

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

Sh. Narinder Kumar, Member (Judicial)

M.A. Nos. 515-519/22

In Appeal Nos: 417-421/ATVAT/22

Date of Order: 19/09/2022

M/s Sirjan Ayurved.

WZ-79A Gali no.4,

Shiv Nagar-110058.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

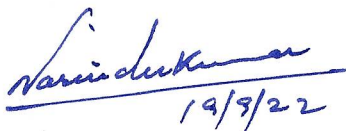
.....Respondent

Counsel representing the Applicant : Sh. S. Kumar.

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

**ORDER**

1. This common order is to dispose of five applications i.e. M.A. Nos. 515-519/22. These applications u/s 76(4) of DVAT Act have been filed with above captioned appeals through authorized signatory, Sh. Pramjit Singh.
2. Applicant is a proprietorship with Sh. Sahilpreet Singh Bhatia its proprietor.

  
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3. The matter pertains to the year 2014-15. Dealer has filed appeals challenging assessments of all the quarters and the order passed by learned OHA.
4. Initially, default assessments of tax and interest pertaining to 1<sup>st</sup> Quarter of 2013-14 were framed on 16/03/2022 under CST Act raising demand of additional tax and interest in total Rs. 13,201/-. Said demand was raised due to non-filing of Form-9 by the dealer.
5. Default assessment of tax and interest pertaining to 2<sup>nd</sup> Quarter of 2014-15 was framed on 06/03/2019 under CST Act raising demand of additional tax and interest in total Rs. 19,833/-. Said demand was raised due to non-filing of Form-9 by the dealer.
6. Default assessment of tax and interest pertaining to 3<sup>rd</sup> Quarter of 2014-15 was framed on 06/03/2019 under CST Act raising demand of additional tax and interest in total Rs. 15,970/-. Said demand was raised due to non-filing of Form-9 by the dealer.
7. Default assessment of tax and interest 3<sup>rd</sup> Quarter of 2015-16 was framed on 20/03/2020 under CST Act raising demand of additional tax and interest in total Rs. 19,649/-.  
Said demands were raised due to non-filing of Form-9 by the dealer.
8. Default assessment of tax and interest 4<sup>rd</sup> Quarter of 2015-16 was framed on 20/03/2020 under CST Act raising demand of additional



tax and interest in total Rs. 30,400/-. Said demand was raised due to non-filing of Form-9 by the dealer.

9. Feeling aggrieved by the above said assessments, dealer filed objections u/s 74 of DVAT Act.
10. Vide impugned order dated 17/02/2022, learned OHA-Joint Commissioner observed that the dealer failed to submit any ground for objection and that counsel for the objector submitted that nothing further was to be submitted on behalf of the objector. Taking into consideration all the facts and the legal position, learned OHA dismissed the objections. Operative part of the impugned order reads as under:-

“However tax rate mentioned in the order is 12.5% whereas tax rate as per return and invoices is 5% and also as per DVAT tax schedule is 5% for rectification of tax rate alone above objection is remanded back.

In this regard, the objector dealer is directed to appear before assessing authority within 15 days from the date of issuance of the order. Along with all the relevant documents/records in support of his claim for the period in dispute without waiting for a further notice in the matter from the Ward/Authority concerned and thereafter the assessing authority will complete the remand proceedings and pass the speaking order within one month.”

11. Hence, these appeals accompanied miscellaneous applications.
12. Arguments heard on the miscellaneous applications. File perused.
13. In the memorandum of appeal, the dealer has put-forth the ground that Form-9 was not required to be submitted by the dealer and the

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same is required to be furnished only by the dealer who makes inter-state sales at a concessional rate against statutory Form 'C' and stock transfer against Form 'F'.

The dealer claims to have shown the same as sale in 2B in which name of M/s Affix Pharmaceuticals finds mention. It is case of the dealer that it filed return unintentionally and by mistake depicting purchase as sale.

14. The dealer has also claimed itself to be a consignee agent of M/s Affix Pharmaceuticals Ghaziabad (Manufacturer of Ayurvedic Oil). Case of the dealer is that the said manufacturer having sold/transferred goods to the dealer-appellant against 'F' form, the dealer-appellant cannot reverse the process by selling same goods to manufacturer.
15. From the copies of assessment framed by Assessing Authority Ghaziabad for the tax period "Annual 2014-15" & "2015-16", it transpires that the dealer – M/s Affix Pharmaceuticals was directed to deposit tax and interest, as the said dealer failed to produce any "F" form in respect of the relevant transactions.

At the same time, Assessing Authority, Delhi has raised the disputed demand of tax and interest for the tax period 2014-15 (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Qtr.) and tax period 2015-16 (3<sup>rd</sup> & 4<sup>th</sup> Qtr.), on the ground that the dealer-appellant-applicant failed to produce any

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“F” form in proof of the transaction of stock transfer shown in all these returns for the five tax periods.

16. At the time of final arguments, it shall be for the appellant-applicant to prove that all this happened because of bonafide mistake on the part of the dealer-applicant that the turnover was shown in all the five returns of the above said tax periods as stock transfer instead of stock arrival.
17. Keeping in view the claim put forth and the disputed point involved herein, coupled with the assessments framed by the Assessing Authority Ghaziabad, I deem it a fit case where all five appeals deserve to be entertained without calling upon the dealer-appellant to deposit any amount by way of pre-deposit, for any of the five tax periods i.e. 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Qtr. of 2014-15 and 3<sup>rd</sup> & 4<sup>th</sup> Qtr. of 2015-16. It is ordered accordingly.

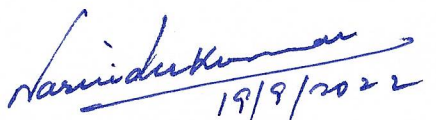
All five M.As are disposed of accordingly vide this common order.

18. Be put up on 23/09/2022 for final arguments.
19. Copy of the order be placed in the connected filed. 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 : 19/09/2022



  
(Narinder Kumar)  
Member (J)