

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

M.A. No. 152/23

In Appeal No. 72/ATVAT/23

Date of Order: 22/09/2023

M/s Jay Ace Technologies Ltd.,  
G1, 48, GT Karnal Industries Area,  
Delhi.

.....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. This order is to dispose of application u/s 76(4) of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act).
2. On 30/05/2023, dealer-assessee-objector filed above captioned Appeal No. 72/ATVAT/23, challenging impugned order dated 03/03/2023 passed by learned Special Commissioner-II, Objection Hearing Authority (hereinafter referred to as OHA), as regards default assessment of tax and interest dated 23/03/2021, for the tax period 2016-17 (Annual) framed under Central Sales Tax Act (CST Act).

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3. Vide order dated 05/06/2023, application seeking condonation of delay in filing of appeal stands allowed subject to costs. It is submitted that order regarding deposit of costs stands complied with.
4. Vide default assessment of tax and interest, learned Assessing Authority-AVATO (ward-64) raised demand of additional tax of Rs. 32,15,074/- and that of interest of Rs. 18,81,479/- due to the following reasons:

“.....Notice was issued to the dealer u/s 59(2) of DVAT Act 2004 for the year 2016-17. None present nor any intimation received. Despite giving sufficient time, the Form 9 filed by the dealer is not matched with return. Further, in absence of any Books of accounts, proof of sale/purchase bill, statutory form and other relevant documents related to central sale made by the dealer in year 2016-17, the entire turnover is taxed as per local rate with interest. Order is issued accordingly.....”

5. Feeling aggrieved by the default assessment, dealer-objector filed objections on 14/12/2021.
6. Learned OHA upheld the default assessment of tax and interest and rejected/dismissed the objections by observing in the operative part of the order as under:

“In view of the above discussion, I find that though Form-09 was filled up by the objector, however, it is also statutory requirement to possess the statutory forms and to produce the same as and when called by the Assessing Authority. Additionally, dealer is also required to produce other relevant records. In the present case, objector has neither produced statutory forms nor other supporting documents

  
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and in absence of same, there is no provision which permit me to give any benefit/relief to the objector considering overall facts and circumstances of the case as discussed hereinabove.

In view of the above discussion, present objection filed by the objector-dealer is disposed of in following terms:

Objection ref. no. 720452 dated 14/12/2021 is hereby rejected/dismissed for the reasons stated herein above; and

Impugned notice of default assessment of tax and interest dated 23/03/2021 for the year 2016-17 (Annual) issued under CST Act is upheld.”

7. As regards the objections raised on behalf of the assessee that no notice u/s 59(2) of DVAT Act was received by the objector in terms of Rule 62 of DVAT Rules, learned OHA observed in the manner as:

“It is observed that as far as facts of Bhumika Enterprises are concerned, they are clearly distinguishable as in the said matter, u/s 59(2) were issued in bulk raising additional demand of tax and interest. Said notices were neither digitally signed nor had the name of the issuing officer. However, in the present matter, all three notices were digitally signed and issued for calling relevant records therein.

As far as the contention with regard to the service is concerned, it is observed that in view of the order dated 17.1.2014 issued by the Commissioner, CVAT, all the notices, orders etc. to be issued online by passing on the webpage of the individual login. Further in the M/s Bajrang Fabrics Pvt. Ltd. Vs. Commissioner of VAT, WP (C) No. 12221/2015, Honb’le High Court of Delhi vide its decision dated 2.6.2016 has held that pasting of the notices on the web page of the dealer would be deemed service of notice on the dealer and it is the duty of a dealer to visit his login to

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check the notices, orders etc. and in case, he failed to do so, he cannot claim that there is no proper service on it of the said notice.

In the present matter, objector has produced nothing to show that the notices were never served upon the objector on DVAT Portal. He has also not filed copy of screenshot of history of 59(2) notices in his log-in.


Be that as it may, even assuming that the notices were not checked by the objector in his log-in, he could also produce the relevant records including statutory forms during the present proceedings as also held in several decisions including Kirloskar. On this aspect, Ld. Counsel has submitted that Form 9 was already filed by the objector and same was not considered by the Assessing Authority. He has further argued that a fire broke out in the factory of the objector on 5.6.2021 and all books of accounts along with other things were burnt.”

8. As regards other objections, learned OHA observed as under :-

“It is observed that it is undisputed that a dealer provides details of statutory forms received in Form 9 and same should be considered by the Assessing Authority. However, filing of Form 9 is no restriction on the Assessing Authority from calling physical statutory forms along with other relevant records.

It is also evident from the impugned notice that the additional demand was not raised merely due to non production of statutory forms but due to non production of other relevant records also. Obviously, Form 9 contains details of statutory forms only and Assessing Authority has power to call physical statutory forms along with relevant records for examination and verification thereof. It is also evident from Clause (d) of Section 38(7) of DVAT Act.

It is also relevant to mention that provision as to Form 09 has been provided under Rule 4 of the Central Sales Tax (

  
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Delhi) Rules, 2005. Sub-rule(2) of Rule 4 also provides that statutory forms shall be retained by the dealer and shall be produced as and when required during the seven years from the end of the year to which it relates. Further it is observed that Ld. Counsel has placed on record copies of communications made to concerned Police Station and Fire Department informing about the fire break in the factory of the objector on 5.6.2021.

After considering of the all the facts of the present case in light of legal provisions, following aspects of the case have come out:

- a) Default assessment has been framed due to non production of statutory forms alongwith other relevant records;
- b) Objector has claimed that no prior notice was received before issuance of default assessment. On the contrary, Assessing Authority has provided copies of three notices digitally signed and served on DVAT Portal;
- c) Even otherwise, objector had an opportunity to produce the statutory forms and other records during the present proceedings. However, it is the case of the objector that statutory forms are not available as same had been burnt out in the fire break in the factory on 5.6.2021;
- d) Objector has claimed that details of statutory forms were filled in Form 09 and same was not considered.

It is not a valid ground because as per Section 38(7)(d) ( for refund purpose) and Rule 4(2) of CST(Delhi)Rules, objector has to retain original statutory forms for seven years and Assessing Authority may call original statutory forms within the said period;

- e) Perusal of the communications and newspaper cutting shows that fire was broken in the factory situated at Bhagwanpur, Roorkee. However, objector is having its registered office at G.T. Karnal Road, Delhi. There is no justification as to why books of accounts including statutory forms

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were kept in the factory situated in Uttarakhand when registered place of business is in Delhi. This is also in contravention of provisions of Section 42 of the DVAT Act;

- f) Rule (3) of the CST (R&T) Rules, 1957 provides that where a form is lost, dealer can furnish duplicate copy or a certificate along with a declaration. However, no provision has been brought to my notice which provides that even without having statutory forms, benefit of concessional rate or exemption can be given merely on the basis of Form -09 only;
- g) Moreover, nothing has been produced on record to show that any effort was ever made by the objector for re-issuance of the statutory forms which were stated to be burnt.”

9. Today, an application filed on behalf of the applicant seeking production of certain documents including copies of 8 ‘F’ forms and copies of the correspondence made by the Roorkee branch of the applicant with the Department of Trade & Taxes, Roorkee, have been allowed to be placed on record.

Counsel for the applicant submits that in the default assessment framed on 23/03/2021, the Assessing Authority did not correctly observe regarding mismatch of the details furnished in form-9, with the return.

Counsel for the Respondent also submits that this is not a case of mismatch of details available in Form-9, with the return, for the year Annual- 2016.

10. As regards non production of statutory forms, counsel for applicant has submitted that with this appeal copies of two ‘C’

  
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forms pertaining to 1<sup>st</sup> and 4<sup>th</sup> quarter of the year 2016-17 have been filed. He further submits that the same were received by the applicant after disposal of the objections and as such, the same could not be produced before the authorities below.

11. As regards copies of 8 'F' forms, counsel for the applicant has submitted that the same have been recently received by the applicant on 18/09/2023. On the true copies of the 'F' forms word 'original' finds mentioned. Counsel for the applicant submits that actually these are the duplicate 'F' forms issued by the department of Trade & Taxes, Roorkee and in this regard, correspondence by the Roorkee branch of the applicant has also been placed on record.

Counsel for respondent has rightly pointed out that at the time these 'F' forms were issued to the Roorkee branch of the applicant, it should have been brought to the notice of the issuing authorities that actually these were duplicate and not original, even though, the initial duty in this regard was on the concerned issuing authority.

12. Taking into consideration these 8 'F' forms, today produced on record, after the same have been recently received by the applicant on 18/09/2023, as alleged, this case remains to be a case of some missing 'F' forms pertaining to "2<sup>nd</sup> quarter of 2016-17 to the tune of Rs. 52,595/- and of missing 'F' forms pertaining to 4<sup>th</sup> quarter of the same year, to the value of Rs.




8,400/-". Interest is also payable on the said amount of missing 'F' forms.

13. Counsel for applicant has pointed out that copies of 2 'C' forms received after disposal of the objections have also been placed on record while filing this appeal.
14. Counsel for the applicant submits that as verified by the applicant in form 38A, a sum of Rs. 5,09,656/- stands already deposited during pendency of the objections u/s 74(1) of DVAT Act. This fact is not disputed by the counsel for the Respondent. Since, the applicant-dealer has already deposited the above said amount during objection proceedings, prima facie, this is a fit case for entertaining of the appeal without calling upon the dealer-applicant to deposit any further amount by way of pre condition/pre deposit.
15. The application is disposed of and accordingly the appeal is entertained without calling upon the dealer-applicant to deposit any further amount by way of pre condition/pre deposit.
16. 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 : 22/09/2023

  
(Narinder Kumar)  
Member (J)