(10)

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

Appeal No. 148-149/ATVAT/2019
Date of Order: 23/9/2021

M/s. Oyster Bath Concepts (P) Ltd.,
D-73, Okhla Industrial Area, Ph.-I,
New Delhi - 110 020. .... Appellant –Applicant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh.M.K. Gandhi.
Counsel representing the Revenue : Sh. S.B. Jain.

O R D E R

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

1. This order is to dispose of two applications u/s 76(4) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act) which came to be filed along with two appeals which have been numbered as 148-149/2019.

2. Dealer - Appellant Company is engaged in trading of sanitary ware and fittings. It stands registered with Department of Trade

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& Taxes vide Tin No. 07570265987.

3. The matter pertains to the year 2012-13. Appellant – dealer has challenged orders dated 29/10/2020 passed by learned Objection Hearing Authority (OHA) – VATO (Ward-93), whereby it has been directed to pay additional tax and interest, due to levy of tax @ 10.5% with interest, at Rs. 3,21,321/- (2nd Qtr. 2012-13) & Rs.2,65,653/- (3rd Qtr. 2012-13) , i.e. value of missing C-forms.

4. It may be mentioned here that initially vide orders dated 22/03/2017 passed u/s 9(2) of Central Sales Tax Act (here-in-after referred to as the Act), passed by the Assessing Authority dealer – appellant was directed to pay tax & interest of Rs. 15,38,621/- (2nd Qtr. 2012-13) & Rs. 49,97,797/- (3rd Qtr. 2012-13) because of non furnishing of statutory forms.

5. Feeling aggrieved by the said notice of default assessment of tax and interest, appellant filed objections. During hearing on objections, the dealer – appellant submitted some statutory forms. On the basis of such statutory forms, learned OHA allowed exemption to the dealer – appellant. Since the dealer – appellant was not allowed any further exemption, the appellant has come in appeals.

6. On the point of pre-deposit for the purpose of admission of

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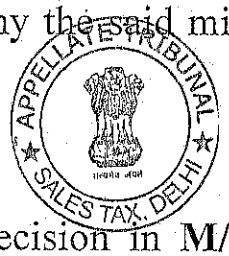
appeal, sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.

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.

7. Admittedly, the dealer is not having any other statutory forms so far. The fact remains that no additional statutory form has been filed with these appeals. It would be for the applicant to satisfy at the time of final arguments as to what efforts were made by the applicant-dealer in obtaining the remaining statutory forms, which were still missing even at the time of hearing on the objections, and as to why the said missing forms have not been filed so far.



8. Keeping in view the decision in **M/s Kirloskar Electric Co.**

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Ltd. V/s. Commissioner of Sales Tax, 1991 Vol. 83 of Sales Tax Cases, 485 and the averments put forth in the appeals, the appeals are allowed to be entertained subject to deposit of 15% of disputed demand by way of tax and interest in respect of each quarter.

9. Accordingly, the applicant is given time till 25th, October, 2021, to deposit 15% of the disputed amount towards tax and interest by way of pre-deposit for the purpose of entertainment of appeals. Ld. Counsel for the applicant to apprise Ld. Counsel for the Revenue regarding compliance of this order of pre-deposit, so that on the next date i.e. 1/11/2021 appeals are taken up for final arguments. Otherwise, law shall take its own course.

10. 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 : 23/09/2021

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(Rakesh Bali)
Member (A)

23/9/2021

(Narinder Kumar)
Member (J)

Appeal No. 148-149/APVAT/2019/1144-51

Dated: 24/9/21

Copy to:-

(1) VATO (Ward-93)
(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) AC(L&J)

REGISTRAR