'21.20. 155

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (J) and Sh. Rakesh Bali, Member (A)

M.A. No. ..111/Misc/Stay/21
Appeal No. 186/ATVAT/2020
Date of Order: 05/01/2022

M/s. STP Limited,
707, 7th Floor,
Chiranjiv Tower 43,
Nehru Place,
New Delhi – 110 019. .... Appellant - Applicant

V.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel for the Appellant : Sh. Anil Verma &
Sh. Shyam Sethi
Counsel for the Revenue : Sh. P. Tara.

ORDER

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

1. This order is dispose of application u/s 76(4) of Delhi Value Added Tax Act-2004 (here-in-after referred to as the DVAT Act) filed with appeal No. 186/20.

2. Appeal has been filed challenging impugned order dated 24/9/2020 passed by learned Objection Hearing Authority

Narinder Kumar 5/1/22

(OHA), whereby on account of non-submission of C & F forms, he directed the dealer to pay additional tax with interest, while disposing of the objections filed against the assessment framed by the Assessing Authority on 4/1/2018.

3. The Assessing Authority had also framed default assessment of tax & interest under Central Sales Tax Act (CST), in respect of all the 04 quarters, due to the reasons that the dealer had failed to submit C, F & I Forms.

4. Arguments heard. File perused.

5. Learned counsel for the appellant - applicant submits that subsequent to the disposal of the objections by learned OHA, one C-form has been received by the dealer – appellant which was not made available by the opposite dealer earlier and accordingly the appeal be entertained.

6. Learned counsel for the appellant-applicant has supplied one set of C-form and the annexures to counsel for the Revenue and learned counsel for Revenue has gone through the same and submitted that the said C-form pertain to the 04 quarter of 2013-14.

Some statutory forms were produced by the dealer – appellant before the Assessing Authority and some other forms were produced by the dealer before learned OHA and the tax and interest came to be levied/ upheld by the Assessing Authority – learned OHA as regards missing C & F Forms.

It is yet to be seen as to what steps were being taken by the dealer to secure the remaining statutory forms for their production before the Revenue.

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."

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. In the light of the above decisions in Ravi Gupta Vs. Commissioner Sales Tax, and in the case of UOI (supra), this appeal is entertained subject to deposit of 15% of the disputed demand towards tax and interest,

13. Accordingly, the applicant is given time till 27th, Jan., 2022 to deposit 15% of the disputed amount towards tax and interest by way of pre-deposit for the purpose of entertainment of appeal. Ld. Counsel for the applicant to apprise the Registry and Ld. Counsel for the Revenue regarding compliance with this order of pre-deposit, so that on the next date i.e. 17/2/2022 appeal is taken up for final arguments. Otherwise, law shall take its own course.

14. 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 : 05/01/2022

(Rakesh Bali)
Member (A)

(Narinder Kumar)
Member (J)

Misc.App. - 11/DTVAT/21 / 1840-47
Appeal No. 186/DTVAT/20

Dated:

Copy to:-

(1) VATO (Ward-89)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)
(9) Commissioner (T&T)

REGISTRAR