

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

**M.A. No. 403/24**

In Appeal No. 121/ATVAT/23

**M.A. No. 404/24**

In Appeal No. 122/ATVAT/23

**M.A. No. 405/24**

In Appeal No. 128/ATVAT/23

**M.A. No. 406/24**

In Appeal No. 129/ATVAT/23

**Date of Order: 09/02/2024.**

M/s Larsen & Toubro Ltd.

..... Applicant.

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Atul Gupta.

Counsel representing the Respondent : Sh. C.M. Sharma.

**ORDER**

1. This order is to dispose of <sup>above captioned four</sup> applications filed u/s 76(5)(c) of DVAT Act read with rule 57(A)(8) of DVAT Rules, 2005 and

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regulation 20 of DVAT (Appellate Tribunal) Regulations, 2005 seeking production of additional documents/evidence.

2. In the index, applicant has described documents in the form of Annexure 1 and Annexure 2 which are sought to be produced by way of additional evidence.
3. The documents- described as Annexure 1 are sought to be produced to show that goods like circuit breakers, relays regulators etc were the subject matter of pure sale and works contract transactions.
4. Applicant has alleged that this detail was provided by it to its consultant Sh. Abhay Aggarwal, but the consultant failed to produce the same on the record of learned OHA.  
As further alleged in the application, all these details are required in support of the claim of the dealer that as per section 8 of CST Act, 1956 these goods were exigible to tax at the rate of 5%.
5. Annexure 2 is copy of an application stated to have been submitted by the dealer-applicant before learned VATO with the prayer to furnish its pending refund claims, and adjust the demand of tax upheld by learned OHA for the year 2012-13 to 2016-17 against said claims of refund. Copy of the application is sought to be produced in support of the contention that no

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liability to pay interest accrued from the date on which refund became due.

6. The application has been opposed by the Revenue by filing reply thereto by pleading that applicant has not furnished any sufficient reason for non-production of these documents before the authorities below.
7. Respondent has pleaded that there is nothing on record to suggest that any such document/record was ever handed over by the dealer to Sh. Abhay Aggarwal, its Chartered Accountant.
8. While referring to the averments in the application that Sh. Abhay Aggarwal, CA of the dealer did not produce these documents before learned OHA, respondent has pleaded that this is a case of failure on the part of the Chartered Accountant but the applicant has omitted to specifically so plead.
9. As regards, copy of 'C' form, now sought to be produced, respondent has pleaded <sup>in the reply</sup> that same is of the year 2016 but applicant has failed to explain as to why the same is being produced now before this Appellate Tribunal.
10. As regards rate of tax, respondent pleads that applicant has not brought on record any material to suggest that it has been dealing in items taxable at the rate of 5% and 12.5%. At the same time, it has been pleaded that in case it was an error, it

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remains unexplained as to why the applicant has not moved an application for rectification of any error.

11. Ultimately, respondent has pleaded that since the applicant has been very casual and the documents are now sought to be produced at a <sup>very</sup> late stage, without any good and sufficient reason, applicant deserves to be burdened with costs.
12. So far as <sup>✓</sup> copy of application- Annexure 2 sought to be produced is concerned, respondent has opposed the prayer while pleading that same is totally irrelevant and as such should not be taken on record.
13. Arguments heard. File perused.
14. It may be mentioned here that in the course of arguments, counsel for the appellant has not pressed prayer in the applications seeking production of Annexure-2 i.e. copy of the application. In other words, prayer in the applications seeking production of only Annexure-1 documents has been pressed.
15. Section 76(5)(c) of DVAT Act provides that in proceedings before the Appellate Tribunal, the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.
16. Admittedly, none of the documents annexed to the applications as Annexure-1 was submitted before learned Assessing





Authority or before learned OHA. In this situation, the dealer-applicant was required to furnish good and sufficient reasons. In the applications, it has been alleged that the applicant had provided such detail to the consultant, Mr. Abhay Agrawal, who failed to bring such detail on record of the Ld. Objection Hearing Authority.

17. It is significant to note that in the applications, the applicant has averred about 'providing of details' and not 'providing of documents' now sought to be produced. Applicant should have clearly alleged about providing of documents by it to the consultant. It appears that the averment has been made selecting */choosing* *evitable* words.

Counsel for the respondent has rightly submitted that applicant has not placed on record any affidavit of its own or that of Sh. Abhay Agrawal in support of the averment regarding delivery of said documents to the consultant.

In absence of any affidavit that of the representative of the dealer or of the concerned consultant, it cannot be said that any of these documents – Annexure-1 was delivered by the applicant to the consultant for being produced before the OHA.

18. On going through the grounds of appeal, I find that a fresh ground has been raised by the dealer-appellant to the effect that



the Assessing Authority adopted incorrect rate of tax while raising the demand on account of non-production of statutory forms.

The ground is not only a legal ground but also based on facts. Dealer-objector should have raised this ground requiring determination of facts as well, before the OHA. For said determination, the documents now sought to be produced, were also required to be produced before the authorities below. Admittedly, this ground was not raised before the authorities below and that this ground has been raised for the first time. Appellate Tribunal is the last fact finding authority. In the given facts and circumstances, counsel for the parties are in agreement that the matter needs to be considered by the Assessing Authority, as regards this ground of applying incorrect rate of tax concerning the transactions in respect of which the dealer failed to produce statutory forms.

19. In view of the above discussion, and finding that production of the documents-Annexure-1 in all the four appeals is necessary for adjudication of the ground raised by the dealer, their production is allowed, while imposing costs of Rs. 8,000/- each as regards Appeal No. 121/23 and Appeal No. 122/23, while





imposing cost of Rs. 5,000/- each as regards Appeal No. 128/23 and Appeal No. 129/23 i.e. total cost of Rs. 26,000/-.

20. All the four applications are disposed of accordingly as regards prayer for production of copies of documents- Annexure-1. As regards prayer for production of copy of application – Annexure-2, all the four applications are dismissed, said prayer having not been pressed.
21. At this stage, counsel for the appellant submits that the dealer shall deposit the entire cost within a week and that he be permitted to argue the appeals on merits. Counsel for the respondent has no objection to hearing of arguments in the appeals on merits. Accordingly, counsel for the parties are permitted to argue the appeals on merits, keeping in view the submission that the dealer shall deposit cost imposed just now, within a week from today without fail.
22. Copy of the order be placed in each appeal file. Copy be also supplied to counsel for the parties. One copy be sent to the concerned authority. Another copy be uploaded on the portal of the department.

Announced in open Court.

Date : 09/02/2024.



*Narinder Kumar*  
9/2/2024  
(Narinder Kumar)  
Member (J)

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