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

Application No. 239/ATVAT/Stay/21

Appeal No- 25/ATVAT/19

Date of decision: 10/3/2022

M/s. T.D. Industries Pvt. Ltd.,
Plot No. 204, 226A, (unit I)
Near Syndicate Propp.
Mundka, Delhi – 110 041.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Kanishk Rana
Counsel representing the Revenue : Sh. M.L.Garg

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 by the dealer – appellant with appeal No. 25/19.
2. The appeal has been preferred challenging order dated 16/05/19 passed by Ld. Objection Hearing Authority (hereinafter referred as Ld. OHA) / AVATO Ward - 62.
3. The matter pertains to 4th Quarter 2016.



framed in respect of the other valuations, which find mentioned in the order dated 09/11/18, were also upheld.

7. Arguments heard. File perused.
8. In Para No. 13 of the application, it has been alleged that the dealer has deposited the demand of tax on the pending forms. Learned counsel for the applicant has submitted that tax has been deposited except in respect of C-forms worth Rs. 1,07,98,53,000/-.
9. The case of the dealer- appellant is that the Assessing Authority framed ex-parte assessment. As regards the Impugned order passed by Ld. OHA, it is case of the appellant- dealer that all the statutory forms, which were submitted before Ld. OHA, were accepted, except the forms which were cancelled by Excise & Taxation Department, Haryana. Other necessary documents are also stated to have been produced before Ld. OHA.
10. As regards, cancellation of C-forms issued to the dealers, which find mentioned in the impugned order, learned counsel for the applicant has submitted that the same having been subsequently cancelled, the dealer – applicant could not be burden^{ed w/} ~~of~~ the liability of the tax and interest. In support of his submission, learned counsel for the applicant has referred to decision in **State of Haryana v. Inalsa Limited and Another**, 2010 SCC online P&H 13071, decided by Hon'ble High Court of Punjab &

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Haryana, on 1/9/2010; **Jain Manufacturing (India) Pvt. Ltd. v. Commissioner**, WP(C 1358/2016 decided by our own Hon'ble High Court on 01/06/2016.

11. On the other hand, learned counsel for the Revenue has submitted that the dealer, despite notice u/s 59(2) of DVAT Act, by the Assessing Authority, failed to produce sale purchase invoices, bank statement, original statutory forms, export details and audited balance sheet etc., and as such this is not a case where appeal should be entertained waiving the requirement of pre-deposit of the disputed demand.
12. Learned counsel for the applicant submits that no notice was served upon the dealer. The Assessing Authority specifically mentioned in the assessment order regarding issuance of notice u/s 59(2) of DVAT Act to the dealer – assessee and further that neither anyone appeared nor produced any record before him. There is nothing on record to suggest that any such objection was raised by the dealer before learned OHA regarding non-service of notice u/s 59(2) of DVAT Act. So, only at the time of final arguments, the dealer – appellant has to satisfy regarding non-service of any such notice.
13. 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:



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“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 [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.



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14. In the objections, the dealer – objector had specifically sought permission to produce documents in respect of export sales and also in respect of rejected C-forms. In the impugned order, there is no mention if any documents were submitted before learned OHA. In the application, dealer has specifically alleged that all the requisite documents were submitted before learned OHA.
15. As regards, cancellation of C-forms, as communicated to Department of Trade & Taxes, Delhi, by the Excise Department, of Haryana, in view of decisions cited by learned counsel for the applicant, it is yet to be determined as to what led to the cancellation of C-forms, and if the dealer – applicant could be made liable to pay tax on this ground.
16. In the given facts and circumstances, we deem it a fit case to entertain the appeal without calling upon the dealer – applicant to deposit any amount towards the disputed demand. We order accordingly.
17. 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.

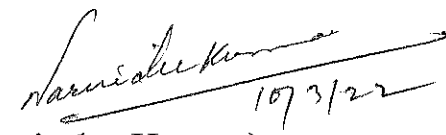
Announced in open Court.

Date : 10/3/2022


(Rakesh Bali)

Member (A)




(Narinder Kumar)

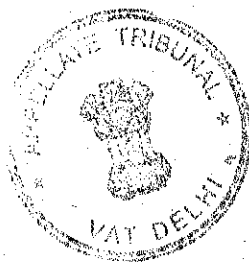
Member (J)

Misc App. No. 239/ATVAT/3rd/21 /
in Appeal No. 23/ATVAT/19 / 3000-07

Dated: 14/3/22

Copy to:-

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|---|----------------|
| (1) VATO (Ward-62) | (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. | |




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