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

Misc. No. 159/19
In Appeal No : 212-13/2018
Date of Decision : 14/10/21

M/s. Rinish Overseas Pvt. Ltd.,
Plot No. 2/A-I Sector-8,
Rohini, Delhi – 110 085.

..... Appellant-Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. Subhash Chand Jain.
Counsel representing the Revenue : Sh. S.B. Jain

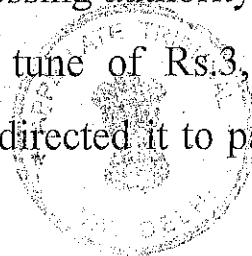
ORDER

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

1. This order is to dispose of two applications filed u/s 76(4) of Delhi Value Added Tax Act (here-in-after referred to as DVAT Act). Dealer- applicant stands registered vide TIN No. 07720174191, with Trade & Tax Department.
2. Vide orders dated 07/06/14, the assessing authority, directed the dealer to pay tax, interest to the tune of Rs.3,13,506/- and interest of Rs. 67,511/- and further directed it to pay penalty of

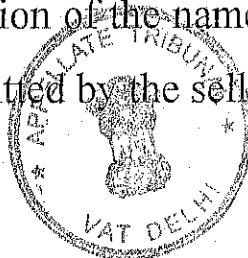
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Rs. 3,13,506/-, so far as the second quarter of 2012-13 is concerned.

3. Notice u/s 32 of DVAT Act, is the notice vide which default assessment of Tax and Interest was made by the Assessing Authority. The other notice is the notice of assessment of penalty u/s 33 of DVAT Act, vide which penalty came to be imposed. Dissatisfied with both these assessments, the dealer filed objections before learned OHA, u/s. 74 of the Act.
4. The impugned order is dated 28/08/18, vide which Ld. OHA has dismissed the objections.
5. Ld. Counsel for the dealer-appellant has submitted that in Form 2A, the dealer had shown purchase of goods from M/s. Pilot Industries Ltd. during the aforesaid period, i.e second quarter of 2012-13, but the selling dealer subsequently revised its return and showed the said sale, actually made to the dealer-appellant, in favour of M/s. Base Corporation Ltd. and this led to mismatch with 2A and imposition of tax, interest and penalty.
6. As per impugned order, the Ld. OHA observed that mismatch was more than 5 years old and even the dealer stood cancelled; and further that there was no mention of the name of the dealer-appellant in 2B of July 2012 submitted by the selling dealer; that



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it could not be established that there was a fair transaction between the two dealers.

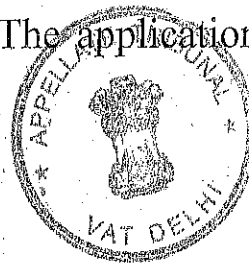
7. As noticed above, the assessment was made in June 2014 but the dealer appellant filed objections against the said assessment on 21/06/18. We have enquired from Ld. Counsel for the dealer if any application seeking condonation of delay for filing of objections was filed before the Ld. OHA. Ld. Counsel for the appellant- dealer is unable to reply the query. In the given situation, at the time of arguments on merits, the dealer – appellant shall have to satisfy about maintainability of the objections before Ld. OHA in the year 2018 when the assessments were made in June 2014.
8. Ld. Counsel for the dealer-appellant has referred to copy of 2A & 2B which form part of the appeal and also to the ledger account of the supplying dealer in the account books of the dealer-appellant as well as three tax invoices and then to the statement of account of the dealer-appellant. This statement of account pertains to the year 2015, whereas the assessment pertains to the second qtr. Of 2012-13. Faced with this situation, Ld. Counsel for the appellant-dealer has submitted that the dealer has a current and running account with the supplying dealer and that the payments were made in respect of the three transactions by the dealer-appellant to the supplying dealer in

the year 2015. However, Ld. Counsel for the appellant-dealer has not been able to interlink any of these transactions with the transactions stated to have been depicted in 2A.

9. 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.

10. In the given facts and circumstances, in view of the provision of section 76(4), appellant – applicant is called upon to deposit, by way of pre-deposit, 20% of the impugned demand of tax & interest, within 25 days from today, by way of condition for entertainment of these appeals. The application is disposed of accordingly.





11. Counsel for appellant - applicant to apprise learned counsel for the Revenue regarding compliance of this order within time so that on the next date i.e. on 24/11/21 the appeal is taken up for final arguments on merits.
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 displayed on the concerned website.

Announced in open Court.

Date : 14/10/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. Misc No - 154/19 in 212-13 / ATVT / 18 | 1408-15

Dated: 21/10/21

Copy to:-

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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. | |
| (9) Commissioner (T&T) | |




REGISTRAR