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

Misc. No. 58,74-78/21.....in
Appeal No : 99-104/ATVAT/2020-21
Misc. No. 59,69-73/21.....in
105-110/ATVAT/2020-21
Date of Decision : 27/07/2021

M/s. Amway India Enterprises Pvt Ltd.,
Ground & 1st Floor,
Heirarchical Commercial Centre,
Jasola,
New Delhi – 110025.

.. Appellant - Applicant

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Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Appellant : Sh. A. K. Bhardwaj,
Counsel representing the Revenue : Sh. P. Tara

ORDER

(on Stay Applications U/s 76(4) of DVAT Act)

1. This common order is to dispose of twelve applications U/s 76(4) of DVAT Act, 2004 (here-in-after referred to as the Act) in the above mentioned twelve appeals, as same point is involved in all these matters.

2. The appellant, a dealer registered by Tin No. 07170192778, has challenged order dated 6/2/2020 passed by learned Objection

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Hearing Authority (OHA), whereby 12 objections filed by the appellant – objector ^{were disposed of} The objections were filed against notice of default assessment of tax, interest and penalty, dated 27/2/2018 and 28/2/2018, issued u/s 9(2) of Central Sales Tax Act (CST). Assessment pertains to May, July, September, November, 2011, Jan., March, 2012.

3. Sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.

As per First proviso to sub-section (4) of section 76, the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount, as it may direct.

As per Second proviso to sub-section (4) of Section 76, no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.

4. Learned counsel for appellant – objector has submitted that present assessment has been made by the Assessing Officer on

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the basis of order of remand dated 8/1/2018 passed by learned OHA, while setting aside the previous assessment made on 12/7/2013. Further it has been submitted that feeling aggrieved by the order of remand dated 8/1/2018, objector – applicant preferred appeal before the Tribunal on 7/2/2018. Thereafter, on 9/2/2018 the objector – applicant filed an application before this Tribunal in the aforesaid appeal already filed on 7/2/2018. Prayer in the application was for pleading additional grounds and also for stay of proceedings being conducted by the Assessing Officer on the basis of order of remand i.e. on 8/1/2018.

5. The above factual position has not been disputed on behalf of the Revenue.

6. Learned counsel for the appellant – applicant submits that when the aforesaid application filed by the objector – applicant was pending before this Tribunal in the above said appeal and matter was coming up on 28/2/2018, the Assessing Officer should not have conducted any further proceedings, but without showing any respect to the Tribunal, the Assessing Officer passed the order on 27/2/2018 i.e a day before the application for stay of the proceedings was going to be taken up by this Tribunal. On this ground, learned counsel submits that these appeals be admitted, waiving pre-deposit u/s 76(4) of DVAT Act.

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7. On the other hand, learned counsel for the Revenue has submitted that for the reasons given in the impugned order passed by the learned OHA, this is not a case for waiving of pre-deposit for the purpose of admission of appeal.

8. Learned counsel for Revenue has further submitted that the applicant – dealer participated in the proceedings before the Assessing Officer, consequent upon remand of the matter, but ultimately refused to participate on the ground that application for stay of the proceedings had been filed before the Tribunal. The contention is that when there was no stay in the proceedings as on 27/2/2018, the Assessing Officer was justified in making the assessment and the learned OHA has rightly upheld the assessment as regards tax, interest and penalty in respect of all the six quarters.

9. In the order dated 27/2/2018, it stands recorded that on 15/2/2018 counsel for the dealer appeared before the Assessing Officer and apprised him of filing of application for stay, additional grounds and the prayer in the application for stay of assessment proceedings.

10. The Assessing Officer, as per the order of remand dated 8/1/2018, was required to complete the assessment proceedings within two months from 23/1/2018. Therefore, prima-facie, there was sufficient time with the Assessing Officer to complete the proceedings, and keeping the proceedings in abeyance for

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some time, while the Tribunal was seized of the matter, would not have led to violation of the directions ^{issued} passed by the learned OHA.

11. Even if there was no stay order from Hon'ble High Court of Delhi or on the applications ^{was} filed before this Tribunal, as submitted by learned counsel for the Revenue, Assessing Officer should have shown courtesy in postponement of the proceedings taking note of filing of the said application for stay of the assessment proceedings. In other words, the Assessing Officer should not have passed the assessment order on 27/2/2018 and instead waited for directions/ orders on the application which was coming up before the Tribunal on the very next day.

12. Undisputedly, vide order dated 14/5/2018, passed by the Tribunal on the application of the appellant, the assessment orders dated 27/2/2018 passed by the Assessing Officer were stayed.

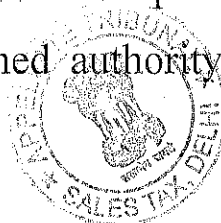
13. For the forgoing discussion, and the triable issues involved in this appeal, all the appeals are admitted waiving deposit of the disputed demand of tax, interest and penalty. All these applications are disposed of accordingly.

Be put up on 09/08/2021 for final arguments.

14. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another

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copy be displayed on the concerned website. One set of the order be placed in the file pertaining to appeals No. 105-110/ATVAT/2020-21.

Announced in open Court.

Date : 27/07/2021



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(Rakesh Bali)
Member (A)

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27/7/2021

(Narinder Kumar)
Member (J)

Appeal No. 99-104/ATVAT/2020-21 / 656-663
105-110/ATVAT/2020-21

Dated: 28/7/21

Copy to:-

- (1) VATO (Ward-)
- (2) Second case file
- (3) Govt. Counsel
- (4) Secretary (Sales Tax Bar Association)
- (5) PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch.
- (6) Dealer
- (7) Guard File
- (8) VATO (L&J)




PS/ PA to Member (A)