

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

M.A. No. 388/23 & 389/23.
In Appeal Nos. 441-442/ATVAT/2022
Date of Order. 20/12/2023.

M/s Metrostroy-Era, JV.
1107, Indraprakash Building 21,
Barakhamba Road,
New Delhi-110020.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Rohit Gautam.
Counsel representing the Respondent : Sh. P. Tara.

ORDER

1. On 22/11/2023, on behalf of the appellant, in each of the above mentioned, one application u/s 76(7) of DVAT Act came to be filed, after the arguments had been advanced by counsel for the parties in these 2 Appeals No 441-442/ATVAT/22 on merits, to a greater extent.
2. There are 2 prayers in the application, firstly, that the Revenue may be directed to file following documents:

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- (a) Copy of complaint/FIR regarding missing of Dak Register by Respondent.
- (b) Copy of complaint/FIR against the erring officials by Respondent.
- (c) Name of suspended officials in above alleged matter.
- (d) Certified copy of vigilance/enquiry report in above alleged matter.
- (e) Copy of vigilance proceedings in above alleged matter.”

The second prayer in the application is for summoning of Sh. Anand Kumar Tiwari, then OHA, Sh. G.P. Singh, then OHA, Mrs. Tapasaya Raghav, Current Vigilance officer, and also the Commissioner of VAT, for their cross-examination.

3. The application has been filed on the ground that in the course of arguments on these appeals, counsel for the Revenue has levelled bald and serious allegations against the appellant, and further that to contend that DVAT-41 was not properly and legally presented, counsel for the Revenue has relied on E-mail dated 08/08/22 from Sh. Anand Kumar Tiwari,

It has also been alleged in the application that counsel for the Revenue has submitted during arguments in the appeals on merits, that the Dak Register, in which filing of such like forms i.e.,


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DVAT 41 is entered, is missing. Applicant has expressed surprise over the factum of non-availability of the Dak Register.

4. On 18/12/2023, when matters were taken up, counsel for the respondent straightway argued the applications opposing the same by contending that under DVAT Act, there is no provision for direct cross-examination of any officer of the revenue, not examined even by way of chief examination, and further that Commissioner of VAT is a respondent, whereas out of the remaining officers sought to be summoned, two were the OHAs, and the third Officer sought to be summoned for cross-examination is Chief Vigilance Officer of the Department of Trade and Taxes, but, the appellant-applicant has also made a prayer for their cross-examination as well, which is not at all permissible under the law.

As regards the other prayer for summoning of documents (a) to (e) as specified therein, Revenue has opposed the same while submitting that in view of the record on the point of DVAT 41, no such document is required to be summoned.

5. Appeal No. 441/ATVAT/22 has been filed challenging impugned order passed by learned OHA whereby objections filed by the dealer-appellant against the ~~default~~ assessment of penalty came to be dismissed. Said appeal pertains to the tax period Annual 2014-15.

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6. The other appeal No. 442/ATVAT/22 has been filed challenging impugned order passed by learned OHA whereby the objections filed by the dealer-appellant challenging the assessment of penalty for the tax period Annual 2015 has been dismissed.
7. Sub-section (5) of Section 76 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.
8. Rule 57A of DVAT Rules provides that every appeal where fresh evidence is sought to be produced, shall be accompanied by a memorandum of evidence sought to be produced, stating clearly the reasons why such evidence was not adduced before the authority against whose order the appeal is being preferred.

Sub-section (2) of Section 57C provides that the Appellate Tribunal shall not, for the first time receive in evidence on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred.

9. Regulation 20 of DVAT (Appellate Tribunal) Regulations 2005 empowers the Appellate Tribunal to allow production of any documents or examination of any witness or filing of any affidavit,


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in order to pass orders or for any other substantial cause or where any of the authorities below decided the case without giving sufficient opportunity to the assessee to adduce evidence.

10. In each of the above said two appeals, DVAT 41 is stated to have been filed by the dealer-appellant on 04/07/2022 with a prayer for decision on the objections within a period of 15 days.
11. Learned OHA, while disposing of the objections dealt with the preliminary issue regarding presentation of DVAT 41 and while narrating the sequence of events observed that the file of objections with notice in form DVAT 41 came to his notice only on 10/08/2022. He further took notice of an E-mail dated 08/08/2022 from Sh. Anand Kumar Tiwari, the then Special Commissioner (then holding charge as OHA), Zone-II (Special Zone), which was addressed to Commissioner, Trade & Taxes with a copy to the said OHA, who disposed of the said objections, while another copy of E-mail is stated to have been endorsed to said OHA, who was also acting as Special Commissioner (Vigilance).
12. The OHA, who disposed of the objections, forwarded ~~the~~ said E-mail to the Assistant Commissioner (Vigilance), while acting in the capacity of the Special Commissioner (Vigilance) for initiating necessary action in the matter, and at the same time requisitioned record from the branch of Sh. Anand Kumar Tiwari, the earlier OHA. While observing that DVAT 41 had come to the notice of



Sh. Anand Kumar Tiwari, earlier OHA on the said date i.e. 02/08/2022, the ^{subsequent} OHA, who disposed of the objections, calculated the period of 15 days from 02/08/2022.

13. In the given facts and circumstances, in case the dealer-appellant was to file any such application seeking production of the above said documents, he was required to file application with the appeal itself specifying therein the relevance of the said documents. The appeals were presented in October 2022. No such application was filed. Rather, the appeals were argued on merits to a greater extent. Fact remains that these applications came to be filed on 22/11/2023 after the arguments had been advanced on merits in the appeals to a greater length.
14. Having regard to all this, I do not find any merit in the applications so as to summon any of the five documents i.e. from (a) to (e) mentioned in para 6 of the said application.
15. As regards the second prayer for cross-examination of the four officers, the same also deserves to be disallowed, firstly, for the reason that the none of these four officers has been examined in chief by the Revenue, and secondly, Sh. Anand Kumar Tiwari, Sh. GP Singh are the Objection-Hearing-Authorities, who were exercising powers of Commissioner, VAT-arrayed as respondent.

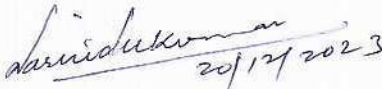

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So far as the Chief Vigilance Officer is concerned, no relevancy has been shown to summon and cross-examine her, and that too even without recording of her chief examination.

16. Accordingly, each application filed in appeal No. 441/22 and 442/22, under section 76(7) is hereby dismissed.
17. 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 : 20/12/2023.


(Narinder Kumar)
Member (J)

