

**M/s S. S. Impex. v. Commissioner, Trade and Taxes**

M.A. Nos. 361-362/2023

M.A. Nos. 363-364/2023

In Appeals No. 119-120/ATVAT/2023

11/10/2023

Present: Sh. Rakesh Aggarwal, Counsel for appellant-applicant.

Sh. M.L. Garg, Counsel for respondent.

1. File has been taken up once again when counsel for both the parties have come present, and requested for taking up of the matter once again.

Counsel for the appellant-applicant submits that *in each appeal,* application seeking amendment in Forms DVAT 38A is ready with *the* both the *proposed* amended DVAT 38A.

Counsel for the applicant further submits that application seeking condonation of delay in respect of each appeal is also ready.

2. *See* Both these applications have been presented. Be registered. Copies supplied to counsel for the respondent.

**M.A. No. 363-364/2023 (seeking amendment)**

1. So far as the first mentioned application, seeking amendment in forms DVAT 38A, counsel for the applicant submits that inadvertently error has crept in para 6 and para 9 thereof. It is submitted that the order dated

*11/10/23*



11/11/2021 passed by learned OHA was served upon the applicant on 18/11/2021 but inadvertently said date was typed in forms DVAT 38A initially presented, as 18/08/2023. Counsel for applicant submits that applications be allowed and amended forms DVAT 38A be taken on record.

2. Counsel for the respondent has no objection to the amendment to be carried <sup>out</sup> in both the DVAT 38A.
3. Since the amendment is being sought to rectify the errors which have crept <sup>in</sup> in DVAT 38A, the applications are allowed.
4. Consequently, both amended <sup>forms</sup> DVAT-38A are taken on record. Copies supplied.

**M.A. No. 361-362/2023 (seeking condonation of delay)**

1. Counsel for the applicant submits that applications seeking condonation of delay be taken up today itself for hearing. There is no objection to this submission.
2. Arguments advanced just now on the applications seeking condonation of delay, as well.
3. Counsel for the applicant submits that the impugned order dated 11/11/2021 was served upon the applicant on 18/11/2021 whereupon the dealer preferred to file review application on 05/12/2021, but the review application came to be disposed of on 11/08/2023 while copy of the said order was served upon the applicant on 18/08/2023



and that this fact be <sup>taken</sup> taking into consideration, which is a sufficient cause, for condonation of delay in filing the appeals.

4. Counsel for the respondent submits that in the given facts and circumstances for the period of delay, due to expiry of 16 days period prior to filing of the review application, <sup>and</sup> the appeals having been filed on 06/10/2023, costs be imposed on the applicant for not filing the appeals within the prescribed period of limitation.
5. Indisputably, the applicant could challenge the impugned order dated 11/11/2021, as per law, within 2 months period from the date of service of the order. Applicant had also the remedy of filing of review against the said order. He opted to avail of the second remedy, but did not file any appeal. It is true that once the applicant intended to file appeals against the impugned order dated 11/11/2021, it had to withdraw the review application, as per sub-rule (6) of Rule 36B of DVAT Rules. As per sub-rule (7) of Rule 36B of DVAT Rules, during pendency of appeal for decision, Commissioner cannot review any assessment or re-assessment or an order.
6. Here, the review application filed on 05/10/2021 came to be disposed of on 11/08/2023, i.e., more than 2 years after filing thereof. But the applicant did not file appeals and rather preferred to pursue the review application, forgetting

11/10





*or ignoring*

/that the period prescribed for filing of appeal had expired.

✓ The dealer should have been diligent. However, having regard to all the facts and circumstances, in the interest of justice, delay in filing of the appeals deserves to be condoned, though subject to costs. Accordingly, applicant is burden<sup>ed</sup> with costs of Rs. 1000/- in respect of each appeal for the delay on its part in filing the appeals. Both the applications are disposed of accordingly.

7. Counsel for the applicant submits that the applicant shall deposit costs within one week.
8. Accordingly, be put up on 25/10/2023 for compliance with this order and thereupon, for arguments on the applications u/s 76(4) of DVAT Act.
9. 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 : 11/10/2023

Typed by Sachin.



*Narinder Kumar*  
11/10/23  
(Narinder Kumar)  
Member(J)