

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 414/ATVAT/22

Date of Judgment : 3/8/2022

M/s. Jai Kishan Pawan Kumar,
A 93/24 Wazirpur Industrial Area,
D.S.I.D.C.
Delhi-110052

.....Appellant

v.

Commissioner of Trade & taxes, Delhi

..... Respondent

CA for the Appellant

: Sh. Raja Ram Gupta

Counsel for the Revenue

: Sh. C.M. Sharma

JUDGMENT

1. By way of above captioned appeal, dealer – assessee has challenged imposition of penalty of Rs. 50,000/- by learned Assessing Authority on 30/3/2019.
2. The matter pertains to tax period Annual 2014-2015.
3. The penalty came to be imposed due to the following reasons :



“A notice u/s 59(2) of DVAT Act, 2004 was issued to the dealer to produce documents and clarify the observation of Audit i.e. “Production of records for CAG Audit the F.Y. 2014-15” for the period 2014-15. The dealer was required to submit the documents

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i.e. Audited Balance sheet, Bank records including cheque books, statement, counterfoil and pay-in-slip, proof of receipt & delivery of goods, purchase register form, DVAT -30, sale register form, DVAT-31, statutory forms, stock register, GR/RR, stock summary (item wise) and tax invoices & retail invoices, export documents, bill of landing, shipping bills and ebrc etc. of the said period. The dealer failed to produce to documents at the given time. Hence, penalty u/s 86(14) of DVAT Act, 2004 imposed accordingly.”

4. Feeling dissatisfied with the imposition of penalty, the dealer – assessee filed objections before learned Objection Hearing Authority (OHA), u/s 74 of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act).
5. Vide order dated 19/4/2022, learned Additional Commissioner – OHA rejected objections and thereby upheld the levy of penalty.
6. Hence this appeal.
7. Arguments heard. File perused.
8. Learned CA for the appellant has contended that the dealer – assessee did not receive any notice u/s 59(2) of DVAT Act from the department and that the Assessing Officer did not allow proper opportunity of being heard before imposition of penalty, and as such the impugned assessment deserves to be set-aside.

As regards impugned order passed by OHA, learned CA has



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contended that the same deserves to be set-aside as OHA misinterpreted the observations made by the Assessing Officer.

9. As noticed above, Assessing Authority observed in the assessment framed on 30/3/2019 that a notice u/s 59(2) of DVAT Act was issued to the dealer to produce documents.

In the objections filed before learned OHA, the dealer raised specific objection/ ground of having not received any such notice from the VAT Department requiring to produce any information or document.

In view of this specific objection, learned OHA should have asked the Department for production of file or called for report from the Department as to on which date notice u/s 59(2) of DVAT Act was issued by the Department to the dealer and by which mode, and then recorded finding about due service of the said notice upon the dealer.

However, in the impugned order learned OHA simply observed regarding issuance of notice u/s 59(2) of DVAT Act, without calling for record from the department on the aforesaid significant aspect.

10. From the impugned order it transpires that learned OHA recorded specific finding that the objections deserved to be dismissed being barred by limitation. ^{recording} For this finding, learned OHA observed that the dealer had failed to provide sufficient



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and reasonable justification.

However, in the impugned order learned OHA has not discussed the plea put forth by the dealer – proprietor in his affidavit dated 9/8/2021 that he had come to know about the impugned assessment dated 30/3/2019 when its accountant/ representative attended the office of VATO for assessment of coming years, and further that he had received assessment order after about 2 years.

Reasons were required to be recorded by learned OHA to hold that the dealer had failed to provide sufficient and reasonable justification. In other words, in absence of any reasons or discussion no such finding could be arrived at.

11. In the given facts and circumstances, when it has been expressed by the Appellate Tribunal that this is a case where matter deserves to be remanded to Learned OHA for decision ~~on the objections~~ afresh, Learned Counsel for the parties are in agreement that the matter needs to be remanded to Learned OHA for decision afresh after providing to the dealer-objector reasonable opportunity of being heard.
12. From the impugned order, it does not transpire if the dealer – objector filed any application before learned OHA for condonation of delay in filing of the objections.
13. In the given situation, dealer – objector may file application in

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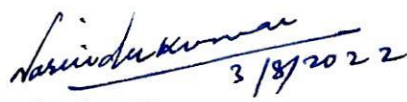
the appropriate DVAT Form before learned OHA furnishing all requisite particulars, seeking condonation of delay in filing of the objections, in consonance with the plea already put forth by the proprietor in his affidavit dated 9/8/2021 filed there.

14. As a result, these appeals are disposed of, the impugned order passed by Learned OHA is set aside and matter is remanded to Learned Objection Hearing Authority for decision afresh firstly on the application seeking condonation of delay in filing of the objections, and in case the objector satisfies the learned OHA that there was sufficient and reasonable cause in non filing of the objections within the prescribed period of limitation, only then to proceed to dispose of the objections on merits, of course after providing reasonable opportunity of hearing to the dealer-objector-applicant.
15. Accordingly, dealer-appellant to appear before Learned OHA on 26/8/2022.
16. File be consigned to the record room. Copy of the judgment 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 : 03/08/2022




(Narinder Kumar)
Member (Judicial)

Appeal no. 414/ATVAT/22/5226-33

Dated: 04/08/22

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 Bar Association) | |
| (5) PS to Member (J) for uploading the judgement on the portal of
DVAT/GST, Delhi-through EDP branch | |

REGISTRAR

