

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

M.A. No.- 604/COND./22
In Appeal No.- 443/ATVAT/22
Date of Order : 14/11/2022

M/s Chitra Cables P. Ltd.,
8/995, Nehru Gali, Vishwas Nagar,
Shahdara, Delhi- 110032

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Dinesh Mohan Sinha.
Counsel representing the Revenue : Sh. S. B. Jain.

ORDER

1. Today, counsel for the appellant-applicant has submitted fresh application seeking condonation of delay, while submitting that in the earlier application submitted while seeking condonation of delay certain facts could not be alleged.
2. As requested by learned counsel for the applicant, the previous application seeking condonation of delay is hereby dismissed as not pressed.
3. Arguments heard on this fresh application seeking condonation of delay.
4. Learned counsel for the applicant submits that the appeal could not be filed within the prescribed period of two months from the


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passing of the impugned order because of two reasons; firstly that Sh. Kanak Mal Dhassani, one of the Directors of the appellant-dealer was suffering from migraine and also from Covid, w.e.f. 22 April and as such on medical advice he shifted to Rajasthan for medical treatment, and ultimately returned to Delhi on 2nd October 2022 and then resumed his duties; secondly that earlier one 'C' form was not available with the dealer-appellant, but the same has been received.

5. Learned counsel submits that the appeal was drafted on 21/10/2022 and then presented.

The submission is that for the above sufficient reasons, delay in filing of appeal be condoned.

6. Impugned order was passed by learned OHA on 15/03/2022. Applicant has alleged that it was served upon the dealer-appellant on 04/04/2022.

7. With the application seeking condonation of delay, Sh. Kanak Mal Dhassani, Director has submitted his affidavit testifying therein the averments put forth in the application.

8. A perusal of the medical certificate dated 08/11/2022 would reveal that the Doctor has mis-spelt "Migraine" as "Mygran" and also "Symptom" as "Semtepm". Furthermore, it appears as if he advised complete bed rest to the patient vide certificate dated 08/11/2022. The period i.e. from 22 April to 2nd October finds mention in the certificate without formation of a proper sentence.

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9. On having noticed the above said facts, firstly, this Appellate Tribunal was inclined to call the concerned Doctor to seek queries, but learned counsel for the applicant submits that the application is not pressed on medical ground and that only the other ground that one 'C' form has been received subsequently, be taken into consideration.

In this situation, without probing any further about the genuineness of the medical certificate, I proceed to consider the other ground seeking condonation of delay.

10. In the memorandum of appeal copy of 'C' form has been furnished. It appears to have been issued on 29/06/5017 and pertains to the tax period January to March 2017, and for a sum of Rs. 4,95,765.46/-, on the basis of two invoices.

In the affidavit annexed to the application, it has been testified that this 'C' form was earlier mis-placed and now it has been found, after the disposal of the objections by learned SOHA.

11. Learned counsel for the applicant submits that before learned SOHA it was nowhere submitted that any 'C' form received by the dealer-appellant was missing.

Be that as it may, keeping in view the decision in **M/s Kirloskar Electric Co. Ltd. v. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, decided by our own Hon'ble High Court, consequent upon the receipt or coming across of a 'C' form, which was allegedly earlier not available to the dealer-



appellant, the dealer can resort to the remedy of appeal. But neither in the affidavit nor in the application, it has been specified as on which date the misplaced 'C' form has been traced out.

Keeping in view all this, the plea as regards the 'C' form, the delay in filing of the appeal is condoned, but subject to deposit of cost of Rs. 2,000/-.

12. Learned counsel for the applicant submits that the appeal be listed for 17/11/2022 for hearing on the application u/s 76(4) of DVAT Act as in the meanwhile dealer would deposit the amount of cost under the appropriate head. Accordingly be put on 17/11/2022, for arguments on the application u/s 76(4) of DVAT Act, subject to deposit of cost in the meanwhile.
13. 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 : 14/11/2022



Narinder Kumar
Member (Judicial)