

Sl. No. 122

PS

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

Misc. No. 240/ATVAT/21  
Appeal No : 275/ATVAT/2021  
Date of Decision : 1/12/2021

M/s Bajrang Bali Industries  
QU-171B, Pitam Pura,  
New Delhi - 110034.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi

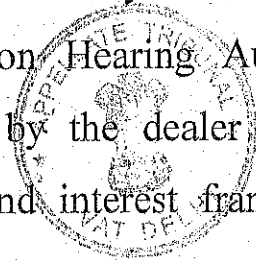
..... Respondent

Representing the Appellant : Sh. H.L. Madan, CA.  
Counsel representing the Revenue : Sh. C.M. Sharma.

## ORDER

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

1. This order is to dispose of application u/s 76(4) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act).
2. Appellant – dealer is feeling aggrieved by order dated 11/8/2021 passed by learned Objection Hearing Authority (OHA), whereby the objections filed by the dealer against notice of default assessment of tax and interest framed on



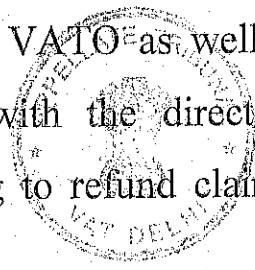
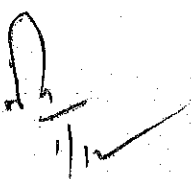
*Narinder Kumar*  
1/12/2021

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*[Signature]*

Appeal No : 275/ATVAT/2021

29/6/2018, by the Assessing Authority, has been rejected. The matter pertains to tax period 1/10/2009 to 31/3/2010.

3. The only submission put forth by learned counsel for the applicant on this application is that while rejecting the claim i.e. ITC of the dealer – applicant, the Assessing Authority could not issue the notice of default assessment of tax and interest particularly when the turnover assessed was ‘zero’, even as per the table available in the said notice issued by the Revenue. Consequently, it has been submitted that when the learned OHA fell in error in upholding the notice of default assessment, appeal be entertained without calling upon the applicant to deposit any amount towards the disputed demand.
4. On the other hand, learned counsel for the Revenue has referred to the observations made by the Assessing Authority for levy of tax and interest, when it was found that the dealer had not mentioned Tin Nos. of some of the selling dealers, in DVAT 30 for the quarter ending 31/12/2009 and 31/3/2010.
5. Undisputedly, earlier this Appellate Tribunal vide order communicated vide endorsement dated 3/5/2018 had remanded the matter to VATO, while setting-aside the previous assessment dated 14/8/2012 passed by VATO as well as the order passed by the learned OHA, with the direction for reconsideration of the matter pertaining to refund claimed by



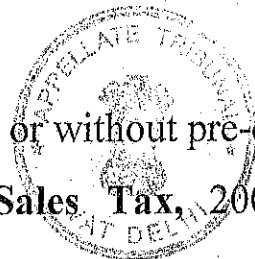
the dealer and to pass orders afresh.

When the matter was remanded in connection with reconsideration of the ITC of the dealer, it is a matter to be considered and decided by this Appellate Tribunal if the Assessing Authority could go to the extent of levying tax and interest on the ground that Tin Numbers of some of the selling dealers had not been mentioned in DVAT 30, and if this is case where the Assessing Authority exceeded the scope of the matter in dispute.

6. 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.

On the point of admission of appeal with or without pre-deposit,  
in **Ravi Gupta Vs. Commissioner Sales Tax, 2009(237)**



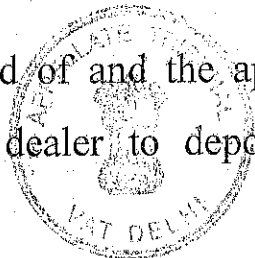
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E.L.T.3 (S.C.), it was held as under:-

“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.”

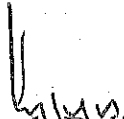
7. Having regard to the provision of section 76(4) and the decisions in Ravi Gupta's case (supra) and the point involved in this appeal, the appeal deserves to be entertained without calling upon the dealer to deposit any amount by way of pre-deposit under the notice of default assessment dated 29/6/2018.
8. As a result, this application is disposed of and the appeal is entertained without calling upon the dealer to deposit any amount by way of pre deposit.

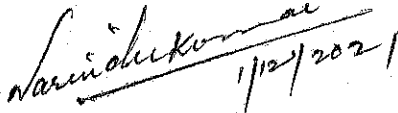


9. Be put up on 12/1/2022 for final arguments.
10. Copy of the order be supplied to both the parties as per rules.  
One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 01/12/2021

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



Order No. 240/ATVAT/21/1584-91  
Appeal No. 275/ATVAT/21

Dated: 6/12/21

Copy to:-

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|--|----------------|
| (1) VATO (Ward-64)   | (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