

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

Appeal No. 82/ATVAT/19
Date of Judgment: 17/5/2022

M/s Mahadev Enterprises,
126, New Qutab Road,
Sadar Bazar,
Delhi-110006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

JUDGMENT

1. By way of present two appeals, dealer - a firm has challenged order dated 25/09/2019 passed by Learned Objection Hearing Authority-Additional Commissioner, Delhi, whereby objections filed by the said dealer in respect of assessment of tax and interest, relating to 4th quarter of 2013-14 and imposition of penalty, in respect of tax period-3rd quarter of 2015-16, have been rejected.

The objections have been dismissed on the ground that the same were filed beyond the prescribed period of limitation.



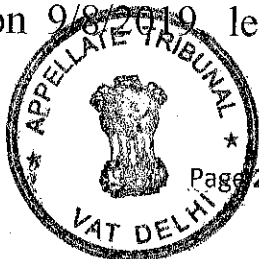
Narinder Kumar
17/5/22

Rakesh Bali
17/5/22

2. Notice of default assessment of tax and interest (dated 1/12/2017) was issued by the Assessing Authority-AVATO (Ward 5) on the ground that despite notices dated 14/09/2016 and 14/05/2017, dealer had failed to produce documents alongwith tax invoice, on which refund was claimed by the said dealer. Keeping in view the provisions of Section 9(8) of DVAT Act, the Assessing Authority disallowed ITC to the tune of Rs. 1,11,469/-.

The Assessing Authority directed the dealer to pay Rs. 1,11,469/- by way of tax.

3. It may be mentioned here that vide order dated 25/09/2018, the Assessing Authority had also imposed penalty of Rs. 10,000/- on the dealer-appellant, in respect of 3rd quarter of 2015-16.
4. In the statement of facts, dealer has alleged that the OHA, illegally and arbitrarily dismissed the objections vide order dated 25/11/2019, without confronting the firm with the fact of limitation on the point of filing of objections.
5. As regards imposition of penalty of Rs. 10,000/-, concerning tax period 3rd quarter 2015-16, it finds mentioned in the impugned order passed by learned OHA that during proceedings on 9/8/2019, learned counsel for the dealer had



withdrawn the other objection No. 3894/15 pertaining to imposition of penalty of Rs. 10,000/-.

6. It may be mentioned here that the dealer had filed only one appeal but inadvertently the registry assigned two numbers i.e. 82 & 83/19. It was only on the pointing out of the office that rectification of error in this regard was carried out. So, there is only one appeal No. 82/19 being disposed of. By way of this appeal, levy of tax and interest relating to 4th quarter 2013 has been challenged.
7. Arguments heard. File perused.
8. In the course of arguments, the learned counsel for the dealer – appellant has submitted that at the time of hearing on objections, the point of limitation was neither raised nor argued and that learned OHA has dismissed the objection while taking into consideration the point of limitation and that too when dealer was not within the know of this point of limitation. Learned counsel for the appellant has submitted that the objections were filed within limitation as the notice of default assessment was never served upon the dealer.
9. On the other hand, learned counsel for the Revenue has submitted that the objections were filed on 13/11/2018 whereas the notice of default assessment was issued on 1/12/2017, and



as such the objections have been rightly rejected by learned OHA on the ground that the same were barred by limitation.

10. In reply, the contention raised by the learned counsel for the appellant is that the notice of default assessment u/s 32 of DVAT Act, dated 1/12/2017 is an unsigned order and appears to have been uploaded on the portal and as such it cannot be said to be a case of due service of notice.

11. In the course of arguments, we have enquired from learned counsel for the dealer – appellant if any application was filed by the dealer before learned OHA while submitting objections, showing the reason for delay in making the objection, as required under Rule 52(3) of DVAT Rules 2005.

Learned counsel for the dealer submits that no such application was filed, but at the same time submits that when it was a case of non service of notice of default assessment, the objection was filed within the period of limitation, consequently upon getting copy of this impugned assessment, and as such the objections were not barred by limitation.

12. A perusal of the copy of DVAT-38 dated 13/11/2018 submitted by the dealer before learned OHA would reveal that in column No. 8 thereof, the dealer mentioned that the assessment order was served on 24/9/2018. Accordingly, at sl. No. 9, DVAT-38, the dealer stated that the objection was being filed within time.



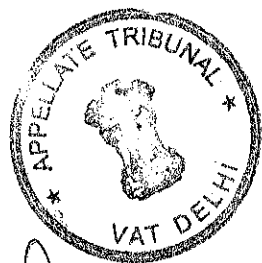
However, in para No. 15 the dealer alleged that notice had not been served on the dealer, and it came to know about the same only when documents were produced. It is not clear as to which documents, the dealer was referring to while so mentioning in para 15, but the fact remains that it was his case that notice of assessment was not served.

In this situation, as provided under rule 52(3), the dealer was required to submit statement in form DVAT-39, particularly when the objections were being submitted after the time limit prescribed under sub-section(4) of section 74 showing the reason for the delay.

Admittedly, no such statement was submitted in form DVAT-39. Undisputedly, no application was submitted by the dealer before learned OHA seeking condonation of delay.

13. Learned counsel for the dealer submits that it was on the Respondent – Revenue to prove due service of notice of default assessment.

On the other hand, it has been submitted on behalf of the Revenue that it was firstly for the dealer to seek condonation of delay and prove sufficient cause for filing of objections beyond the prescribed period.



14. In view of provisions of Rule 53(3) of DVAT Rules, had the dealer filed statement in form DVAT-39 showing reason for delay, the dealer would have been required to lead evidence, even by way of affidavit to prove that there was sufficient cause in presenting the objections beyond the prescribed period of limitation. Only thereafter, the onus would have shifted to the Revenue to prove that it was a case of due service of notice of default assessment. However, when the dealer neither filed any application nor submitted DVAT-39, seeking condonation of delay, it cannot be said that firstly the Revenue was to prove due service of notice of default assessment.
15. In the given situation, keeping in view the submission of learned counsel for the appellant that the point ^{of} ~~was~~ limitation was neither raised nor argued, in order to afford a reasonable opportunity to the dealer to satisfy learned OHA on the point of delay or submission of the objections after the prescribed period of limitation, we deem it a fit case to remand the matter to learned OHA.
16. Accordingly, the impugned order passed by learned OHA rejecting objections pertaining to 4th quarter 2013-14 is set-aside, and while disposing of the appeal, we remand the mater^{ial} to learned OHA.

The dealer – objector to submit DVAT-39 before learned OHA furnishing each detail required therein. Learned OHA to



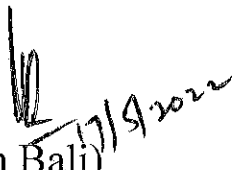
provide reasonable opportunity of being heard to the dealer – objector on the point of delay/ condonation of delay.


In case learned OHA arrives at the conclusion that there was sufficient ground for condonation of delay or for filing of the objections after the prescribed period of limitation, learned OHA to proceed to dispose of the objections on merits.

17. Dealer – objector to appear before learned OHA on 26/5/2022.
18. File be consigned to the record room. Copy of the judgment 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)



Appeal No. 82/ATVAT/19/4395-02

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

