entertained vide order dated 5/4/2022, waiving the condition of pre-deposit.

5. Arguments heard. File perused.

6. Learned counsel for the dealer – appellant has submitted that learned OHA erred in rejecting the objections on the ground that the same were barred by limitation. Learned counsel has submitted that actually the dealer was never served with copy

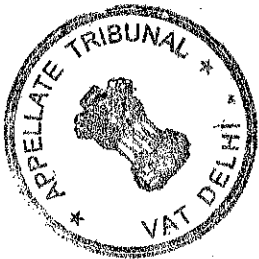


of the assessment orders and that the dealer came to know of the framing of the assessments only on phone call received by the representative/ CA of the dealer on 21/9/2020 and that is how a copy thereof was collected from the office of the Assessing Authority and objections were filed. The contention is that in the given situation, the objections were filed within time.

7. We have enquired from learned Practitioner if any application seeking condonation of delay was filed by the dealer before learned OHA seeking condonation of delay. The answer is that no such application was filed.

8. As per section 74(4) of DVAT Act, suchlike objections challenging the assessments are to be filed within two months of the date of service of assessment. Rule 52(3) of DVAT Rules, 2005 provides that where an objection is made after the time limit prescribed in sub-section (4) of section 74, it shall be accompanied by statement in form DVAT-39, showing the reason for the delay in making the said objection.

Admittedly, no such statement in form DVAT-39 was submitted by the dealer before learned OHA. When neither any application seeking condonation of delay nor any



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6/7/2022

*[Handwritten signature]*

statement in form DVAT-39 was submitted by the dealer before learned OHA, it remains unexplained as to how learned OHA arrived at the conclusion that the reasons sought to be tendered to explain the delay could not be sustained.

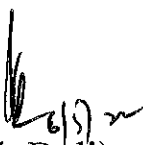
9. In the given situation, learned counsel for the dealer – appellant submits that the dealer is ready to submit application in form DVAT-39, before learned OHA, seeking condonation of delay in filing the objections. In this regard, there is no objection by learned counsel for the Revenue.
10. In view of the above observations and in the given situation, the common impugned order passed by learned OHA is set-aside and while disposing of all the seven appeals, the matter is remanded to learned OHA for decision afresh, firstly on the point as to whether there is any sufficient cause for filing of the objections beyond the prescribed period of limitation of two months, after providing reasonable opportunity to the dealer of being heard; and in case learned OHA is satisfied that the person was prevented for sufficient cause from filing the objections within the specified time, and the objections are entertained, learned OHA to proceed to dispose of the objections on merit, in accordance with law.




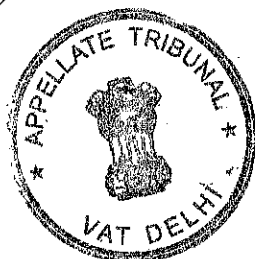
11. Dealer – appellant is hereby directed to appear before learned OHA on 18/5/2022.
12. Copy of this judgment be placed in file No. 326-331 as well. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 06/5/2022.

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Appeal No. 325-331/ATVAT/21/4332-39

Dated: 04/05/22

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