

S. NO - 179

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Application No. 312-315/ATVAT/2022

In Appeal No. 340-343/ATVAT/2022

Date of Order: 9/2/2022

M/s. R.K. Enterprises,
59/1, Office No. 7,
New Rohtak Raod,
New Delhi - 110 025.

.... Appellant –Applicant

V

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Appellant

:

Sh. Manoj Kumar.

Counsel representing the Revenue

:

Sh. C.M. Sharma.

ORDER

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

1. This common order is to dispose of applications No. 312-315/22, filed by the dealer with prayer for entertaining of 4 appeals No. 340-343/22, without calling upon the dealer to deposit any amount towards demands raised by the Revenue on assessments towards tax and interest.

Narinder Kumar
9/2/2022

Rakesh Bali
7/1/22


2. Matter pertains to all the four quarters of 2015. Assessments have been made under Central Sales Tax Act (CST), vide orders dated 16/12/2021, by the Assessing Authority – AVATO (Ward-41).
3. Against the default assessments of tax and interest, the dealer filed objections u/s 76(4) of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act). Learned Objection Hearing Authority (OHA) – VATO (Ward-41), allowed certain exemptions to the dealer on production of some statutory forms.

Still feeling dissatisfied with the impugned order, dealer – appellant has filed four appeals accompanied by the four applications u/s 76(4) of DVAT Act.

4. 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


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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) 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.”

Furthermore, in the case of **UOI V Adani Export**

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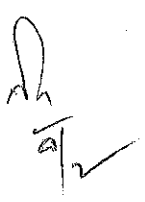

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[2007(218)ELT 164(Supreme Court)], Hon'ble Apex Court has held that following are the three aspects to be focused while dealing with the application for dispensing of pre-deposit:

- (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.

5. Learned counsel for the dealer –applicant has submitted that before the Assessing Authority, the dealer submitted some C-forms, downloaded from the portal of tax information exchange system, but those were not taken into consideration and the demand of tax and interest was raised in respect of each quarter, and as such the appeals be entertained without any condition of deposit by way of pre-deposit.
6. On the other hand, learned counsel for the Revenue has submitted that to claim exemption under statutory forms, dealer is required to submit original statutory forms before the Revenue Authorities, and that he has already been allowed exemption in respect of the statutory forms produced by the dealer before learned OHA.

7. As regards, the case of the dealer regarding rejection of exemption on the basis of C-forms downloaded from the portal, there is nothing in any of the notices of default assessments of tax and interest, to suggest that any exemption was disallowed in spite of submission of original C-forms. Even in the impugned order passed by learned OHA, there is no mention of disallowing of any exemption to the dealer – objector, on production of original C-forms.
8. Undisputedly, dealer – appellant, has not filed any fresh C-forms with any of these appeals.
9. As a result, we do not find any prima-facie case in favour of the dealer – appellant, so as to entertain these four appeals without calling upon the dealer to pay amount by way of pre-deposit rates.
10. In the given facts and circumstances of the case, we hereby direct the appellant-applicant to deposit the entire amount of demand as per the impugned orders passed by learned OHA, within 25 days from today, for the purposes of entertainment of these appeals. Counsel for appellant-applicant to apprise counsel for the Revenue regarding compliance with this order, well in time, so that on the next date i.e. 11/3/2022, appeals are taken up

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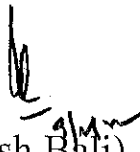
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for final arguments.

11. However, it is made clear that the observations made above are merely for the purposes of disposal of these applications on the point of pre-deposit for the purposes of admission of appeals, and shall have no effect on the decision of the appeals on merits.
12. 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 : 09/02/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Application No. - 312 - 315/ATVAT/2022 } 1968-75
Appeal No. - 340 - 343/ATVAT/2022 }

Dated: 09/02/2022

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-) | (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. | |

REGISTRAR

