

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

Miscellaneous Application No. 520/22

In Appeal No : 396/ATVAT/2017

Date of Order : 15/09/2022

M/s Delhi State Indl. & Infrastructure
Development Corporation Limited,
A-3/4, State Emporia Building,
Baba Kharak Singh Marg.
Con. Circus, New Delhi.

.....Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Applicant : Sh. Sudhir Sangal.
Counsel representing the Revenue : Sh. C.M. Sharma

Miscellaneous Application No. 521/22

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1579



V

Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Applicant : Sh. Sudhir Sangal.
Counsel representing the Revenue : Sh. P. Tara.

ORDER

1. This common order is to dispose of the above captioned two miscellaneous applications filed in the above referred to two appeals. The dealer - Appellant – Corporation is stated to be a Government undertaking of NCT of Delhi. It is engaged in the business of conducting sale of liquor and goods.
2. The applications have been filed with the prayer to place on record copies of following documents-mentioned therein:

S. No.	Particulars	Being Produced for the first time
1	Copy of letter dated 28/06/2022 to Joint Secretary (Finance), GNCTD	
2	Copy of letter dated 28/06/2022 to all CAOs; all Division Heads of the Works Division	



1579

3	Copy of order No.F.No.8/2/2007-AC/CD-.1295543/2012-13/1063-1082 dated 29/11/2012	
4	Copy of order No. F1.1-33/UC/CD/Policy CD-021297485/350-361 dated 10/03/2016 of Government of NCT Delhi, Finance (Infrastructure) Development specifying DSIIDC as work executing agency	
5	Copy of Circular No.F.14/5/2012-AC/usfa/182-92 dated 28/08/2012	
6	Copy of Circular No.F1(9)/2015-16/Fin./E-IV/Infra./012318065/DSIV/3850-3984 dated 10/08/2015	
7	Relevant extract of Manual for Procurement of Works, Ministry of Finance	
8	Draft Memorandum of Understanding	
9	Corporate Division of similar entities	
10	Work flow of DSIIDC contracts i.e. sanction orders and other	



1579

	documents pertaining to the year 2018 onwards	
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3. In the index, there is mention of decisions in **Moral Alloys Pvt. Ltd. v. Commissioner of Trade & Taxes**, W.P.(C) 10153/2018 and in **Sales Tax bar Association vs. Govt. of NCT of Delhi & Another**, W.P.(C) 14052/2006, decided by our own Hon'ble High Court, and sought to be referred at the time of final arguments.
4. Revenue has opposed this application by filing reply. Learned counsel for the Revenue has submitted that he has no objection to the filing of the synopsis and citing of the above said decisions.
5. Arguments heard. File perused.
6. It may be mentioned here that in the applications, applicant has prepared a list in respect of the documents sought to be produced. At S. No. 1 of the list of the documents, sought to be produced, under column "Particulars", synopsis find mention. It may be observed that no permission is required to submit any synopsis.
7. There is no S. No. 2 in the list which finds mention in the applications itself, what to say of any document. At S. No. 5 – 9 of the said list typed in the application, there is mention of copies of orders issued by the Government/Manual and same *are* ✓

1579



- ✓ stated to have already been submitted. But, it has not been specified as to before which authorities these documents were submitted.
8. As regards, reference to decisions of the Hon'ble Courts, at the time of final arguments, no permission is required to rely upon the same, as rightly submitted by Learned Counsel for the Revenue.
9. Both the appeals have been filed challenging the impugned order dated 12/12/2017 passed by learned OHA whereby notices of default assessment of tax, interest and penalty for the year 2009-10, framed by the Assessing Authority, have been upheld, while allowing the objections filed by the dealer to an extent.
10. As per case of the appellant, accounts of the Appellant Corporation were subjected to default assessment as regards tax period 2009-10. At that time, Assessing Authority found that the appellant – corporation had concealed turnover relating to works contract executed during the said period i.e. 2009-10.
11. Vide notice of default assessment of tax and interest u/s 32 DVAT Act, Assessing Authority directed the Appellant Corporation to deposit the amount of demand by way of additional tax and interest .

12/1/19

Page 5 of 9



Vide notice of assessment of penalty u/s 33 of Delhi Value Added Tax Act (here-in-after referred to as the Act) issued on 31/3/2016, the Assessing Authority also imposed penalty.

12. Feeling aggrieved by the above notices of assessment of penalty, Appellant Corporation filed objections. Vide order dated 12/12/2017, learned OHA - Addl. Commissioner, VAT, disposed of the objections filed by the Appellant Corporation, accepting one of the objections but rejecting the other objections and thereby upheld the levy of tax, interest and penalty by the Assessing Authority.
13. Feeling dissatisfied with the order dated 12/12/2017 passed by learned OHA, Appellant Corporation filed present appeals in the year 2017.

In this regard, learned OHA was of the view that the submission on behalf of the objector itself made it evident that the dealer was acting in the capacity of contractor and hiring / engaging sub contractor for execution of works contract of different nature; that the dealer was also making deduction of TDS u/s 36A of DVAT Act, but the dealer ceased its liability on this and did not discharge its liability as a dealer.



Page 6 of 9.

14. As further observed by the learned OHA, wherever contractors hire / engage sub-contractor they are supposed to take tax invoices from the relevant sub-contractor and further to take necessary ITC on such tax invoices as per prescribed column R-6.2(5) and R-6.2(6) of the periodical return i.e. DVAT 16 and then to discharge its tax liability on the value addition in the hands of such contractors as per column R-5.5 and column R-5.6.
15. Learned OHA did not find any merit in the argument advanced on behalf of the dealer – objector that the dealer corporation was not liable to pay VAT on the amount received from the Government Department for carrying out various projects and work contracts assigned by different department of Govt. of NCT of Delhi, the reason being that the said Act does not provide any specific exemption or exclusion to the Government Corporation from the liability of tax for execution of works contract.
- Accordingly, the learned OHA upheld the notices of assessments.
16. As noticed above, the matter pertains to the tax period 2009-10, but vide this application, orders or circulars sought to be produced pertain to the other – subsequent period i.e. years 2012, 2015, 2016 and 2018.

1579



Chapter 3 of copies of Manual for Procurement of Works, sought to be produced, pertains to the year 2019.

In the course of arguments, when this Appellate Tribunal has inquired from Learned Counsel for the applicant as to how documents pertaining to the subsequent years are relevant and sought to be produced, the reply is that such documents i.e. orders and circulars pertaining to the relevant tax period are not traceable / available with the dealer-appellant.

17. In the given facts and circumstances, noticed above, Learned Counsel for the Revenue has rightly submitted that instructions or directions or procedures issued/framed by the Government in the subsequent years i.e. subsequent to the tax period 2009-2010 are not at all relevant for adjudication of the matter in dispute in these appeals.
18. Copy of the company master data sought to be produced is not at all relevant for the adjudication of the matter in dispute.
19. Regulation 20 of Delhi VAT (Appellate Tribunal) Regulations 2005 reads as under:

“As provided under Regulation 20 of Delhi VAT (Appellate Tribunal) Regulations, 2005, the parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed, to enable it, to pass orders or for any other

179



substantial cause, or if any of the authorities below has decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by him or not specified by him, the Tribunal may allow such documents to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced, subject to the condition that the Commissioner shall be entitled in that case to lead rebuttal evidence.”

20. Learned Counsel for the Revenue has also rightly submitted that nowhere in the application, applicant has given any sufficient cause for non-production of any document previously i.e. before Assessing Authority or before OHA.
21. In view of the above discussion, the prayer in the application for production of the orders/circulars etc. containing instructions/guidelines issued by Government of NCT of Delhi deserves to be rejected.
22. 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 : 15/09/2022


15/9/2022

(Narinder Kumar)
Member (J)



MA No- 520 & 521/22
In Appeal no. 396 & 397/ATVAT/17 / 5514-21

Dated: 15/09/2022

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

