

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

M.A. No. : 509-511/22

In Appeal Nos. : 152-154/ATVAT/11

Date of Order: 21/7/2022

M/s. Bansal Service Station,
Rohtak Road, Nangloi,
Delhi-110041.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

CA representing the Appellant : Sh. Sunil Kumar Gupta.

Counsel representing the Revenue : Sh. C. M. Sharma.

Order

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

1. This order is to dispose of three applications u/s 76(4) read with Rule 57A(7) of DVAT Rules with prayer that the above captioned Appeal Nos. 152-154/11 be entertained without calling upon the dealer-appellant to deposit, by way of pre-deposit, any amount towards the demands in dispute.
2. Applicant is a dealer registered with Department of Trade & Taxes under Local Act (DVAT). It is stated to be a partnership firm. It is engaged in the business of Petroleum Products i.e. by running a Petrol-Pump. It has been filing monthly returns under DVAT Act, monthly, as per Rule 26(1)(d) of DVAT Rules.

Narinder Kumar
21/7/2022

3. On 30/12/2010, Assessing Authority – VATO (Ward-63), framed assessment in respect of tax and interest, u/s 32 of DVAT Act and called upon the dealer to pay tax and interest. Two Appeal Nos. 152-153/11 pertain to tax period 2005-06. One of them pertains to assessment of tax and interest and the other pertains to assessment of penalty.

The third Appeal No. 154/11 pertains to tax period 2006-07. It has been filed challenging assessment of tax and interest.

4. The default assessment was framed on the ground that the dealer-assessee had claimed ITC on petrol/diesel which evaporated and shortage, but no ITC was allowed for the same.

Assessing Authority also took into consideration that the dealer had not paid any output tax. Therefore, he reversed the ITC.

5. It may be mentioned here that the Assessing Authority clearly observed in the default assessment that it was subject to final outcome of decision by the Hon'ble High Court of Delhi in **M/s Delhi Petrol Dealers Association vs. Commissioner, New Delhi**.

6. Feeling aggrieved by the above said default assessment, dealer-assessee filed objections before Learned OHA. Learned Additional Commissioner (Special Zone), vide order dated 10/03/2011 rejected the objections, for the reasons recorded therein. Hence, these appeals.

21/7

7. In **Delhi Petrol Dealers Association and BPCL Petrol Dealers Association vs. Commissioner, New Delhi and others**, 2014 (8) TMI 445, same point was involved as it was argued on behalf of the appellant that even the evaporation loss component is added as credit claim. In this regard, reference was made to circular No. 47 of 2005-06 issued in January 2006. It was argued on behalf of the petitioner therein that the directions issued by the Commissioner vide said circular were without authority of law.

On the other hand, it was argued that the circular could not be read as direction to take a particular position with regard to assessment proceedings, but had to be construed more as a guidance.

Our own Hon'ble High Court, while disposing of the petition, observed that the impugned circular shall not bind the authorities in taking a particular view to disallow the claims for the evaporation losses claimed as credit by the petitioners therein at the point of sale to their customers, and further that such claims shall be examined in taking into account by the Assessing Authority on a factual basis.

8. In the course of arguments on these applications, learned CA has referred to decision in **M/s Ruchika Service Station v. Commissioner of Trade & Taxes, Delhi**, (2018) 56 DSTC 361

21/7

by this Appellate Tribunal to point out that vide said decision, the matter was remanded to the Assessing Authority to find out whether ITC, claimed on losses due to evaporation, were reasonable and within the parameters as set out by the Oil Companies in this regard.

It is not case of the Revenue that decision in **M/s Ruchika Service Station** was challenged by the Revenue.

9. Learned CA for the applicant has also placed on record copy of order dated 19/12/2015 issued by the Ministry of Petroleum and Natural Gas, which contains the relevant provisions. Schedule-I available in this order issued by the Ministry pertains to the percentage as regards evaporation / handling losses in case of motors spirit and high speed diesel, and variation in stocks in the underground tanks.

In the course of arguments, learned CA for the dealer – appellant has submitted that dealer is voluntarily ready to deposit a sum of Rs. 5,000/- in respect of each appeal by way of pre-deposit.

10. On perusal of the assessment order, prima-facie it appears that the Assessing Authority took into consideration circular dated 23/1/2006 issued by the Commissioner, which was ultimately held to be not binding on the authorities. Prima-facie it appears that the account books and other relevant documents of the dealer – appellant were yet to be considered to find out as to at

dh
21/7/22



what rate the ITC was claimed by the dealer on the point of evaporation and if the percentage of evaporation / handling losses was or was ^{within permissible limits or} not in terms of the directions contained in order dated 19/12/2005,

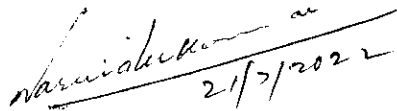
11. Keeping in view the decision in **M/s Ruchika Service Station's** case (supra), and the provisions of the order dated 19/12/2005, issued by the Ministry of Petroleum and Natural Gas, all these three appeals are entertained while allowing the dealer to deposit only a sum of Rs. 5,000/- in respect of each appeal.

The dealer-appellant to deposit pre-deposit amount within 15 days and also to apprise the Registry and counsel for the Revenue regarding compliance with this order, so that the appeal is taken up on the next date i.e. on 16/8/2022 for final arguments.

12. Consequently, these applications are disposed of.
13. 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 : 21/7/2022


(Narinder Kumar)
Member (J)

M.A No. 509-511/22 / 5138-45
Appeal No. 152-154/11

Dated: 22/7/2022

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 DVAT/GST, Delhi - through EDP branch. | |


REGISTRAR

