

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

M.A. No. – 598/STAY/22
In Appeal No.- 439/ATVAT/22
Date of Order : 31/10/2022

M/s Konica Minolta Business Solutions
India Pvt. Ltd.
1304, 13th Floor, Mohandev building,
13, Tolstoy Marg, Connaught Place,
New Delhi-110001.

~~..... Applicant~~

..... Applicant.

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Atul Gupta with Ms. Neha
Choudhary.
Counsel representing the Revenue : Sh. P.Tara.

ORDER

1. This order is to dispose of application u/s 76(4) of DVAT Act filed by the dealer-assessee-objector with prayer that the appeal challenging the order dated 10/08/2022 passed by learned OHA, on challenge to default assessment of tax and interest framed under Delhi Value Added Tax Act (hereinafter referred to as DVAT Act), pertaining to tax period 2015-16, be entertained without calling upon the dealer-appellant to deposit any amount by way of pre deposit.

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2. The assessment of tax and interest has been framed under DVAT Act raising a demand of Rs. 1,63,38,294/- by way of additional tax and interest of Rs. 95,74,688/-.
3. Vide impugned order dated 10/08/2022, objections filed by the dealer-appellant, have been accepted by learned OHA-Special Commissioner-III, with the direction that Assessing Authority shall issue fresh assessment notices in terms of decision dated 25/05/2022 passed by this Appellate Tribunal in Appeal No. 64/2018 and re-calculate tax and interest as per findings/directions given by this Appellate Tribunal.
4. The impugned order passed by learned OHA has been challenged on the ground that the same was passed after expiry of 15 days period from the date of receipt of Form-41.
5. While dealing with the point of furnishing of DVAT-41 by the dealer, learned OHA has observed that neither diary clerk nor the Reader to learned OHA brought the notice in Form DVAT-41 to his knowledge before 28/07/2022 when he heard about the said notice from a Legal Assistant. On this aspect, learned OHA has further observed as under before proceeding to decide the objections on merits:

“Noting the fact that certain officials in the Personal Branch have been grossly negligent in this matter, a detailed note was submitted to the Commissioner, Trade & Taxes vide no. 59/SCTT-III dated 01.08.2022, recommending disciplinary

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action against the Diary Clerk as well as the then Reader to OHA.

It was further recommended that both these officials should be placed under suspension pending disciplinary proceedings. I may further mention that while the Junior Assistant who was working as a Diary Clerk has been suspended by the Commissioner, Trade & Taxes vide order dated 03.08.2022, a communication has been addressed to Directorate of Social Welfare (Controlling Officer of the then Reader to OHA) vide letter dated 03.08.2022 to place the said Reader under suspension pending disciplinary proceeding.”

6. In the course of arguments, learned counsel for the appellant has submitted that learned OHA has wrongly rejected the case of the dealer-objector while dealing with notice served in DVAT 41. He has further pointed out that while dealing with the objections on merits, learned OHA did not decide one of the objections challenging assessment whereby excess sale of Rs. 1,30,04,338/- was treated as local sale taxable @ 12.5% along with interest.
7. In the impugned order, learned OHA has not dealt with the above said objection as regards the excess sale treated as local sales. In this situation, the application u/s 76(4) of DVAT Act with prayer that the appeal be entertained waving the requirement of pre-deposit, deserves to be allowed.
8. Consequently, this appeal is entertained without calling upon the dealer to deposit any amount by way of pre-deposit.
9. Be put up on 18/11/2022 for final arguments.

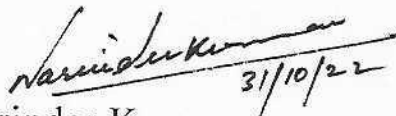
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10. Copy of the order be supplied to both the parties as per rules.
One copy be sent to the concerned authority. Another copy be
displayed on the concerned website.

Announced in open Court.

Date : 31/10/2022


Narinder Kumar
Member (J)

