

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

M.A. No. 293/23 & M.A. No. 294/23

In Appeal No. 72/ATVAT/2023

Date of Order: 13/09/2023

M/s Jay Ace Technologies Pvt. Ltd.
G1 48, GT Karnal Road Indl. Area,
Delhi-110033.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Sudhir Sangal.
Counsel representing the Respondent : Sh. N.K. Gulati.

ORDER

1. On 30/05/2023, appellant filed Appeal No. 72/ATVAT/2023 challenging impugned order dated 03/03/2023 passed by learned OHA-Special Commissioner.
2. Vide impugned order, objections filed by the dealer against default assessment dated 23/03/2021 framed under Central Sales Tax Act, came to be dismissed.
3. Default assessment was framed after issuance of notice by the Assessing Authority to the dealer u/s 59(2) of DVAT Act and taking into consideration non-appearance on behalf of

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the appellant and non-production of books of accounts, proof of sale/purchase bill, statutory form and other relevant documents despite sufficient time.

4. On 23/06/2023, when the application u/s 76(4) of DVAT Act filed with the appeal was being argued, counsel for the appellant sought adjournment seeking amendment of appeal and the accompanying application u/s 76(4) of DVAT Act.
5. That is how, 2 applications i.e., M.A. No. 293/23 & M.A. No. 294/23 came to be presented on behalf of the appellant seeking amendment in the pleadings i.e. in the application u/s 76(4) of DVAT Act and the memorandum of appeal.
6. In Para No. 4 of the previous application u/s 76(4) of DVAT Act applicant alleged that all the relevant documents in support of Central Sales made during the year 2016-17 were produced before learned Additional Commissioner.
At the time of arguments on the said application, when confronted with the aforesaid averments in para 4 of the application, counsel for applicant candidly submitted that said assertion in the application was wrong.
7. Attention of counsel for the applicant was also drawn at that time to para 10 of the appeal wherein, in the statements of facts, it was asserted that all the relevant documents were produced in the course of hearing before learned Additional Commissioner. When attention of counsel for the applicant was drawn to this assertion in the statement of facts, counsel

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for the applicant again submitted that the said assertion was also wrong.

8. At the time of arguments on application u/s 76(4) of DVAT Act, it also transpired that applicant had not filed any grounds of appeal with form-38A. In para 14 of form-38A, it was alleged that the grounds of appeal were enclosed therewith. When no ground of appeal was admittedly filed with form-38A, said assertion in para 14 of form-38A was also found to be incorrect.
9. On application – M.A. No. 293/23, seeking amendment of appeal, Counsel for the applicant submits that while drafting the appeal, the discrepancies which find mentioned in the order, inadvertently crept in, and as such the proposed amendment of statement of facts and filing of grounds of appeal by way of amendment, be allowed.
10. The proposed amendment of statement of facts is being sought by way of insertion of following paragraph:

“It is submitted that the appellant Company is in possession of all the relevant documents i.e. the books of accounts, proof of sale/ purchase bill, statutory forms and other documents in support of central sales made by the appellant company during the year 2016-17 and shall ~~crave~~ leave to produce the same during the course of hearing of this appeal.”

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11. Five grounds of appeal are also sought to be raised by way of amendment of the memorandum of appeal, as specified in the application.
12. Counsel for the Respondent submits that he has no objection to the amendments prayed for in the application so as to introduce one paragraph in the statement of facts and all the 5 grounds as grounds of appeal, but adds that the applicant be burdened with costs for the delayed application.
13. The amendments prayed for are necessary for the effective adjudication of the matter in dispute. Accordingly, application deserves to be allowed. Same is allowed. However, in the given facts and circumstances, applicant is burdened with costs of Rs. 500/-.
14. Amended form DVAT 38A accompanied by amended statement of facts with grounds of appeal, has already been presented. Same shall be taken on record on deposit of costs.
15. In the other application – M.A. No. 294/23, on the same ground, amendment is being sought in the application u/s 76(4) of DVAT Act so as to plead five paragraphs numbered as 5A to 5E, as reproduced in the said application.
Counsel for the applicant submits that inadvertently, discrepancies arose in the application u/s 76(4) of DVAT Act initially presented and that the amendment be allowed. Proposed amended application u/s 76(4) of DVAT Act read

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with section 9(2) of CST Act has also been submitted with the application.

As regards para 5E sought to be inserted in the application u/s 76 (4) of DVAT Act by way of amendment, same cannot be allowed to be inserted, the reason being that vide this paragraph prayer is being made seeking leave to produce duplicate 'F' forms for the year 2016-17, which are yet to be collected by its Roorkee Branch and separate application is required to be filed seeking permission for production of documents,.

At this stage, counsel for applicant submits that he does not press amendment by way of para 5E. Accordingly, the application is dismissed as regards amendment of the application u/s 76 (4) of DVAT Act by way of insertion of para 5E.

As regards insertion of para 5A to 5D, counsel for the Respondent has no objection to the insertion of the above said paragraphs i.e. 5A to 5D in the application u/s 76 (4) of DVAT Act, but he adds that for the delay in the proceedings, dealer-applicant be burdened with costs.

16. Counsel for appellant-applicant does not oppose prayer for costs.
17. Having regard to the fact that the amended prayed for insertion of four paragraphs is necessary for the adjudication of the matter in dispute, the prayer of amendment as regards

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said paragraph deserves to be allowed and same is allowed, but keeping in view all the facts and circumstances, applicant is burdened with costs of Rs. 500/-.

18. The amended application u/s 76 (4) of DVAT Act has already been submitted. Same shall be taken on record on deposit of costs.
19. 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 : 13/09/2023.

Narinder Kumar
13/9/2023
(Narinder Kumar)
Member (J)



M.No. 293/23 & 294/23 / 804-809
Appeal no. 72/ATVAT/23

Dated: 13/09/23

Copy to:-

(1) VATO (Ward-64)

(4) Dealer

(2) Second Case File

(5) Guard File

(3) Govt. Counsel

(6) AC(I&J)



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