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

Appeal No : 94/ATVAT/2019-20

Date of Decision : 29/07/2021

M/s. RAD Elan Distributors Pvt Ltd.

F-90/33, Okhla Industrial Area,

Ph.-I, New Delhi – 110020.

..... Appellant - Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. M.L. Garg,

Counsel representing the Revenue

: Sh. P.Tara

### ORDER

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

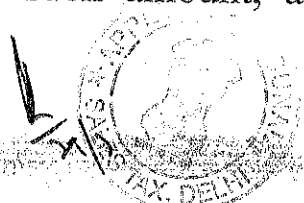
1. Appellant – Applicant is a dealer registered under DVAT Act, as per Tin No. 07260355349 (Ward No. 63). By way of present appeal, appellant has challenged order dated 8/7/2019 passed by learned Spl. Objection Hearing Authority (SOHA).
2. Vide impugned order, SOHA has allowed exemption to the appellant in respect of additional 97 C-Forms produced during hearing on objections, and levied tax @ 18% in respect of missing C-forms worth Rs. 1,78,95,603/-.

*Narinder Kumar*  
29/7/2021



3. Prior thereto the Assessing Officer, vide order dated 2/2/2019 directed the appellant to pay additional tax to the tune of Rs. 1,11,17,237/- with interest of Rs. 64,14,493/-, and in total Rs. 1,75,31,730/-. Tax and interest were levied as the dealer failed to provide requisite documents including statutory forms, despite issuance of notices u/s 59(2) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act).
4. On this application u/s 76(4) of DVAT Act, the submission of learned counsel for the applicant is that subsequently appellant has received C-forms worth Rs. 1,78,42,294.40 paisa and that the appeal be admitted for hearing.
5. On the point of pre-deposit for the purpose of admission of appeal, 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.



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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.

6. Learned counsel for the appellant submits that after the passing of the impugned order by learned OHA on the objection, appellant has received more C-forms, on the basis of which appellant is entitled to avail of benefit.

This fact also finds mentioned in para no. 3 of the application u/s 76(4) as well as in the memorandum of appeal, Copies of the C-forms subsequently received also form part of the record. Learned counsel for the Revenue has gone through the copies of the statutory forms now filed.

7. Keeping in view the fact that subsequently the applicant has received more statutory forms, on which the appellant could not lay hand earlier, and that the appellant may furnish sufficient reasons for non filing of these forms at the time of assessment and during hearing on objections, prima facie case having been made out in favour of the appellant-applicant, the applicant is admitted subject to the direction that the applicant deposits by way of pre-deposit only a sum of Rs. 10,000/- u/s 76(4) of DVAT Act.

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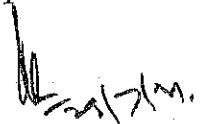
8. We order accordingly. The application is disposed of with the directions to the applicant to deposit the aforesaid amount within 25 days from today.

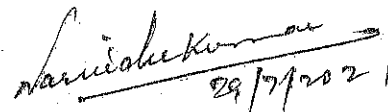
Counsel for applicant to apprise learned counsel for the Revenue regarding compliance, well before the next date i.e. on 08/9/2021, so that appeal is taken up on that day for final arguments.

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 : 29/07/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)




Appeal No. १५/१११११/२०१-२०/६६५-६७१

Dated: 30/7/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-63)   | (6) Dealer     |
| (2) Second case file   | (7) Guard File |
| (3) Govt. Counsel  | (8) VATO (L&J) |
| (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. |                |

  
PS/ PA to Member (A)

