

**BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI**

Sh. Narinder Kumar, Member (Judicial)

Misc. Application Nos.: 529/22 & 530/22

In Appeal Nos. 423-424/ATVAT/22

Date of Order : 25/8/2022

M/s Universal Paper Product  
2488, Naiwara Chawri Bazar,  
New Delhi 110006.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

C.A. representing the Applicant : Sh. Kushagra Agarwal.

Counsel representing the Revenue : Sh. S.B. Jain.

**ORDER**

1. This common order is to dispose of the above captioned two Miscellaneous Application Nos. 529/22 & 530/22 filed in the above captioned appeals prayer in the applications is that the appeals be entertained exempting the applicant from depositing any amount towards the demand of tax and interest.
2. Appeals have been filed challenging order dated 15/06/2022 passed by Learned VATO - Learned OHA u/s 32 of DVAT Act.



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3. Vide impugned order objections filed by the dealer against default assessment of tax and interest framed on 05/11/2020 have been disposed of.
4. Vide assessment dated 05/11/2020, Learned Assessing Authority found that more Input Tax Credit had been claimed than the corresponding Output Tax as shown by the selling dealer, and as such the dealer-assessee claimed excess input tax credit in violation of provisions of clause (g) of sub-section (2) of Section 9 of DVAT Act.
5. While partly allowing the objections filed by the dealer, Learned OHA has rectified the demand of tax on account of mismatch, but at the same time, observed that the dealer having failed to produce invoice, Ledger Account, Bank Statement in respect of mismatch of Rs. 10,51,438/- as regards Raj Dealers & Distributors, ITC to the tune of Rs. 52,572/- remained unverified.
6. It may be mentioned here that vide assessment dated 05/11/2020, Learned Assessing Authority levied penalty of Rs. 1,63,996/- having found it to be a case of violation of provisions of Section 86(10). The dealer filed objections against this assessment of penalty as well. Learned OHA vide impugned order dated 15/06/2022 reduced the amount of penalty on account of breach of provisions of Section 86(10) read with Section 33 of DVAT Act.



2/78

7. In the application, dealer-applicant has alleged that Learned OHA failed to appreciate that this is not a case of mismatch in 2A and 2B and rather a case of technical default. As per case of the dealer-applicant goods purchased in 4th Qtr. were wrongly appearing in the mismatch report of the Department pertaining to 3rd Qtr. while actually there was no mismatch in 2A and 2B in respect of the 3rd Qtr. As further claimed by the applicant, it did not claim ITC in the 3rd Qtr. and rather claimed the same in the 4th Qtr. Further, it has been alleged that when it is not a case of any collusion between the two dealers, Department should not have denied tax credit to the applicant.
8. In the course of arguments on the application u/s 76(4) of DVAT Act. Learned counsel for the appellant-applicant has submitted that appellant-applicant is ready to furnish bank guarantee to the tune of Rs. 15,000/- by way of pre-deposit requirement for entertainment of these appeals.
9. Record reveals that Assessing Authority assessed liability of additional tax at rate 27571.90/- so far as the transaction with Raj Dealers and Distributors is concerned, in addition to that of interest and penalty. Learned counsel for appellant-applicant has pointed out that learned OHA enhanced the said demand i.e. of additional tax of Rs. 52572/-. It is for the Revenue to explain as to how this enhancement came to be made by learned OHA.



12  
298



10. In the given facts and circumstances, when in the impugned order there is no mention of any ground for enhancement of the said assessment, the appeals are entertained allowing the appellant-applicant to furnish bank guarantee to the tune of Rs. 15,000/-, for a period of six months. Bank guarantee to be furnished in accordance with Rules. Dealer to furnish compliance report within 10 days, and informed the Registry as well as counsel for the Revenue, so that on the next date i.e. 6/9/2022 appeals are taken up for final arguments.
11. 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: 25/8/2022



*Narinder Kumar*  
25/8/22  
(Narinder Kumar)  
Member (Judicial)

MA. No:- 529 & 530/22 / 5378-85  
Appeal no. 423-424/ATVAT/22

Dated: 26/8/22

Copy to:-

- (1) VATO (Ward-12)
- (2) Second Case File
- (3) Govt. Counsel
- (4) Secretary (Sales Bar Association)
- (5) PS to Member (J) for uploading the judgement on the portal of DVAT/GST, Delhi-through EDP branch
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)



REGISTRAR