

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

Stay Application Nos. : 504-505/22
In Appeal Nos. : 383-384/ATVAT/22
Date of Order: 08/12/2022

M/s. Bajrang Agro Products
Office No. 305, B-09, ITL Twin Towers,
Netaji Subhash Place, Pitampura,
New Delhi-110034.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. A. K. Rai and
Sh. Sanjay Sharma.
Counsel representing the Revenue : Sh. M. L. Garg.

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

1. This common order is to dispose of Application Nos. 504-505/22, u/s 76(4) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) read with Rule 57A(7) of DVAT Rules, 2005.
2. Instant applications have been filed with prayer that Appeals No. 383-384 be entertained without calling upon the dealer-appellant to pay or deposit any amount by way of pre-deposit, towards the disputed demand of tax, interest and penalty.

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3. The dealer-assessee-applicant is engaged in the business of resale of Kirana Goods, Herbal Products and Spices, having registration under Delhi Value Added Tax (hereinafter referred to as "DVAT Act") and Central Sales Tax Act (in short "CST").

Demand of tax, interest and penalty was raised by learned Assessing Authority-VATO (Ward-64) as two commodities i.e. Haldi and Amchoor were found stored in the godown known as Bajrang Cold Storage, Kundli Sonapat (Haryana). These were declared as "undeclared Central Sales" and accordingly, assessment was framed in respect of the two items, and demand of tax and interest was raised.

The disputed demand towards tax and interest is of Rs. 6,84,968/- under CST Act. Vide separate assessment u/s 9(2) of Central Sales Tax Act read with u/s 86(10) of DVAT Act, learned Assessing Authority levied penalty of Rs. 6,61,849/-.

4. Feeling dissatisfied with the above said assessments, the dealer filed objections u/s 74 of DVAT Act before learned OHA-Joint Commissioner.

Vide common order dated 25/02/2022, learned OHA dismissed the objections and upheld the demands raised by the learned Assessing Authority vide above said assessments dated 14/01/2016.

5. The matter pertains to tax period-2nd Quarter of 2015-16.



6. It may be mentioned here that the learned Assessing Authority initiated proceedings on receipt of letter no. 6635-41, dated 03/11/2015, from Assistant Commissioner (Ward-28).

Vide said letter, the Assistant Commissioner had communicated to the learned VATO (Ward-64) that when Enforcement Team conducted survey at the said storage the dealer-assessee was found to have stored items at its Cold Storage, in Kundli, Sonipat (Haryana).

Consequent upon receipt of this communication, learned Assessing Authority issued notice u/s 59(2) of DVAT Act to the dealer-assessee.

Authorised Representative of the dealer appeared and pleaded that the items i.e. 30000^mkgs of Haldi and 58497 kgs of Amchoor were stored at the aforesaid Cold Storage in Kundli due to insufficient space in Delhi.

7. While dismissing the objections, learned OHA observed in the manner as:

“The Assessing Authority while passing the impugned notice of default notices of default assessment of tax, interest and penalty has assumed the rates of Haldi @ Rs. 100 per Kg. and Amchoor @ Rs. 175 per Kg. is purely based on the facts & considering the requisite purchase bills and other documents as filed by the Objector Dealer before the Assessing Authority in order to substantiate its claim. Moreover, goods of the dealer registered in Delhi are lying outside Delhi and also submits that in Delhi there is not sufficient space to



store the goods. There is little storage space in Delhi is unjustified statement. The undersigned is of the considered view in the interest of law and justice, that the impugned notice of default assessment of tax and interest under the CST Act dated 14.01.2016 for the second period 2015-2016 is hereby upheld and accordingly, objection no.151253 and 151251 dt 02.03.2016 are dismissed in aforesaid terms."

8. In the course of arguments on the applications, learned Counsel for the applicant has only submitted that the impugned assessments have been framed against law, in having assumed the two items lying at the godown, outside Delhi, as "undeclared Central Sales", when actually there was no sale, and in also having assumed the rates of these two items, ignoring the actual rates which find mention in the invoices.

Accordingly, the prayer is that the appeals be entertained without calling upon the dealer to deposit any amount by way of pre-deposit.

9. The applications have been opposed on behalf of the Revenue.
10. Indisputably, before framing of assessments, notice u/s 59(2) of DVAT Act was issued by learned Assessing Authority to the dealer-assessee.

Before learned Assessing Authority, it was the case of the assessee-applicant that the said items i.e. 30,000 kgs of Haldi and 58,497 kgs of Amchoor were stored at the Cold Storage in



the area of Kundli, which is in Haryana, as there was inadequate space in Delhi to store the said items.

This claim of the assessee-applicant was rejected by the Revenue Authorities.

11. Revenue does not dispute factum of purchase of the above said quantity of each item i.e. Haldi and Amchoor by the assessee-applicant. Learned Counsel for the Revenue submitted that in case a dealer is to store any item in a Cold Storage, outside the State of Delhi, the dealer is required to follow procedure prescribed under the law and also inform the Revenue Authorities, but, in this case, the dealer neither followed the prescribed procedure nor intimated the Revenue Authorities, and as such present applications deserve to be dismissed.
12. In these appeals, applicant has not placed on record any document to suggest that it informed the Revenue Authorities that the goods were going to be stored/kept in the Cold Storage of Kundli, after inter-State purchase. There is nothing on record to suggest as to why the Revenue Authorities were not informed about this fact.

The factum of storage of the said items in the Cold Storage, outside Delhi, came to the notice of the Revenue Authorities only when Enforcement Team detected the same on survey conducted in August, 2015.



13. Record is required to be prepared by the dealer in case any item is removed from the stock so as to stock the same outside Delhi, even for the purpose of storage in some godown. From the impugned order and the impugned assessments, it does not transpire that any such record was produced by the dealer before them.
14. As regards the word 'assumed' used by learned Assessing Authority in the assessments, it appears that learned Assessing Authority treated as if it was a case of "undeclared Central Sales".
15. So far as grievance of the dealer that learned Assessing Authority assumed higher rate i.e. more than the rate of the said items as shown in the invoices, learned Counsel for the Revenue has submitted that while framing the assessments, learned Assessing Authority appears to have taken into consideration the rates prevalent at the relevant time, and not the rates as shown in the invoices.
- Indisputably, the invoices reflect rates lesser than the rates assumed/treated by learned Assessing Authority.
16. Learned Counsel for the Revenue has referred to copies of the invoices placed on record by the dealer-applicant, particularly available at Page Nos. 39 & 41 and also the copies of GRs lying



annexed to the said invoices, to point out that complete address of the assessee does not find mention in these documents.

Dealer will have to explain this fact in the course of final arguments.

On behalf of the Revenue, reference has also been made to copies of receipts available at Page Nos. 45, 48, 51 and others, produced on record by the applicant, to point out that these depict different addresses of the applicant-dealer creating doubt regarding the place of business of the applicant.

A perusal of the copies of the above said documents referred to on behalf of the Revenue reveals that complete address of the applicant does not find mention in the invoices and GRs.

Dealer will have to explain this fact in the course of final arguments.

17. Keeping in view the respective contention raised on behalf of the parties and the reasons recorded by the Revenue Authorities in the impugned order and the impugned assessments, the point which needs to be explained by the dealer is as to non-production of any record on its behalf depicting removal of above said goods from its stock to the above said Cold Storage, situated outside Kundli, without intimation to the Revenue Authorities in Delhi. Dealer-applicant will have also to satisfy,

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at the time of final arguments, that proper procedure was followed in the storage of the above said items at Kundli.

Applicant will have also to satisfy that the goods so stored at the godown were actually never sold by it up to the date of survey and rather sales, if any, out of the said quantities took place subsequent thereto, as for the present, no such record has been made available by the applicant.

As regards rates of the said items, taking into consideration the rates as depicted in the invoices, learned Counsel for the applicant has submitted in the course of arguments that in view of the said rates, demand towards tax comes to Rs. 1,48,000/- and that this fact be taken into consideration for the purpose of entertainment of these appeals.

Learned Counsel for the Revenue has submitted that even as per this submission on behalf of the applicant, total demand comes to about Rs. 3 lakhs and that the same may be taken into consideration for the purpose of entertainment of these appeals, on deposit of pre-deposit.

18. In the applications, it has been alleged that applicant is passing through financial crisis due to COVID-19 and slump in the market. In the course of arguments, this ground has not been agitated by the Counsel for the applicant. Even otherwise, learned Counsel for the Revenue has rightly submitted that no



document in support of this averment has been submitted by the applicant.

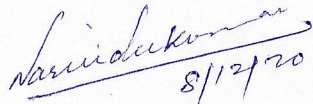
19. Having regard to all the facts and circumstances, applicant is directed to deposit Rs. 40,000/- only by way of pre-deposit for the purpose of entertainment of these appeals.

The amount of pre-deposit to be deposited within 15 days.

20. Dealer-applicant to submit compliance report and also apprise learned Counsel for the Revenue about the compliance, so that on the next date i.e. 27/12/2022 appeals are taken up for final arguments.
21. 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: 08/12/2022


(Narinder Kumar)
Member (Judicial)

