

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

Application No. 442/ATVAT/22
In Appeal No. 395-396/ATVAT/22
Date of Order: 13/5/2022

M/s Choudhry Plastics Works,
138/14, Onkar Nagar,
Tri Nagar, Delhi-110035.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

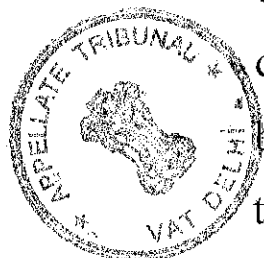
.....Respondent

Counsel representing the Applicant : Sh. Rahul Gupta.
Counsel representing the Revenue : Sh. M.L. Garg.

ORDER
(On Application U/s 76(4) of DVAT Act)

1. This order is to dispose of common application u/s 76(4) of DVAT Act filed with the two above captioned appeals. Separate application is required to be filed with each appeal.

Prayer in the application is that appeals be entertained without calling upon the dealer to deposit any amount by way of pre-deposit. Since requisite court fee has been affixed, as requested by counsel for the applicant, same is being disposed of treating the prayer in respect of both the appeals.



Narinder Kumar
13/5/22

Rakesh Bali
13/5/22

2. The impugned orders pertain to tax periods 2nd quarter of 2013-2014, 2nd quarter of 2013-2014 and Annual- 2011. Vide impugned order three objections u/s 74(6) were disposed of. One objection was raised challenging penalty of Rs. 47,000/- under DVAT Act. The second objection was filed to challenge the same amount of penalty imposed under CST Act. The third objection was to challenge penalty of Rs. 10,000 under DVAT Act.
3. Learned Assessing Authority had levied penalty for 2nd quarter of 2013, u/s 9(2) of CST Act read with section 86(9) of DVAT Act, due to late filing of returns i.e. after 94 days. The other penalty was imposed u/s 33 read with section 86(9) of DVAT Act due to the same reason. The third penalty was for tax period-Annual 2011 under DVAT Act.
4. Learned OHA disposed of the objections reducing penalty for the tax period 2nd quarter of 2013-2014 (under both the Acts) to Rs. 20,000/- each. Learned OHA however set aside the third penalty of Rs. 10,000/- pertaining to tax period Annual 2011.
5. As per the case of the Dealer-Appellant delay in filing of the returns was due to the reason that the proprietor Sh. S. L. Chaudhary - Dealer was suffering from severe typhoid fever and was advised complete bed rest. During said period of serious illness, he had provided the entire data pertaining to returns to his Accountant but due to the carelessness of the accountant, the return could not be filed in time.

6. Learned counsel for the appellant – applicant has submitted that the appeals be entertained without calling upon the dealer to deposit any amount by way of pre deposit as the orders u/s 33 of DVAT Act are unsigned and system generated orders. In this regard, learned counsel has referred to decision in **Kilasho Devi Burman and Ors. v. Commissioner of Income Tax, West Bengal, Calcutta**, 1996 IIAD (SC) 337 and also to the provisions of section 100 A(2) of DVAT Act.
7. On the other hand, learned counsel for Revenue has submitted that the orders of penalty were uploaded by the department and since the dealer has been filing returns from time to time, it must have been aware of uploading of the said order. Learned counsel has further submitted that penalty was imposed on the ground of late filing of the return and as such this is not a case where the appeals deserves to be entertained waiving the condition of pre deposit.
8. As regards section 100A (2) of DVAT Act, we have enquired from learned counsel for the appellant if any notification in the official gazette was issued by the government. Learned counsel for the applicant submits that he is not aware of any such notification.
9. In Kilasho Devi Burman's case (supra), the record produced by the Revenue before the Tribunal did not contain ^{at all signed} assessment order or signed assessment form.



Here, the assessment has been framed under DVAT Act, which came into force in 2005. This is not a case where any record has been filed by the Revenue which does not contain at all signed assessment order.

Learned counsel for the Revenue submits that the orders are uploaded on the system in terms of the circular issued by the Commissioner and that the decision in Kilasho Devi Burman's case (supra), does not apply to the facts of this case as there is nothing to suggest in the said decision that there was any provision for uploading of assessments orders at the relevant time.

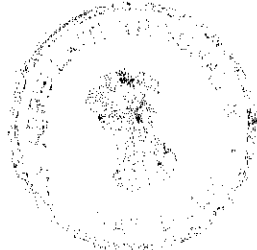
10. This is a case where in the statement of facts, the dealer applicant has clearly admitted that the due date for filing of return was 12/12/2013, under both the Acts i.e. DVAT & CST Act and that the same were furnished by the dealer on 4/4/2014 and accordingly filed late by 94 days.

The only explanation for delay in filing of the return is that the applicant was under treatment of severe Typhoid fever and he was advised complete bed rest. However, no medical record has been filed by the dealer.

Counsel for the applicant submits that affidavit of the dealer was submitted before learned OHA. A perusal of copy of the said affidavit would reveal that the same was not got attested. It

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remains unexplained as to how this photo copy of the affidavit contains signatures of the applicant in original.

As regards the other point of carelessness of the accountant, there is nothing on record to suggest that any affidavit of the said accountant has been filed or was submitted before learned OHA.


- & points involved*
11. In the given facts and circumstances, the appeals are entertained but subject to deposit of Rs. 10,000/- i.e. Rs. 5,000/- each for each assessment by the dealer. This application u/s 76(4) is disposed of accordingly.

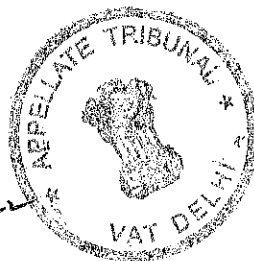
Applicant is given 25 days' time to deposit the said pre-deposit amount in each appeal. Put up on 10/6/2022 for final arguments. Counsel for the applicant to apprise the Registry and Ld. Counsel for the Revenue about compliance well in time, so that appeals are taken up for final arguments.


12. 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 web-site.

Announced in open Court.

Date : 13/5/2022.


(Rakesh Bali)
Member (A)



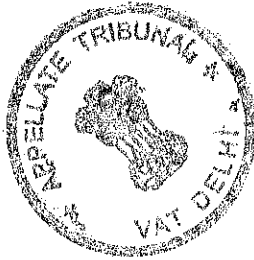

(Narinder Kumar)
Member (J)

Application no - 422/ATVAT/22 / 4380-87
Appeal No. 395-396/ATVAT/22

Dated: 18/05/2022

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