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

Appeal No. 161/ATVAT/2019

Date of Order: 22/09/2021

M/s. Hathway Cable & Datacom Ltd.,
AB-6, Safdarjung Enclave,
Delhi - 110 092.

.... Appellant – Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : None.
Counsel representing the Revenue : Sh. S.B. Jain.

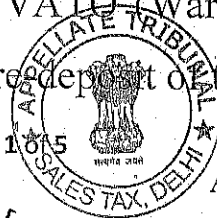
ORDER

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

1. This order is to dispose of application U/s 76(4) of DVAT Act, 2004 (here-in-after referred to as the Act), the prayer in the application is that appeal filed by the appellant – dealer against impugned order dated 17/12/2020 passed by learned Objection Hearing Authority (OHA) – VATO (Ward-100), he entertained waiving of the condition of pre-deposit of the disputed amount of

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tax and interest.

2. ~~Learned~~ Appellant company stand registered with the Department of Trade & Taxes vide Tin No. 07830237423, while it is engaged in the business of cable and internet services provider.
3. Vide impugned order, learned OHA considered objections filed by the dealer – appellant filed against the assessment dated 6/3/2018 framed by the Assessing Authority by way of notice of default assessment of tax and interest u/s 9(2) of Central Sales Tax Act (CST), in respect of 1st quarter of the year 2013-14. Assessing Authority directed the dealer to pay a sum of Rs. 5,29,08,977/-.
4. During hearing on objections, dealer – appellant submitted 8 F-forms of the value of Rs. 24,35,48,799/- and the learned OHA allowed exemption regarding this value. However, as regards F-forms which were still missing, learned OHA, directed the dealer – appellant to pay tax @ 12.5% on the value of the said forms i.e. Rs. 44,35,491/-.
5. The appellant – dealer has challenging the impugned order while alleging that the dealer has no control over the purchasing dealers for obtaining the statutory forms except making persuasive efforts for the same. Furthermore, as per version of



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the dealer, it has been making efforts and the dealer is still hopeful of obtaining pending F-forms.

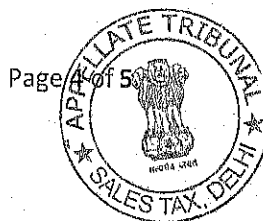
6. The legal ground raised by the dealer – appellant is that the learned OHA has reviewed the notices of default assessment of tax and interest u/s 74B (5) of DVAT Act without any jurisdiction and as such the impugned order deserves to be set aside.
7. Admittedly, the dealer is not having any other statutory forms so far. The fact remains that no additional statutory form has been filed with this appeal. 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. 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.



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9. 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.
10. Keeping in view the decision in **M/s Kirloskar Electric Co. Ltd. V/s. Commissioner of Sales Tax**, 1991 Vol. 83 of Sales Tax Cases, 485 and the averments put forth in the appeals, this appeal deserves to be entertained but subject to deposit of 15% of disputed demand by way of tax and interest.
11. Accordingly, the applicant is given 25 days time, from today, to deposit 15% of the disputed amount towards tax and interest by way of pre-deposit for the purpose of entertainment of appeal. Ld. Counsel for the applicant to apprise Ld. Counsel for the Revenue regarding compliance of this order of pre-deposit, well in time, so that on the next date i.e. 21/10/2021, appeal is taken up for final arguments. Otherwise, law shall take its own course.
12. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be



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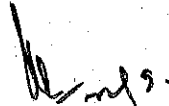
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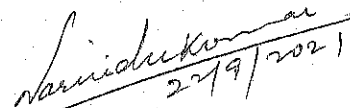
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displayed on the concerned website.

Announced in open Court.

Date : 22/09/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



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Dated: 23/9/21

Copy to:-

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|---|----------------|
| (1) VATO (Ward-100) | (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