

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

M.A. No.: 597/STAY/22
In Appeal No.: 438/ATVAT/22
Date of Order: 10/11/2022

M/s Kapsons Worldwide
C74A, Mayapuri Indl. Area,
Phase-II,
New Delhi-110064.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. Sushil Verma.
Counsel representing the Revenue : Sh. P. Tara.

Order on Stay Application u/s 76(4) of DVAT Act


1. On 20/09/2022, Appeal No. 438/22 came to be presented before the Registry. With the appeal, application seeking condonation of delay of 32 days was filed.

Vide order dated 27/10/2022, prayer for condonation of delay in filing the appeal was allowed subject to cost of Rs. 1,000/-. Cost has been deposited.

2. With the memorandum of appeal, an application u/s 76(4) of DVAT Act was also filed, with prayer that appeal be entertained

Page 1 of 4

M.A. No.: 597/STAY/22
In Appeal No.: 438/ATVAT/22


Narinder Kumar
10/11/2022

waiving requirement of deposit towards impugned demand, by way of pre-deposit.

3. Appeal has been filed challenging order dated 10/06/2022 passed by Learned OHA whereby objections filed by the dealer-assessee-objector u/s 74 of DVAT Act have been dismissed. The matter pertains to tax period – Annual 2013-14.
4. Objections u/s 74(1) of DVAT Act were filed on 14/10/2019 challenging notice of default assessment of tax and interest framed u/s 32 of DVAT Act, whereby demand of Rs. 4,58,537/- by way of additional tax and Rs. 2,69,846/- by way of interest was raised. In this way, total demand raised by the Department was of Rs. 7,28,383/-.
5. In the impugned assessment, learned Assessing Authority observed that notice u/s 59(2) of DVAT Act was served before framing of assessment, seeking production of records on 30/10/2017, so far as 4th qtr. of 2013-14 is concerned, but no record was produced.
In the appeal, it has been alleged that no such notice was served by the Assessing Authority upon the assessee.
6. While disposing of the objections, learned OHA observed that the Assessing Authority framed assessment after issuing notice u/s 59(2) of DVAT Act and thereafter raised demand towards tax and interest.
7. Assessment was framed on 31/03/2018 by observing in the manner as:

[Handwritten signature]
10/11



“A notice u/s 59 (2) vide reference no.38661 dated 06-10-2017 was issued to M/s KAPSONS WORLDWIDE having TIN-07720320467 for production of records on 30-10-2017 for the 4th qtr., 2013-14. None appeared and no record was produced. The dealer has claimed total local purchase of Rs.8277677/- for the period 2013-14 and claimed input tax credit of Rs.458537/- but could not produce tax invoices, bank statement and other documents sought vide above mentioned notice to substantiate his claim. As, the dealer failed to produce the relevant records as sought vide above mentioned notice, the total input tax credit of Rs.458537/- claimed by the dealer on local purchases is hereby disallowed under section 9(8) of DVAT Act, 2004.”

8. Case of the dealer-appellant-applicant is that all requisite information was submitted to the department manually and electronically, but Assessing Authority did not provide proper opportunity to the dealer, of being heard.
9. Learned counsel for the Revenue submits that in view of the grounds put forth by the appellant, issues involved in this appeal are as to whether notice was or was not issued by the Assessing Authority before framing of assessments and as to whether any purchase bill was or was not produced by the dealer-assessee, before the authorities for the purpose of assessment .
10. In the given facts and circumstances and the issues involved, prima facie case having been made out, the application.u/s 76(4) deserves to be allowed so as to entertain the appeal without calling upon the dealer-appellant to deposit any amount by way of pre deposit.



11. The application is accordingly allowed waving requirement of any deposit by way of pre deposit and the appeal is entertained.
12. 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: 10/11/2022

Narinder Kumar
10/11/2022
(Narinder Kumar)
Member (Judicial)

