

S1.No. 159

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

Application No.- 260-263/ATVAT/21

Appeal No.297-300/ATVAT/21

Date of order: 6/1/2022

M/s Sony India Pvt. Ltd.
A-18, Mohan Co-operative Industrial Estate,
Mathura Road,
New Delhi-110044,

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. A.K. Bhardwaj
Counsel representing the Revenue : Sh. P. Tara

ORDER

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

1. This order is to dispose of four applications u/s 76(4) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the DVAT Act), filed by the Dealer-Appellant Company. The applications have been filed alongwith appeals nos. 297-300/21.
2. By way of appeals, the Dealer-Appellant has challenged order dated 30.09.2021 passed by Ld. OHA (VATO, Ward-202) under Central Sales Tax Act, whereby he directed the

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Dealer-Applicant to pay additional tax with interest for the tax period 1st, 2nd, 3rd and 4th quarter of 2014-15.

3. In the notices of default Assessment of tax and interest, the Assessing Authority directed the Dealer-Applicant to pay tax & interest as shown in the following table :

Tax period	Total Amt.	Tax	Interest
1 st qtr 2014-15	27,080/-	15,778/-	11,302/-
2 nd qtr 2014-15	46,05,183/-	27,43,641/-	18,61,542/-
3 rd qtr 2014-15	62,84,209/-	38,29,276/-	24,54,933/-
4 th qtr 2014-15	32,82,932/-	20,46,576/-	12,36,356/-

3. The Dealer-Appellant is engaged in inter-alia trading of consumer electronics and information technology products such as, Television, digital Camera, music systems, Laptop etc.

4. As alleged in the applications, the case of the Appellant-Applicant is threefold - Firstly, that on the legality of the impugned order whereby the Ld.OHA has invoked section 74B(5) of the DVAT Act whereas the provisions of Rule 36B (7) of the DVAT Rules mandates that the order which is pending in objection cannot be reviewed-thus making the impugned order without jurisdiction and non-est;

Secondly, that even on merits – the impugned order only restricts itself to the forms submitted and there is no mention of any time given for submission of missing forms or refusal of the same. Hence there is no adjudication on the status of missing forms except that they need to be taxed. ^{undue} In the DVAT scheme of assessments at the level of OHA – the bilateral assessment is processed, and an opportunity is given to the aggrieved dealer to state his case and as in the present case the dealer gets an opportunity to plead that the OHA can, for the reasons stated, refuse such a grant of extended time. Therefore, there is complete lack of adjudication on this important aspect in the impugned order; ^{an}

Thirdly, that the imposition of interest is not warranted on the ^{given} facts and in the circumstances of the case.

4. Accordingly, the applicant has alleged that prima-facie it has a very strong case and no harm is going to be caused to the revenue if the appeals are entertained without calling upon the Appellant-Applicant to deposit the disputed amount of tax and interest, whereas, on the other hand, if the applicant is asked to deposit the disputed demand by way of pre-condition by entertaining appeal it would severely affect the cash flow of the applicant.

5. Learned counsel for the applicant has today submitted three F-forms, all dated 24/12/2021, while pointing out that these have been received by the dealer recently as some ^{re-}assessment proceedings were going on in the State of Uttar Pradesh in respect of the company, registered in Greater Noida, to which the stocks were transferred by the dealer – appellant.
6. Learned counsel for the applicant further submits that after adjusting the value of the said three F-forms, submitted today, as regards the C & F Forms, still not received by the dealer applicant, disputed demand of tax comes to the tune of Rs. 1,94,732/-, which the dealer – applicant is going to deposit and that these appeals be entertained.
7. One of the submissions put-forth by learned counsel for the applicant is that in view of provisions of section 8 (2) of CST Act, liability of dealer, who fails to produce statutory forms, arises only from the date of assessment made by the Commissioner and as such the liability of the dealer towards interest accrues from the said date, and not from the date of filing of the return.
8. On the other hand, learned counsel for the Revenue has submitted that liability of such a dealer to pay interest accrues from the date of filing of the return, ^{itself} once the dealer fails to

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furnish the requisite statutory forms as per declaration submitted with the return, within the prescribed period, and further that this is rather a case of admitted liability as on the date of filing of appeal.

9. In the given facts and circumstances, the issue regarding the date of accrual of liability of such a dealer as regards interest, is a point to be adjudicated on merit.
10. 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

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relief can be given.”

11. 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.

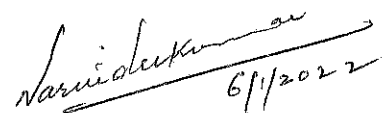
12. Keeping in view the abovesaid decisions and provisions of section 76 (4) of DVAT Act, the fact that appellant is going to deposit the entire amount of tax as per disputed demand, raised because of the missing statutory forms, and that the point of interest as raised by counsel for the applicant can be considered/ determined only at the time of final hearing, we are inclined to admit the appeal and stay recovery only as regards demand of interest, under the impugned order. We order accordingly.

13. Be put up on 14/2/2022 for final arguments.

Announced in open Court.

Date: 06/01/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appellate No. 260-213/ATVAT/21/1784-91
Appeal No. 297-300/ATVAT/21/1784-91

Dated: 10/1/22

Copy to:-

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| (1) VATO (Ward-202) | (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