

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

Stay Application No. : 483/22 ✓  
In Appeal No. : 411/ATVAT/22  
Date of Orders: 24/6/2022

M/s. Enterprise Trading Co. (ASH),  
B3, Rajouri Garden, Vishal Enclave,  
New Delhi-110027.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. P. K. Bansal.  
Counsel representing the Revenue : Sh. C. M. Sharma.

**Order**  
**on Stay Applications u/s 76(4) of DVAT Act**

1. Along with Appeal No. 411/22, dealer – assessee – objector has filed Application No. 483/22 with the prayer that the disputed demand be stayed till the disposal of the appeal. At the same time, it has been prayed that condition by way of pre-deposit of the disputed demand be waived and appeal be heard on merits.

2. By impugned order dated 25/05/2022, <sup>learned</sup> / Additional Commissioner – learned OHA dismissed the objections filed by the dealer against notice of assessment of penalty, while observing that the said notice was rightly and legally issued in accordance with law.

*Narinder Kumar*  
24/6/22



Page 1 of 3

Stay Application No. : 483/22 ✓  
In Appeal No. : 411/ATVAT/22

3. Notice of assessment (dated 01/02/2021) of penalty was issued by learned Assessing Authority - AVATO (Ward-57), finding that it was a case of violation of provisions of Section 86(10) of DVAT Act as the dealer failed to appear/submit documents for the year 2016-17.
4. When the objections came up before learned OHA, learned counsel for the objector put-forth the ground that no proper opportunity was afforded to the objector before passing assessment of penalty. In this regard, reference was made to circular dated 17/01/2014 passed by learned Commissioner.
5. As noticed above, learned OHA dismissed the objections vide impugned order. Hence, this appeal accompanied by the application.
6. In the statement of facts of this appeal, the dealer – appellant has averred that penalty has been imposed without service of any notice; that the impugned order passed by learned OHA is not a speaking order; that VATO – Assessing Authority should have specified in the notice of assessment as to for which date and vide which mode notice u/s 59(2) of DVAT Act was served upon the dealer and further that this point was raised before learned OHA, but even then the objections have been rejected.
7. Learned counsel for the applicant has submitted that from the impugned assessment of penalty, it remains unexplained as to



12  
24/6

under which provision of law the said penalty has<sup>actually</sup> been imposed, as at one place section 86(14) of DVAT Act finds mentioned, but at the other two places section 86(10) finds mentioned. Therefore, the contention is that the impugned assessment deserved to be set-aside for want of clarity as to under which provision of law the penalty was being imposed. Further, it has been contended that learned OHA simply upheld the impugned order without taking into consideration the above said fact which remained unexplained.

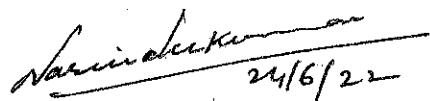
8. Keeping in view that in the impugned assessment, prima-facie it is not clear as to why section 86(14) finds mentioned in the body of the notice of assessment whereas at other two places section 86(10) finds mentioned. Revenue will have to explain at the time of final arguments regarding this ambiguity in the impugned assessment. Therefore, the appeal deserves to be entertained waiving the condition regarding pre-deposit. The application is accordingly allowed.

9. 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: 24/6/2022



  
(Narinder Kumar)  
Member (Judicial)

In M.A.No- 484/22  
Appeal No. 411/ATVAT/22/4864-71

Dated: 24/06/22

Copy to:-

- |  |                |
|--|----------------|
| (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<br>DVAT/GST, Delhi - through EDP branch. |                |

  
**REGISTRAR**

