

S.No. 150

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

Stay Applications No. 306/ATVAT/22 & 307/ATVAT/22

Appeal No. 117-128/ATVAT/17 & 129-140/ATVAT/17

Date of Order : 04/01/2022

M/s. Impex Steels,
Y-20, Ist Floor, Lohamandi,
Naraina,
New Delhi – 110 028.

.....Appellant

v.

Commissioner of Trade & taxes, Delhi

..... Respondent

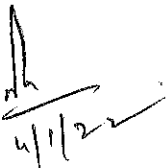
Counsel representing the Appellant : Sh. A.K. Babbar, Adv.

Counsel representing the Respondent : Sh. M.L. Garg, Adv.,

ORDER

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

1. This order is to dispose of applications u/s. 76(4) of DVAT Act, 2004 filed by the dealer-appellant with set of appeals No. 117-128/ATVAT/17 & also with another set of appeals No.129-140/ATVAT/17.
2. Both these set of appeals have been filed challenging impugned orders dated 08/05/17 passed by the Learned Special Commissioner-II/OHA.


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3. The matter pertains to tax period for the month April'2008 to March' 2009.
4. The objections were filed against notices of Default Assessment of Tax & Interest issued by the Assessing Authority – AVATO on 05-11-07/11 and notices of assessment of Penalty, whereby tax, interest and penalty were levied/ imposed upon the dealer, mainly due to the reason that as regards ITC claimed by the dealer, most of the purchases shown in the ITC claim, under audit, were made after the cancellation of RC's of the selling dealers named therein.
5. Ld. OHA, while considering 24 objections raised by the dealer against the said assessment, observed in the manner as:

“I have heard both the parties and I am of the view that the bone of contention in the objection is that during the period 2008-09, the objector had purchased the goods from cancelled dealers, and therefore, the ITC claim of the objector from such cancelled dealer was disallowed and default assessment of tax, interest and penalty was carried out by the Ld. AA. The objectors contention that they were not in knowledge of the fact during the purchase period that the dealers from whom they had procured goods were cancelled and to substantiate the same they sought the information about the notification of the cancellation status in the officer gazette of the department which showed that status of cancellation was not notified. This substantiates the claim of the objector. The claim of

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the objector that the provision section 9(2)(g) is not applicable to the present case, as its been effective w.e.f 01/04/2010 is also true, however, the interest of revenue cannot be ignored, as the fact is well established in the order that the selling dealers were cancelled before the purchases were made by the objector and so the ITC cannot be allowed to the objector. It is also the duty of the purchaser to see that they are dealing with genuine / alive dealers who have duly deposited the due tax. In the instant case also the due revenue that was to be realised had not been received by the department, so the AA was correct in disallowing the ITC claim of the objector. Hence the order of Ld. AA are upheld.”

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.

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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.” ;

7. Ld. Counsel for the applicant also referred ^{to} decision in **Srei Equipment Finance Pvt. Ltd Vs. Commissioner DAVT, in VAT Appeal No. 2/2017** decided on 17/01/2017 by our own

Hon'ble High Court and decision by this Appellate Tribunal in **Bharti Electronics v. Commisisoner, Trade & Taxes, Delhi, Appeal No. 245-248/ATVAT/16.**

8. As noticed above, while disposing of the objections, Ld. OHA himself observed that the contentions raised on behalf of the objector that they were not within the know of the factum of cancellation of the Registration Certificates of the selling dealers, during the relevant purchase period, stood substantiated in view of the fact that status cancellation of the said dealers, named in the notices of default assessments had been not notified. In this regard, provision of section 22 of DVAT Act is of significance.
9. Ld. Counsel for the revenue has submitted that for a claim of credit under the law, there must be transaction with the registered dealer, but herein RC's of some of the selling dealers stood already cancelled and the dealer-appellant should have taken steps to find out, before making purchases, if those selling dealers were duly registered under the Act, and since the dealer-appellant did not take any such step in respect of such selling dealers, whose registration stood already cancelled, the appeals deserve to be entertained subject to deposit by the dealer, of disputed demand towards tax, interest and penalty.
10. In the course of arguments, Ld. Counsel for the appellant-applicant has submitted that this is a case where VATO (Audit)

framed assessment without any authority from the Commissioner, and as such the appeals deserves to be entertained.

In support of his submission, learned counsel for the applicant has referred to following decisions:

- i) Capri Bathaid Pvt. Ltd v. Commissioner of Trade & Taxes, Delhi (WPC No. 8913/2014) decided by our own Hon'ble High Court on 02/03/2016;
- ii) Teleworld Mobile Pvt. Ltd. v. Commissioner of Trade & Taxes, Delhi (WPC No. 6746/2016) decided by our own Hon'ble High Court on 03/08/2016;
- iii) Commissioner of Sales Tax v. Hari Ram Oil Co. decided by our own Hon'ble High Court 1992 (87 STC 493);
- iv) N.S. Oswalyarn, Ludhiana v. State of Punjab – GSTR No. 11 / 2014 Decided by ^{Hon'ble} Punjab & Haryana High Court on 26/03/2009
- v) Meet Traders v. State of Gujarat & Others. (2013) 63 VST 246

On the other hand, Ld. Counsel for the Revenue has submitted that as per circular issued by Commissioner, during the relevant period, the officers appointed under sub-section (2) of Section

66 of Delhi Value Added Act, 2004, not below the rank of Value Added Tax Officer were conferred the powers to audit the business affairs of dealer/ any person for (a) confirming the assessment under the review or (b) serve a notice of the assessment or reassessment of the amount of tax, interest and penalty.


11. Ld. Counsel for the applicant has also referred to decision in **Bansal Dyechem Pvt Ltd. v Commissioner, Value Added Tax, Delhi & Anr.**, ST. Appeal 29/2015 decided on 24/09/2015 by our own Hon'ble High Court, to point out that no prior notice was issued by the Assessing Authority before levy of penalty, and as such the orders imposing penalty deserve to be set aside. On the other hand, Ld. Counsel for the Revenue has referred to decision in **Sales Tax Bar Association's case** and submitted that there was no need of issuance of any prior notice by the Assessing Authority to the dealer, for the purpose of imposition of penalty, and further that opportunity has been afforded by the Ld. OHA to the dealer in compliance of the said decision.
12. Keeping in view of the fact that the Ld. OHA observed that the claim of the objector – dealer-assessee stood substantiated on the ground that the status of cancellation was not notified, at this stage for the purposes of entertainment of appeal, we find that


these appeals deserve to be entertained waiving deposit of any amount.

13. In view of the above discussion, we deem it a fit case to entertain both the set of appeals, without calling upon the dealer-appellant to deposit any amount by way of pre-deposit.
14. All the applications are disposed of accordingly.
15. Be put up on 11/02/2022 for final arguments.
16. 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 web-site. One copy of the order be placed in the other set of appeals 129-140/ATVAT/17

Announced in open Court.

Date : 04/01/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

App. No. 306-307 / AT VAT/22
in Appeal No. 117-128 & 129-140 / AT VAT/17 / 1792-99

Dated: 10/1/22

Copy to:-

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|---|----------------|
| (1) VATO (Ward-103) | (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