

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

Application No.: 606/22
In Appeal No.: 444/ATVAT/22
Date of Order: 23/11/2022

M/s. Johnson and Johnson Pvt. Ltd.,
C20 Lawrence Road,
Industrial Area,
New Delhi-110035.

.....Applicant

v.

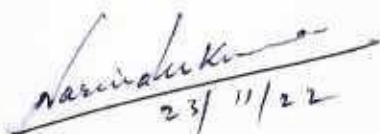
Commissioner of Trade & Taxes, Delhi

.....Respondent

CA representing the Applicant	:	Sh. Mayur Bhargav
Counsel representing the Revenue	:	Sh. S.B. Jain

ORDER

1. This order is to dispose of application filed by the dealer-appellant-applicant along with Appeal No. 444/22. The prayer in the application is for condonation of delay in filing the appeal. Delay is stated to be of 294 days.
2. Record reveals that on 07/04/2021, learned Assessing Authority – VATO (Ward 203) issued Notice of Default Assessment of Tax and Interest under Central Sales Tax Act, for the tax period – Annual 2015 raising a demand of Rs. 23,63,893/- towards additional tax and Rs. 19,37,053/- towards interest i.e. in total Rs. 43,00,892/-.



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Feeling aggrieved by the said default assessment, the dealer filed objections u/s 74 of DVAT Act. On 11/10/2021, Learned SOHA dealt with the objections and reduced the demand to Rs. 41,03,922/- taking into consideration that dealer-objector furnished before him two "C" Forms worth Rs. 2,27,568/- and one "C" Form worth Rs. 9,70,857/- and thereby allowing exemption.

3. Present appeal came to be presented on 02/11/2022. As provided under DVAT Act, appeal in DVAT-38A against the order passed by Learned SOHA was required to be presented within two months of the passing of the impugned order.
4. In this application, dealer-applicant has alleged that it has recently obtained some statutory – declaration forms after strenuous efforts made in this regard and then decided to file this appeal.

In support of prayer for condonation of delay, applicant has made reference in the application to the decision in Mst. Katiji & Ors. (66 STC 228 [SC]).

5. Arguments heard. File perused.
6. Learned CA for the applicant submits that appeal has been filed on 02/11/2022, after a delay of 294 days, the reason being that applicant-dealer has received two 'C' forms pertaining to tax period, 1st and 2nd quarter of 2015-16, in September 2022. The



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prayer is that delay in filing of appeal be condoned for the said reason. Learned CA for the applicant has submitted true copy of e-mail from Future Retail to the applicant-dealer, in support of the contention that the two 'C' forms were received by the dealer-applicant initially by mail in February 2022.

7. As per copy of e-mail, some 'C' forms are stated to have been sent by Future Retail to the applicant-dealer, but there is no mention in the said e-mail as to which were the 'C' forms so sent to the dealer-applicant. It may be mentioned here that in the application there is no plea regarding receipt of two 'C' forms initially by e-mail in February 2022. In the course of arguments, learned CA for the applicant has submitted that it was subsequently in September 2022 that the two 'C' forms were received from the Future Retail, the reason being that earlier only copies thereof were received by e-mail. However, there is no document in support of the said submission put-forth by learned CA for the applicant. In absence of any documentary proof it cannot be said that initially only copies of 'C' forms were received by e-mail and subsequently in September 2022 the original of the said 'C' forms were received. Learned CA for the applicant has submitted that dealer has not provided to him any such document and as such the same has not been made part of the record.

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8. In the given circumstance, it is found that dealer-applicant has not been able to furnish any sufficient cause for non filing of the appeal within prescribed period of limitation of two months from 01/10/2021 i.e. when the impugned order was passed by learned SOHA.
9. As per decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485, decided by our own Hon'ble High Court, State is entitled to claim/charge only the tax actually due and that the statutory forms be taken into consideration by the concerned authority to levy tax due as per law.
10. In the given circumstances, instead of rejecting the prayer of the applicant for consideration of the statutory forms on the ground that the appeal is barred by limitation, I deem it a fit case to levy cost upon the dealer-applicant for delay in filing of the appeal, particularly when dealer has not furnished any documentary evidence in proof of the fact that the original statutory form were actually received in September 2022.
11. At this stage, Learned CA for the applicant submits that dealer-applicant is ready to deposit Rs. 10,000/- as cost. Learned counsel for the Revenue submits that this quantum of cost shall be adequate.
12. In the given situation, keeping in view the decision in Kirloskar Electric Co. Ltd's case (supra), delay in filing of the appeal is



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condoned with order for deposit of cost of Rs. 10,000/- under the appropriate head. The application is disposed of accordingly.

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: 23/11/2022


(Narinder Kumar)
Member (Judicial)