

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial)

Misc. Application No. 372/22

Appeal Nos. : 753-766/ATVAT/22 //

Date of Order: 09/06/2022

M/s. Cardio Fitness Pvt. Ltd.
B-23, Industrial Area, Okhla Phase-II
New Delhi – 110 020.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Applicant :

Sh. A.K.Babbar

Counsel representing the Revenue :

Sh. S.B.Jain

ORDER

1. This order is to dispose of application filed on behalf of the dealer – Cardio Fitness Pvt. Ltd., with prayer that the additional evidence by way of documents mentioned in it be taken on record and considered for the purpose of adjudication of appeals.
2. Following documents are sought to be produced by the dealer-appellant by way of additional evidence:-

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1. Turnover of sales.
2. Balance sheet.
3. "D" Portion of Challans
4. DVAT Return for Aug'08.
5. CAR Sales Papers (Delhi)
6. Endorsement dated 11.11.2011 and solvage car sales outside Delhi.
7. Bills, GR details.

3. It may be mentioned here that from the documents from serial No. 1 to 7, described in the index, learned counsel for the applicant has pressed the application for production of the documents only at serial No. 2 & 7 i.e. copies of balance sheet, and bills, GRs, the reason being that document at serial No. 1 is only an unsigned table depicting the amount of the demands raised and the amount deposited by the appellant by way of pre deposit, and documents at serial No. 3 are copies of challans whereas, document at serial No. 4 is only copy of return for August, 2008. As regards documents at serial No. 5 & 6, application has not been pressed when attention of learned counsel of the applicant has been drawn to the observations made by learned OHA that the impugned assessments were challenged only as regards rejection of statutory forms.

4. Learned counsel for the appellant – applicant has submitted that the documents sought to be produced are relevant for



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adjudication of the matter and that the dealer could not produce the same as it was prevented by sufficient cause in not placing the same on record earlier. Learned counsel has also submitted that the Court may allow the application even while imposing costs upon the dealer for non production of the said record, as generally Court should be liberal in allowing such prayers subject to costs.

5. Learned counsel for the Revenue has straight way opposed the application in the course of arguments on the ground that ample opportunities were granted by the Assessing Authority to produce record in support of its claim, but it failed and as such the application recently filed in the year 2022 be dismissed, when no sufficient cause has been put forth for non production of the said record / documents earlier.
6. As regards, production of fresh evidence, Rule 57A (8) of Delhi Value Added Tax Rule, 2005 provides that every appeal where fresh evidence is sought to be produced, shall be accompanied by a memorandum of evidence sought to be produced, stating clearly the reasons why such evidence was not adduced before the authority against whose order the appeal is being preferred.

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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.

As provided under Regulation 20 of Delhi Vat (Appellate Tribunal) Regulations, 2005, the parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed, to enable it, to pass orders or for any other substantial cause, or if any of the authorities below has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by him or not specified by him, the Tribunal may allow such documents to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced, subject to the condition that the Commissioner shall be entitled in that case to lead rebuttal evidence.

7. Here, the appeals were filed in the year 2011, but this application seeking permission to produce additional evidence



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came to be filed on 21/2/2022 when the appeals were pending for final arguments.

8. The matter pertains to tax period April 2008, September 2008, October 2008, November 2008, December 2008, January 2009 & March 2009. The objections were filed in the year 2010 challenging default assessment of tax, interest and separate assessment of penalty framed on 13/21 of December, 2010.
9. As observed by the Assessing Authority in the impugned orders, the dealer failed to produce requisite record despite ample opportunities. In this regard, the relevant portion of the assessment for the tax period April, 2008 is reproduced for ready reference. It reads as under :-

“April 08: During the course of audit and test check of records such as DVAT-30/31, cash book ledger, sale/purchase vouchers, audited balance sheet for 2008-09 and other related documents, it was observed that the firm has been making central sale against C/F/I form. At the time of visit the dealer could not produce the complete records including the GR's of central sales and so he undertook to produce the documents mentioned in his statement on 17-11-10. Nobody appeared on that date. Sh. Biswas appeared on 18-11-10 and submitted some documents. He was again asked to produce some documents like Form-4/7 along with copy of



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GR's and details of capital assets sale and tax deposited on that, copy of all central sale against statutory forms along with GRs copy on 22-11-10.

He again appeared on 22-11-10 and submitted Form-4/7 w/o mentioning the transportation details, therefore he was asked to produce the original file of central sale along with GRs, Form-4/7 and details of capital assets sale and tax deposited on that on 25-11-10. Sh. Biswas appeared on 25-11-10 and submitted Form-4/7, original central sale file, but again failed to give the details of tax deposited on capital assets sale as shown in their audited balance sheet of 2008-09."

10. The objector filed objections before learned OHA in the year 2010. Learned OHA, while dealing with the objection took into consideration that the dealer – objector did not submit any proof regarding movement of goods, despite opportunity before the Assessing Authority and further that with the objections, dealer filed worksheet showing details of GRs.

11. The only reason put forth by the applicant for non production of the said record is that the same was not traceable at particular point of time. In the application, it has not been specifically alleged that the said documents were not traceable even when the proceedings were pending before Assessing Authority and the objections were pending before learned



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OHA. For the first time, in the affidavit submitted by Sh. Akhilesh Kumar, Manager Accounts of the dealer – appellant, it has been testified that these documents could not placed "before the OHA" as the same were not traceable at that point of time, due to the reasons that the record had got mixed and that some record is of the branches other than that of Delhi.

The deponent has not explained non production of this record "before the Assessing Authority," who had granted ample opportunities to the dealer for production of the entire relevant record.

12. The deponent has nowhere testified as to with which other record, which of the documents now sought to be produced had got mixed and as to on which date the said documents were traced out or as to which of ^{the} official came across the said documents while these were lying mixed. Details of the record from where the said documents have been traced out, do not find mentioned either in the application or in the affidavit.
13. In view of the above discussion, when the applicant has failed to establish that it was prevented by sufficient cause from producing the documents pertaining to the central sales before the Assessing Authority and before learned OHA, and number



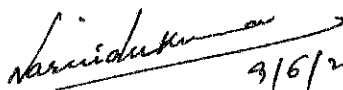
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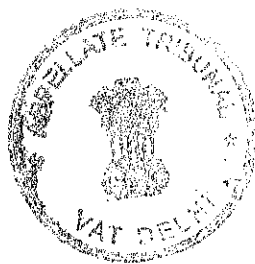
of opportunities were granted by the Assessing Authority to the applicant to produce the entire relevant record, present application deserves to be dismissed. Same is accordingly dismissed.

14. Copy of order be also 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 : 09/06/2022.


(Narinder Kumar)
Member (J)



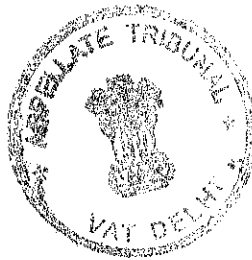
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In Appeal No. - 753-766/AT VAT/II / 4792-99

Dated: 10/06/2022

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

