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

Appeal No.-352-353/ATVAT/22

Date of Order : 15/3/2022

M/s Champion Engg. Works,
A-37/1, Industrial Area,
Mayapuri, Delhi – 110064.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. A.K. Babbar
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 application u/s 76(4) of DVAT Act, 2004, with prayer that appeals no. 352/22 and 353/22 filed by the applicant be entertained, without calling upon the application to deposit any amount, by way of pre deposit, towards the disputed demand.
2. Applicant-Dealer-Assessee, registered with Department of Trade & Taxes, Delhi, was directed by VATO (Ward 105) to deposit Rs. 68,603/- i.e. Rs. 57320/- towards additional tax and

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Rs. 11283/- towards interest, after he framed default assessment u/s 32 of DVAT Act on 12.11.2014. The assessment came to be made due to the reason that dealer had made purchases in the first quarter of 2013-14 from a non existing/suspicious dealer, which stood already cancelled by the Department of Trade & Taxes and also because the dealer could not produce authentic proof regarding transfer of title of goods to his firm. With these reasons, Learned VATO rejected the tax credit claimed by the dealer.

3. The other Appeal No. 353/22 pertains to tax period first quarter 2013-14, whereby Dealer-Assessee was directed by VATO (Ward 105) to deposit a sum of Rs 2,73,750/- towards additional tax and Rs. 12,825/- towards interest, due to the reason that ~~the dealer had made purchase in the said tax period.~~

“The dealer has made purchase in Ist qtr., 2014-15, from a non existing/suspicious dealer which has already been cancelled by this Department. The dealer could not produced authentic proof whereby it can be ascertained that title of goods were transferred to his firm. Hence ITC claimed by the dealer is hereby rejected.”

4. Feeling dissatisfied with the default assessments of tax and interest, the Dealer-Assessee filed objections against both the above mentioned default assessments, which came to be dismissed vide order dated 02.12.2021, passed by Learned Joint Commissioner/OHA. Hence, these appeals.

5. In the impugned order, Learned OHA observed in the manner as:

"In view of the aforesaid facts and circumstances of the case, and also from the contentions/grounds raised by the Ld. Counsel for the objector dealer and also as per the record/documents available along with the said rulings/judgments placed by the Objector Dealer and also perusal of the impugned order shows that the Authority has disallowed the ITC on account of purchases made from some of the dealers on the grounds that these dealers are suspicious/non-functioning. Ample opportunity for producing authentic proof has been provided to the objector, which can ascertain that title of goods were transferred to his firm but objector dealer fails to produce the proof/ documents. No other documents/records have been furnished by the Objector Dealer in order to substantiate its claim. Therefore, without the due examination of the documents/records, the claim of the Objector Dealer cannot be decided. Hence, considering the peculiar facts of the case as mentioned by the counsel for the Objector Dealer, I am of the considered opinion that it is ^{case} a fit to dismiss the present objection (ID No. 88431 and 88432) in aforesaid terms. Ordered accordingly."

6. Arguments heard. File perused.

7. Learned counsel for the dealer has pointed out that while making assessments of tax and interest, the learned Assessing Authority did not specify as to on which date, the name of the

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dealer, from whom the purchases were made or with whom the dealer had entered into transaction, were cancelled by the Department.

Learned counsel for the Revenue does not dispute that this fact does not find mention in the notices of default assessment. Even in the impugned order passed by learned OHA, this fact does not find mention.

8. The other ground for rejection of ITC is that the dealer had not submitted documents regarding transfer of title of goods by the dealer. On this point learned counsel for the dealer has not made any submission except that no document was submitted before the learned Assessing Authority or before learned OHA in this regard.
9. 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.

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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.

10. In the given facts and circumstances, we deem it a fit case to entertain the appeal, subject to deposit of 15% of the disputed demand by way of pre-deposit. These applications u/s 76(4) are disposed of accordingly.

11. Applicant is given 25 days' time to deposit the said pre-deposit amount in each appeal. Put up on 19/4/2022 for final

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arguments. Counsel for the applicant to apprise Ld. Counsel for the Revenue about compliance well in time, so that appeals are taken up for final arguments.

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 web-site. One copy of the order be placed in the other set of appeals 353/ATVAT/22.

Announced in open Court.

Date : 15/3/2022.


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 352-353/DVAT/22/3048-55

Dated: 17/3/22

Copy to:-

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| (1) VATO (Ward- /05) | (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