

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (J)

Appeal No.-415-416/ATVAT/14
Date of Judgment: 21/06/2022

M/s S.J. Constructions,
A-389, Defence Colony,
New Delhi-110024.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. A. K. Bhardwaj
Counsel representing the Revenue : Sh. M. L. Garg

JUDGMENT

1. On 09-12-2014, learned Special Commissioner-II disposed of objections filed by the dealer-assessee-objector-appellant herein.
2. By way of impugned order, learned OHA remanded the matter to learned Assessing Authority of Ward-98 for decision afresh, after providing to the dealer an opportunity of being heard, but at the same time imposed cost of Rs. 50,000/- in respect of each case of assessment.
3. The operative part of the impugned order reads as under:-

“Therefore, in these facts and circumstances of the case and subject to deposit by the objector a ‘cost’ of Rs.50,000/- (Rupees Fifty Thousand only) in respect of each of the assessment cases



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submit its case and the orders having been passed in utter violations of the principle of natural justice.

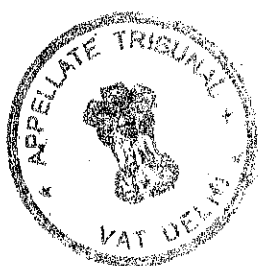
Another submission put-forth by learned counsel for the objector before learned OHA was that the dealer-objector was in possession of complete supporting evidence/record and was prepared to produce the same before the Assessing Authority at any time.

8. In this regard learned OHA observed that the objector had admitted service of notice, as regards tax period 2009-10, through Ward Inspector, but denied service of notice u/s 59(3) of DVAT Act as regards the other tax period i.e. 2010-11.

As finds mention in the impugned order, the objector also stated about presence of its representative in the Ward on 09-07-2012 in connection with notice DVAT-10. Learned OHA observed that presence of the representative of the dealer in the Ward on 09-07-2012, in connection with notice DVAT-10 was not borne out from the assessment record.

However, while affording one more opportunity to the dealer-objector of being heard and to submit its case for the purposes of framing of assessments afresh, learned OHA was of the opinion that in view of the law laid down by the Hon'ble higher Courts and the Tribunal, in case of ex-parte judgments, would be sufficiently met and served if cost of Rs. 50,000/- in each assessment case was imposed, when the objector was

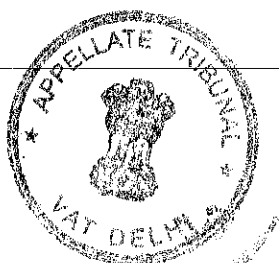
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OHA. It further finds mention in the impugned order that more material was available with the dealer-objector.

11. In the given situation, as rightly submitted by the learned counsel for the dealer-appellant, learned OHA could himself consider the entire material placed on record by the dealer-objector in the objections and allow the dealer to produce the remaining supporting evidence before itself i.e. before learned OHA, the reason being that in view of decision in **Sales Tax Bar Association (Regd.) v. Govt. of NCT of Delhi**, W.P. (C) No. 5711/2012 passed by our own Hon'ble High Court on 07 December, 2012, providing of opportunity to the dealer by learned OHA is equally effective even though as a post decisional hearing.
12. In the given facts and circumstances, I find that when learned OHA preferred to remand the matter to learned Assessing Authority for decision afresh after providing to dealer-assessee an opportunity of being heard, including production of necessary documents, the proper course to be adopted by learned OHA was that he should have remanded the matter without imposing cost.
13. In view of the above discussion, these appeals are allowed and imposition of cost of Rs. 50,000/- in respect of each assessments cost is set aside.

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Appeal No. 415-416/ATVAT/14/4856-63

Dated: 22/06/2022

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. | |



[Signature]
REGISTRAR