

M/S HORIZON TECHNOLOGIES VS. COMMISSIONER

MA NO. - 555/22

APPEAL NOS.: 971-992/ATVAT/11

01/09/2022

Present: Sh. A. K. Babbar with Sh. Pradeep Verma, Counsel for Appellant.
Sh. S. B. Jain, Counsel for Revenue.

1. In this Miscellaneous Application No. 555/22 filed today the prayer is to produce on record additional evidence in the form of Annexures A, B, C and D. By way of Annexure A, documents consisting of 48 pages; by way of Annexure B, documents consisting of 57 pages; by way of Annexure C, two documents i.e. 2 Tax Invoices; by way of Annexure D, documents consisting of 378 pages are sought to be produced.
2. Learned Counsel for the applicant has submitted that these documents now sought to be produced could not be produced by the dealer-assessee before the Assessing Authority and before OHA as the same had got mixed with other on record.
3. With the application, affidavit of Sh. Sudeep Dutt, proprietor of the dealer has been filed.

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4. Learned Counsel for the applicant submits that since these documents are necessary for adjudication of the matter in dispute and the same could not be produced for the reason given therein, the application be allowed even subject to heavy cost.
5. Learned Counsel for the Revenue has opposed the application by submitting that the dealer had the opportunity to produce all these documents firstly before the Audit Team, then before the Assessing Authority and thereafter before the OHA, but no such document was produced, and as such the application deserves to be dismissed.

Even then Learned Counsel for the Revenue has further submitted that in case this Appellate Tribunal finds that production of these documents is necessary for adjudication of the matter in dispute, the applicant be burdened with heavy cost as also submitted on behalf of ^{-mr} ~~application~~ _{in}, as this application has been filed after 14 years.

6. Admittedly, the documents now sought to be produced were not produced before the Audit Team or before the Assessing Authority or before OHA.

In the application, it has been submitted that some of the documents were presented before this Appellate Tribunal

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earlier in the year 2014 in the form of a paper book, but since no permission was obtained from the Appellate Tribunal to produce the same on record, the present application has been filed.

Admittedly, in the form of paper book of the year 2014 copies of documents (only 192 pages) were submitted but no permission was sought from the Appellate Tribunal to place on record. Now, in all 485 documents are sought to be produced. Furthermore, this application has been filed 11 years after the filing of the appeal.

7. Even if the documents are stated to have got mixed with other documents, dealer should have been diligent to produce the same at the earliest.

The Assessing Authority clearly mentioned that the dealer had failed to produce the relevant document on the point of Inter-state Sales, Transit Sales and Exports, in addition to two tax invoices. Similarly, Learned OHA also observed that despite directions, the dealer failed to produce any such document in the form of GR or secondary evidence to prove movement of goods etc.

8. Keeping in view that the documents sought to be produced are relevant for adjudication of the matter in dispute i.e. Export Sales, Inter-state Sales and Transit Sales and also on

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the point of ITC, for the negligence on the part of the dealer-applicant, certainly it deserves to be burdened with heavy costs as rightly submitted by Counsel for both sides.

9. In the given facts and circumstances, the application is allowed and all the documents in the form of Annexure A, Annexure B, Annexure C and Annexure D are taken on record with costs of Rs. 1,00,000/- ^(one Lac) by the dealer-applicant in the appropriate head "others". Dealer-applicant to deposit costs and submit copy of challan within two days.
10. Wait for orders in the appeals on merits.
11. Copy of the order be supplied to both the parties as per rules. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 01/09/2022



Narinder Kumar
1/9/22
Narinder Kumar
Member (J)

MA NO. - 555/22
In Appeal No. 971-992/ATVAT/11/5450-57

Dated: 02/09/22

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


REGISTRAR

