

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

Appeal No.07/ATVAT/2019
Date of Judgment: 18/5/2022.

M/s Arkay Radios,
4162, Naya Bazar,
Delhi-110006.

.....Appellant

v.

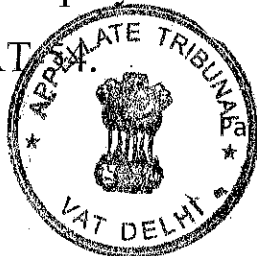
Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. S. Sangal.
Counsel representing the Revenue : Sh. M. L. Garg.

JUDGMENT

1. Dealer – appellant has preferred this appeal against order dated 18/2/2019 passed by learned Commissioner (VAT). Vide impugned order, learned Commissioner dismissed application filed by the dealer under the provision of Rule 49A of Delhi Value Added Tax Rules-2005 (hereinafter referred to as DVAT Rules).
2. Appellant is engaged in the business of works contracts and registered under Works Contract Act 1999.
3. Application under Rule 49A of Rules 2005 was filed on 6/10/2014 with prayer for extension of time in filing of DVAT-53 and DVAT



Appeal No.07/ATVAT/2019

4. The application came to be dismissed due to the following reasons :

“I have heard the arguments put forward by both the sides and gone through the documents placed on records and the various judgments cited by the applicant. In the instant case a reading of rule 30A shows that the intent of the legislature is very clear while framing rule 30A, to restrict the submission of the documents along with the first return filed after the insertion of rule 30A. Also normally the power under rule 49A can be exercised when the delay is reasonable and sufficient cause is shown for such delay. There is inordinate delay of 402 days and no justifiable reasons have been given. Mere ignorance of the amendment of the rule can't be the basis for condonation of such inordinate delay and accordingly, considering all facts and circumstances of the case, the application for condonation is rejected.

5. It may be mentioned here that section 76 of DVAT Act does not provide for remedy by way of appeal against such an order passed on an application under Rule 49A of DVAT Rules.
6. Even otherwise, we find that there is no merit in this appeal. As per section 105 (4) of DVAT Act read with rule 33A of DVAT Rule, 2005, dealer was required to file documents upto



28/1/2006 but the dealer failed to do so. It filed DVAT -53 & 54 on 6/3/2007.

Record reveals that assessment was made by the Assessing Authority on 23/4/2008, for the 1st, 2nd, 3rd & 4th quarter of 2005-06 and also in respect of 1st quarter of 2006-07. The Assessing Authority clearly observed that DVAT 53 & 54 were not filed by the dealer – assessee within the prescribed period i.e. by 28/1/2006. As submitted by learned counsel for the appellant, DVAT-53 & 54 were filed on 6/3/2007 i.e. beyond the prescribed period. As a result, claim of the dealer for refund was rejected, without taking into consideration DVAT-53 & 54 which were belatedly filed. Objections were filed by the dealer against the said assessment but learned OHA dismissed the objections.

6. In the course of arguments, it is admitted by learned counsel for the appellant that dealer was aware of the amendments made in DVAT Act and ^{there is} ~~ie.~~ why he filed revised returns on 23/1/2006 in respect of 1st & 2nd quarter of 2005-06, and also presented returns in respect of 3rd & 4th quarter of 2005-06 on 28/1/2006 & 27/4/2006 respectively.

In the given facts and circumstances, when the dealer failed to file DVAT-53 & 54 within the prescribed time, it should have



filed an application before the Commissioner under Rule 49A of DVAT Rules, ^{before or} soon/after filing of revised return. The dealer – appellant filed application under Rule 49A of DVAT Rules, before the Commissioner seeking extension of time after more than five years of the rejection of the objections. In the course of arguments, learned counsel for the dealer has not been able to explain as to why the application under Rule 49A of DVAT Rules was filed after more than 8 years of the filing of the revised returns.

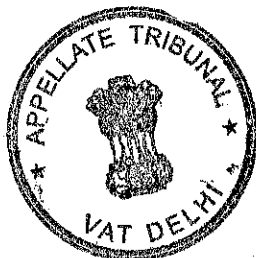
In view of the above discussion, we do not find any merit in this appeal. Same is hereby dismissed.

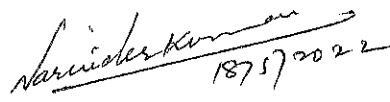
7. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date :18/5/2022


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 07/ATVAT/2019/4428-35

Dated: 20/05/2022

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

