

S/ No. 152

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

M.A No. 285721  
Appeal No. 323/ATVAT/21  
Date of Order : 05/01/2022

M/s. Bhauka Auto Industries  
C-41/J, 3<sup>rd</sup> Floor, Wazirpur Industrial Area,  
Delhi-110052,

.....APPELLANT

v.

Commissioner of Trade & taxes, Delhi ... RESPONDENT

CA for the Appellant : Sh. Mithun Khatri  
Counsel for 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 filed on behalf of the Dealer-Assessee with prayer that appeal be entertained waiving of the condition of pre-deposit towards demand of penalty, which has been challenged by dealer in the appeal no. 323/21.
2. Appeal has been filed against order dated 25.10.21 passed by Ld. OHA whereby objections filed by the Dealer-Applicant

*Narinder Kumar*  
5/1/22

against notice of assessment of penalty dated 30.03.19, issued by the AVATO Ward- 66, have been dismissed.

3. Vide assessment dated 30.03.2019, Assessing Authority imposed penalty of Rs. 50,000/- upon the dealer, u/s 86(14) read with u/s 33 of DVAT Act on the ground that the dealer failed to produce documents namely: Audited Balance Sheet, Bank Records including cheque books, statement, counterfoil & pay-in-slip, Proof of receipt & delivery of goods, Purchase register form, DVAT-30, Sale register form, DVAT-31, Statutory forms, Stock Register, G.R./R.R., Stock Summary (Item wise) and Tax invoices & retail invoices, export documents, bill of landing, shipping bills and ebrc etc. of the said period, despite issuance of notice u/s 59(2) of DVAT Act 2004. Matter pertains to tax period Annual 2014-15.
4. While arguing on this application, Ld. Counsel for the Appellant-Applicant has contended that no notice u/s 59(2) of DVAT Act was issued by the Assessing Authority to the dealer; that the assessment regarding penalty imposed by Assessing Authority and order passed by Ld. OHA deserve to be set aside, and as such the appeal be admitted without calling upon dealer to deposit any amount towards the disputed demand of penalty.
5. We have drawn attention of Ld. Counsel for the Appellant-Applicant to objection no. 20 raised by the dealer before Ld.



OHA that the notice issued u/s 59(2) was unsigned notice and as such invalid being contrary to the decision in Swastik Polymers's case [W.P- 4385/2017].

6. In the grounds of appeal, the dealer has taken up a new ground that the Assessing Authority uploaded the notice u/s 59(2) on the website of Department of Trade & Taxes, but the said notice was not delivered in terms of rules 62 of DVAT Act and that the dealer was not aware of uploading of the said notice.
7. 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.” ;

8. Keeping in view the ground raised by Ld. Counsel for the Appellant-Applicant and keeping in view that before the Ld. OHA, the dealer admitted issuance of notice u/s 59(2) and challenged its <sup>only</sup> validity. On the ground that it was an unsigned notice, and in this appeal a contrary contention has been raised that <sup>no</sup> notice at all was served by the Assessing Authority on the dealer, we do not find any prima-facie case in <sup>favor</sup> of the Appellant-Applicant for waiving <sup>of</sup> the condition regarding deposit of amount towards demand of penalty. We also find that no irreparable loss is going to be caused to the Dealer-Applicant; that balance of <sup>Convenience</sup> ~~convince~~ lies in favor of the Revenue when the dealer admitted before Ld. OHA service of notice u/s 59(2) of DVAT Act, and challenged <sup>only</sup> its validity.
9. Consequently, this application is disposed of and appeal is entertained subject to the condition that the Dealer-Applicant deposits entire amount of penalty within 25 days.
10. Ld. Counsel for the Appellant-Applicant to apprise the registry of the Tribunal and Ld. Counsel for the Revenue regarding compliance with this order, so that the appeal is taken up on the next date i.e. on 10/2/2022 for final arguments.
11. 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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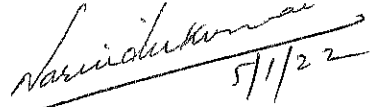
displayed on the concerned website.

Announced in open Court.

Date : 05/01/2022



(Rakesh Bali)  
Member (A)



(Narinder Kumar)  
Member (J)

Application No. 285/ATVAT/21 | 1808-15  
in Appeal No. 323/ATVAT/21

Dated: 10/11/22

Copy to:-

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|--|----------------|
| (1) VATO (Ward-66)   | (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**