

(93) PS

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

Appeal No. 206 & 208/ATVAT/2021

Date of Order: 11/10/2021

M/s. Shiv Singh Construction Co.,
F-264, Phase -IV, Street No. 10,
Shiv Vihar,
New Delhi - 110 094.

.... Appellant -Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

: Sh. M.K. Gandhi.

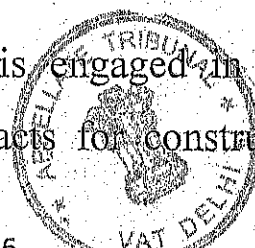
Counsel representing the Revenue

: Sh. P.Tara.

ORDER

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

1. This common order is to dispose of applications u/s 76(4) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act), filed in the above captioned two appeals, as same arise out of common order.
2. Appellant - Dealer Company is engaged in the business of execution of government contracts for construction i.e. works

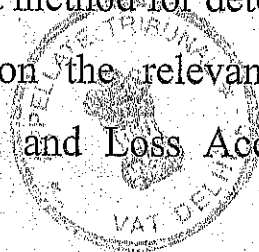


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contracts. It stands registered with Department of Trade & Taxes vide Tin No. 07872011628.

3. Dealer has challenged impugned orders dated 4/3/2021 passed by learned Objection Hearing Authority (OHA), vide which its objection number 388868 and 38867 dated 31/10/2018, in respect of notices of default assessment of tax, interest and separate notice of assessment of penalty, each dated 30/8/2011, issued u/s 32 & 33 of DVAT Act, were disposed of. The tax period is second half early of 2007.
4. Learned counsel for the appellant – applicant has submitted that wrong procedure having followed by the Assessing Authority, while determining GP ratio, so as to reject the GP ratio relied on by the dealer – appellant. In this regard, learned counsel for the appellant has referred to the statement of account Trade and Profit and Loss Account for the relevant period. Therefore, the submission is that the appeals be entertained without calling upon the appellant to deposit any amount by way of pre deposit.
5. Learned counsel for the Revenue has submitted that the Assessing Authority adopted correct method for determination of GP ratio, taking into consideration the relevant figures as furnished in the Trade and Profit and Loss Account ending 31/3/2008.



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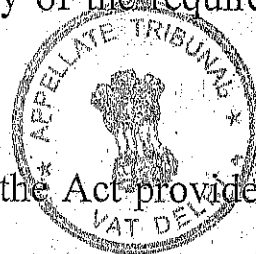
File reveals that learned OHA has observed in the impugned order that during hearing on objections, the dealer failed to convince as to the GP ratio as per its own calculation or understanding.

Only at the time of final arguments, it would be determined if the dealer – appellant correctly depicted GP ratio or if the GP ratio calculated by the Assessing Authority, is the correct GP ratio, calling for default assessment of tax, interest and penalty.

6. Learned counsel for the dealer – appellant has pointed out that while framing default assessment of tax and interest, the Assessing Authority did not specify the basis of his satisfaction i.e. if it was on the basis of incomplete return or incorrect return or a return which did not comply with the requirement of DVAT Act.

A perusal of the notice of default assessment u/s 32 would reveal that the Assessing Authority has not expressed specifically if it was a case on the basis of incomplete return or incorrect return or a return which did not comply of the requirement of DVAT Act.

7. 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.

8. 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.
9. 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 principles that does not give a 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. In the given facts and circumstances of the case, we hereby direct the appellant-applicant to deposit by way of pre-deposit 20% of the disputed demand of tax and interest within 25 days from today, for the purposes of entertainment of these appeals. Counsel for appellant-applicant to apprise counsel for the Revenue regarding compliance with this order, well in time, so that on the next date i.e. 12/11/2021, appeals are taken up for final arguments.



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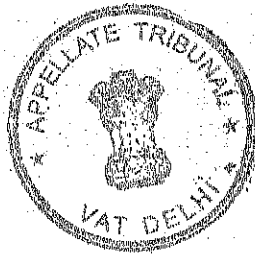
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14. However, it is made clear that the observations made above are merely for the purposes of disposal of these applications on the point of pre-deposit for the purposes of admission of appeals, and shall have no effect on the decision of the appeals on merits. Copies of this order shall be served on both the parties.


15. Stay applications are disposed of accordingly.

Announced in open Court.

Date : 11/10/2021.




(Rakesh Bali)
Member (A)

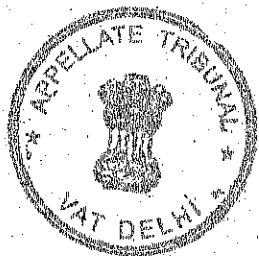

(Narinder Kumar)
Member (J)

Appeal No. 206&208/NT/2021/1344-SI

Dated: 12/10/21

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| (1) VATO (Ward-107) | (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. | |
| (9) Commissioner (T&T) | |




REGISTRAR