

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

Application No. 401/ 2024
In Appeal No. 133/ATVAT/2024
Date of Order: 23/01/2024

M/s Sam Enterprises,
C-5, Ground Floor, Adj to C-4,
Main Market, Malviya Nagar,
Delhi-110017.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

CA representing the Applicant : Sh. Sohrabh Jindal.
Counsel representing the Revenue : Sh. P. Tara.

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), which came to be filed along with Appeal No. 133/ATVAT/2024, presented on 10/01/2024.

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2. Dealer-applicant is a partnership firm. It is engaged in the business of restaurant activities, since the financial year 2011-12.
3. On 01/04/2021, Assessing Authority-VATO (ward-96), Govt. of NCT, Delhi, framed default assessment u/s 32 of DVAT Act raising the above said demand of Rs. 33,88,078/-, due to the following reasons:

“Whereas I am satisfied that the dealer has not furnished returns / furnished incomplete returns or incorrect returns / furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004. / any other reason Cross checking of the purchase related data filed by the dealer online in Annexure-2A with the Annexure- 2B filed by respective selling dealers reveals that more input Tax Credit has been claimed than the corresponding Output Tax, if any, reported by the selling dealer. The dealer has thus claimed excess Input Tax Credit in violation of the provisions of clause (g) of sub section (2) of Section 9 of Delhi Value Added Tax Act, 2004 and is therefore liable for default assessment as per clause (c) and (d) of sub section (1) of Section 32 of Delhi Value Added Tax Act, 2004.”

The above said amount includes a sum of Rs. 11,84,499/- towards interest.

In January 2022, the applicant is stated to have come to know about demand of Rs. 33,88,078/- raised under DVAT Act, pertaining to tax period- 1st quarter of financial year 2017-18. At

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the same time, it came to know about attachment of its bank account due to said outstanding demand.

4. Feeling aggrieved by the default assessment of tax and interest, dealer filed objections u/s 74 of DVAT Act, in October 2023. On 14/11/2023, learned VATO (Special OHA) disposed of the objections and upheld the default assessment of tax and interest by observing in the manner as:

“The case was originally assessed for the 1st Qtr 2017-18 vide order dated 04-04-2021 demand with interest of Rs.3388078/- was created under DVAT Act, due to mismatch of Input Tax Credit as per annexure 2A filed by the dealer with that of output tax in Annexure 28 filed by the selling dealer. The counsel of the Sh. Sohrabh Jindal, CA of the firm has filed objection against this demand of ward-96 on 13-10-2023 the counsel appeared and produced copy of the objection filed before the undersigned for 1st Qtr 2017-18. The CA stated that the dealer has not purchased the mismatched amount of goods from the seller. The dealer also does not have any documents showing the purchases in question. The demand on the purchases of Rs. 17628629/- is created @12.5% along with interest under DVAT Act.”

As per the impugned order passed by learned SOHA, a demand of Rs. 42,91,847/- has been raised which includes a sum of Rs. 20,88,268/- towards interest.

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5. Feeling dissatisfied with the impugned order, which resulted into dismissal of the objections, dealer has filed appeal, accompanied by this application, through its partner.
6. In the course of arguments on the application, learned CA for the appellant-applicant has submitted that the dealer-applicant is ready to deposit 5% of the disputed tax amount for the purpose of entertaining of the appeal and that the appeal be accordingly admitted on deposit of said percentage of the disputed demand of tax.
7. Learned counsel for the respondent has submitted that in the peculiar facts and circumstances of the case, when the applicant was not diligent in pursuing the matter with the Department or with the Police, let the applicant deposit 5% of disputed demand of tax for the purpose of provisions of section 76(4) of DVAT Act.
8. As noticed above, default assessment came to be framed on the basis of scrutiny of purchase related data filed by the dealer online in Annexure-2A, with Annexure-2B filed by the respective selling dealers. Cross checking revealed that dealer-applicant had claimed ITC more than the output tax reported by the selling dealers. So the Assessing Authority found it to be a case of claim of excess ITC in violation of the provisions of Clause (g) of sub-section 2 of Section 9 of DVAT Act.

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9. As claimed by the applicant, the default assessment was framed by the Assessing Authority in absence of the dealer and that the dealer learnt about it only when its bank account was freezed, and that is how by filing an application dated 12/01/2022, the dealer brought to the notice of concerned Assessing Authority that it could not login to the DVAT portal due to change of its password, and even could not succeed in the resetting the password because even its registered mobile phone number was also found to have been changed.

As regards the allegation of mismatch, claim of the applicant is that it is a case of fraud with the dealer.

On the basis of an application filed by the dealer, the concerned AVATO (W-96) recalled the attachment order, vide order dated 12/01/2022.

10. As further claimed by the applicant, it has got registered a FIR on 17/09/2023 by reporting the matter to Police of Police Station, Malviya Nagar, in addition to a complaint submitted to the Cyber Crime Cell on 18/09/2023.
11. As claimed on behalf of the dealer, it again submitted reply on 18/09/2023, online. Thereafter on 22/09/2023, the dealer is stated to have submitted reply by physically presenting the same, having

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received a show-cause-notice dated 11/09/2023 from the AVATO for cancellation of its registration.

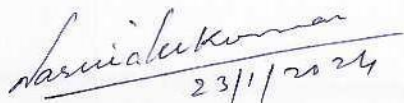
12. In the course of arguments, when enquired as to why the dealer did not challenge the default assessment dated 01/04/2021, learned CA has submitted that the partner of the firm was himself taking steps and that it was only after certified copy of the assessment order was collected, that objections were presented u/s 74 of DVAT Act on 17/10/2023.
13. Accordingly, when claim of the applicant is that this is not a case of mismatch, and rather a case of fraud, there is prima facie case in favour of the applicant, but it ^{would be} ~~is~~ ^{really} for the applicant to satisfy at the time of final argument that it is ^a ~~is~~ victim of fraud at the hands of third person, without its involvement.
14. In view of what has been stated above and the submission by learned CA that applicant is ready to deposit 5% of the disputed demand of tax, the application u/s 76(4) of DVAT Act is disposed of while directing the applicant to deposit only 5% of the disputed demand towards tax only, within 15 days.
15. On compliance, dealer-applicant/ its authorized representative to apprise the Registry as well as counsel for the Respondent so that on the next date, the appeal is taken up for final arguments.

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16. Accordingly, be put up on 08/02/2024. It is made clear that in case of non-compliance with the order, matter shall be taken up for further orders having regard to the non-compliance.
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 : 23/01/2024.


23/1/2024
(Narinder Kumar)
Member (J)

