

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

M.A. No. 599/STAY/22
In Appeal No.- 440/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

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 , under Central Sales Tax Act (hereinafter referred to as CST Act) pertaining to tax period 2015-16, be entertained without calling upon the dealer-appellant to deposit any amount by way of pre deposit.
2. The assessment of tax and interest has been framed, raising a demand of Rs. 4,00,718/- by way of additional tax and interest of Rs. 2,34,832/-.

Narinder Kumar
31/10/22



Page 1 of 4

M.A. No. 599/STAY/22
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3. Assessing Authority did not grant any exemption to the dealer-assessee on certain statutory forms by observing in the manner as:

"Dealer has made central turnover of Rs. 7,50,59,080/-The dealer has made central sale against the C-forms Rs. 2,01,35,608/- and produced C Forms value of Rs. 2,00,48,961/-. There is missing C-Form of Rs. 86,647/- taxed @ 3% along with interest. It is mentioned that the dealer has submitted 02 C-Form bearing no. PB/AA/C/0081851 amounting to Rs. 38,25,000/- of M/s. New Sunrise Albums, TIN-03842190918 and C-Form bearing no HR06WC3744794 amounting to Rs. 21,646/- of M/s. E-Office imaging Solutions, TIN-06431941707 in which TIN no of the dealer is not correct.

The dealer was given opportunity to get them rectified if the forms pertains to the dealer, however, he failed to do the same so both these forms are rejected and taxed @ 10.5% for amount of Rs. 37,50,000/- (taxable value) and @ 3% for amount of Rs. 21,221/- (taxable value) along with interest. The dealer has made stock transfer against F-Form Rs. 5,39,42,294/-. Dealer has produced F-Form amounting of Rs. 5,38,67,652/-. There is missing F-Form of Rs. 74,642/- is taxed @ 5% along with interest.

The dealer has made central sale against without form of Rs. 9,81,178/-. The dealer has filed all the returns on time. Original statutory forms, except 02 forms mentioned above on which benefit has not been given, are returned back to the dealer after test checking."

4. The impugned order 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. Another ground raised by the appellant is that 'C' forms have been wrongly rejected by the Revenue Authorities.

28/10



6. 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 i.e. the date 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 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.”

7. As regards the demand raised by way of default assessment of tax and interest framed under CST Act, learned counsel for the appellant-applicant has pointed out that learned OHA has wrongly rejected the case of the dealer-objector while dealing with notice served in DVAT 41 and further that the objections raised by the dealer-objector before learned OHA challenging the said assessment on merits, have not been considered by learned

22
22/10



OHA, and as such this appeal deserves to be entertained waving the requirement of pre-deposit.

8. Since in the common order disposing of the objections filed by the dealer-objector, learned OHA has not dealt with the objections raised while challenging assessment of tax and interest under CST Act, the appeal deserves to be entertained while waving the requirement of pre-deposit.
9. Consequently, this appeal is entertained without calling upon the dealer to deposit any amount by way of pre-deposit.
10. Be put up on 18/11/2022 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 : 31/10/2022

Narinder Kumar
31/10/2022
Narinder Kumar
Member (J)

