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BEFORE THE APPELLATE TRIBUNAL, VALUE ADDED TAX, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

M.A. No.48 to 51 & 52 to 55/19
Appeal No. 162-165/ATVAT/19
Appeal No. 166-169/ATVAT/19
Date of order: 23.8.2021.

M/s. S.C. J. Plastics Ltd.,
3/10, 11, Okhla Inds. Area,
Pjase – I, Okhla,
Delhi – 110020.

..... Appellant –Applicant

v.

Commissioner of Trade & Taxes, Delhi. Respondent

Present for the Appellant- Applicant : Sh. R. Mahana
Present for the Respondent : Sh. C.M. Sharma

ORDER

(On Applications U/s 76(4) of DVAT Act)

1. Feeling aggrieved by orders dated 30/09/2020 passed by Learned Objection Hearing Authority- (hereinafter referred to as 'OHA'), appellant has filed above captioned appeals in respect of all the four quarters of 2013-14.
2. Vide impugned order, Learned OHA has observed that the dealer-

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appellant could not prove the movement of goods from Delhi to other state, and accordingly upheld the assessment by the assessing Authority treating the sale made by the dealer-appellant as local sale, in respect of the transactions pertaining to the bills, details whereof find mentioned in each notice of default assessment of tax and interest issued u/s 32 of Delhi Value Added Tax Act, 2004 (herein after referred DVAT Act, 2004).

3. On the same observations, Learned OHA has upheld the orders of penalty passed by the assessing authority, in respect of all the said quarters of the year 2013, u/s 86(10) of section DVAT Act, 2004.
4. While arguing on the applications u/s 76(4) of the Act, Learned counsel for the appellant-applicant has submitted that in respect of the bills, which find mentioned in the notices of the default assessment of tax and penalty, case of the appellant-applicant regarding movement of goods stands established from the number of the vehicle(s) mentioned in the said bill and copy of the receipt by the purchaser in proof of delivery of the said goods. The contention is that to prove movement of goods from one state to another, it is not necessary that dealer must file goods receipt (GR).
5. Accordingly, learned counsel for the applicant has urged that all these appeals be admitted without calling upon the applicant-



appellant to deposit any amount by way of pre deposit. In support of his contention, learned counsel has relied in **Bharat Sanchar Nigam Ltd. v Commissioner of Commercial Tax**, MANU/UP/2138/2016.

6. On the other hand, learned counsel for the Revenue has contended that simply from the number of the vehicle mentioned in an invoice, it cannot be said that goods mentioned therein moved from one state to another, so as to entitle the dealer to claim benefit under DVAT Act.
7. On perusal of the copies of the invoices, we find that number of the vehicle(s) finds mentioned therein.
8. Undisputedly, the appellant was given the benefit of the provisions of the DVAT Act, by the Assessing Authority, in respect of some of the transactions in proof whereof the appellant submitted GRs, so far as movement of goods is concerned. Admittedly, the appellant did not submit GRs in respect of the transactions for which tax and interest has been levied and penalty imposed. In the given facts and circumstances, it is for the appellant to explain as to why the goods received (GRs) were not produced before the revenue in respect of the transactions for which tax and interest has been levied and penalty imposed, and the impact of their non-filing.



9. 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.
10. 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.
11. On the point of admission of appeal with or without pre-deposit, in **Ravi Gupta Vs. Commissioner Sales Tax, 2009(237) E.L.T.3 (S.C.)**, it was held as under:-

“It is true that on merely establishing a prima facie case, interim order of protection should not be passed. But if on a cursory glance it appears that the demand raised has no legs to stand, it would be undesirable to require the assessee to pay full or substantive part of the demand. Petitions for stay should not be disposed of in a routine matter unmindful of the consequences flowing from the order requiring the assessee to deposit full or part of the demand. There can be no rule of universal application in such matters and the order has to be passed keeping in view the factual scenario involved. Merely because this court has indicated the principle that does not give a

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license to the forum/ authority to pass an order which cannot be sustained on the touchstone of fairness, legality and public interest. Where denial of interim relief may lead to public mischief, grave irreparable private injury or shake a citizen's faith in the impartiality of public administration, interim relief can be given."

12. Furthermore, in the case of UOI V Adani Export [2007(218)ELT 164(Supreme Court)], Hon'ble Apex Court has held that following are the three aspects to be focused while dealing with the application for dispensing of pre-deposit:

- (a) prima facie case,
- (b) balance of convenience, and
- (c) irreparable loss.

The discretion of stay has to be exercised judiciously by the Appellate Authority.

13. Keeping in view, the triable issue involved in these appeals, if the appellant was able to bring sufficient material before the revenue in proof of the fact of movement of goods to claim the benefit under DVAT Act, we deem a fit case to admit all these appeals, but subject to deposit of 20% of the disputed demand towards tax, interest and penalty, in respect of each quarter.

14. Accordingly, appellant-applicant to deposit by way of pre-deposit

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20% of the disputed demand of tax, interest and penalty for each Quarter of the year 2013-14, within 25 days from today. Counsel for appellant-applicant to apprise counsel for the Revenue regarding compliance with this order, well in time, so that on the next date, appeal is taken up for final arguments.


15. While disposing of the stay application, it is ordered accordingly.

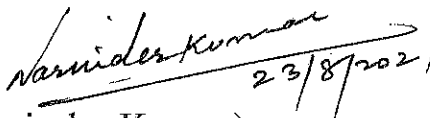
16. However, it is made clear that the observations made above are merely for the purposes of disposal of these applications on the point of pre-deposit for the purposes of admission of appeals, and shall have no effect on the decision of the appeals on merits.

Copies of this order shall be served on both the parties.

17. Announced in open Court.

Date : 23/8/2021.


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Appeal No. 162-165/ATVAT/19 / 806-813
166-169/ATVAT/19/
Copy to:-

Dated: 26/8/21

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




REGISTRAR