

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

M.A. No. 440/22

In Appeal No.563-572/ATVAT/13

Date of Order: 17/05/2022

M/s Arise Surgical,
5/28, 2nd Floor, Industrial Area,
Kirti Nagar,
New Delhi-110015.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. R. K. Batra.

Counsel representing the Revenue : Sh. M.L. Garg.

ORDER

1. This order is to dispose of an application presented on behalf of the dealer in the above captioned set of appeals No. 563-572/13.
2. The appeals came to be filed on 26/9/2013 challenging the order passed by learned Objection Hearing Authority (OHA) on 19/7/2013. This application has been filed on 28/4/2022.
3. Learned OHA dismissed the objections filed by the dealer – appellant – applicant. Those objections were filed challenging



Page 1 of 6

M.A. No. 440/22
In Appeal No.563-572/ATVAT/13

assessments of tax, interest and penalty framed by learned Assessing Authority on 4/11/2009.

Assessment of tax and interest pertains to tax periods 1st, 2nd, 3rd, 4th quarter of 2008-09; and 1st quarter of 2009-10.

The assessments pertaining to penalty relate to the tax period 1st quarter of 2008-09; 2nd quarter of 2008-09; 3rd quarter of 2008-09; 4th quarter of 2008-09; and 1st quarter of 2009-10.

4. By way of present application, dealer – applicant has sought to produce on record 46 documents as shown in the index of papers submitted with the application.
5. The averment put forth in the application is that the Assessing Authority has observed that stocking /sleeves used post operating as a protector composer or for faster recovery as it is a product by its nomenclature or by use/ utility which does not fall in the category of Medical Equipment, Devices and implants, and accordingly levied tax @ 12.5% with interest also imposed penalty u/s 86(10) of the DVAT Act.

Further as claimed in the application, learned OHA without adjudicating the submissions observed that the items sold by the



dealer were glove^s which is neither an instrument nor apparatus or implant.

6. Learned counsel for the applicant has argued that the interpretation of an item is a legal argument and it can be raised at any stage of the proceedings. Learned counsel further submits that when these proceedings before this Appellate Tribunal are in continuation of assessment proceedings, to advance arguments on the interpretation on the said item of the dealer, the dealer applicant be allowed to produce the 43 documents which find mentioned in the index.
7. Learned counsel for the Revenue has opposed the application by submitting that there is no explanation coming from the side of the dealer-applicant as to why these documents, now sought to be filed, were not produced before learned OHA, and as such the application deserves to be dismissed.
8. Rule 57C (2) of DVAT Rules provides that Appellate Tribunal shall not, for the first time receive in evidence on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred.



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17/5

9. On perusal of the index of papers sought to be filed, we find that serial no. 2 is photocopy of a certificate from a doctor of Dr. Ram Manohar Lohia Hospital.

The certificate is not in original. The date of its issuance is not mentioned. The column meant for date is lying blank. The certificate does not bear the name of the Doctor issuing this certificate.

Learned counsel submits that it has been issued on 30-08-2013. Even if it has been issued on 30-08-2013 by any Doctor of the said Hospital, applicant is unable to explain as to why no such certificate was produced before learned OHA. Therefore, for want of any sufficient cause, prayer of the applicant to take this certificate on record by way of evidence is rejected.

10. As regards documents from serial no. 3 -38 and from 40-45, no Authenticity or genuineness is attached to any of these documents.

It is submitted on behalf of the applicant that the same have been downloaded from internet.



17/5

In the application, appellant-applicant has not furnished any explanation as to why the documents mentioned at serial no. 2-38 and 40-46 were not placed on record before learned OHA.

In view of the provision of sub-rule (2) of Rule 57C when the applicant has not satisfied ^{the Tribunal} that it was prevented by sufficient cause from producing the above said documents before learned OHA, and no authenticity is attached to the above referred documents which are only photocopies, we do not deem it a fit case to allow the prayer of the applicant.

11. As regards documents at serial no. 46, same is ^a list of orders passed by Commissioner of Sales Tax, u/s 102 of West Bengal VAT Act.

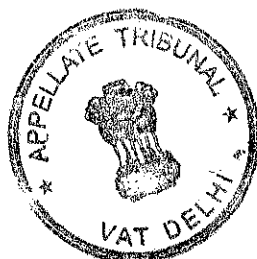
However, during arguments, learned counsel for the applicant has not been able to point out relevancy of this list as regards the matter in dispute in these appeals.

Furthermore, no authenticity is attached to this list as the same is not a certified copy issued by any competent authority.

12. In view of the above discussion, the application for additional evidence deserves to be dismissed. Accordingly, the same is hereby dismissed.

12/5


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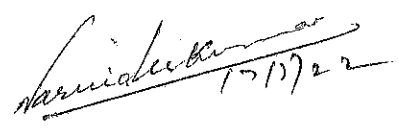


13. At serial no. 39 is a copy of a decision by the Hon'ble High Court of Andhra Pradesh. Reliance can safely be placed by learned counsel for the dealer-appellant in the course of final arguments and there is no question of seeking permission from the court in this regard.
14. Copy of the order be supplied 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: 17/5/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



MA.NO - 440/22
In Appeal No: 563-572/ATVAT/13/4403-10

Dated: 19/05/2022

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

