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

Application No. 270/ATVAT/Stay/21

Appeal No- 303/ATVAT/21

Date of Order: 26/4/2022.

M/s. Ageo Technologies Pvt. Ltd.

Flat No. 29, JMD Appptt., Plot No.11,

Sector-5, Dwarka – 110 075.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

CA representing the Appellant :

Ms. Mamta Saluja

Counsel representing the Revenue :

Sh. C.M.Sharma

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

1. This order is to dispose of application filed u/s. 76 (4) of Delhi Value Added Tax Act, 2004 (hereinafter referred as DVAT Act) read with Rule 57 A of the DVAT Act and Rules with prayer that the appeal be entertained without calling upon dealer-appellant-applicant to deposit any amount towards assessment of penalty, levied by Ld. Assessing Authority and upheld by Ld. OHA.



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Assessment was made by Ld. Assessing Authority vide order dated 02/09/2014, U/s. 86 (9) of DVAT Act.

Ld. Assessing Authority framed assessment of penalty vide separate orders u/s 9(2) of CST Act, in respect of tax period 1st, 3rd and 4th Qtr. 2013-14.

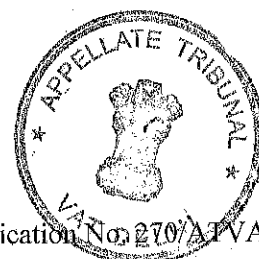
Similar amount of penalty came to be levied by way of separate notice of assessment u/s. 33 of DVAT Act for the same tax periods.

2. Ld. OHA dealt with the objections filed by the dealer against the above said assessments of penalty and dismissed the objections as regards imposition of penalties.

Ld. OHA observed that the dealer had made default in filing of returns on or before the due dates. As regards the submission put forth on behalf of the dealer that the returns could not be timely furnished because of family circumstances of its director, Ld. OHA observed that the reason was not impressive as the dealer was functioning in a regular manner and reporting good amount of turn over as evident from the table and further that the dealer could not take such excuses.

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3. In the appeal, the dealer has averred that the delay in filing of the return was due to medical ground and death of one its director. In this regard in the ground of appeal, the applicant has stated :-

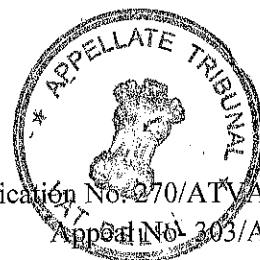
“ That the Directors of the Company during 2013-14 was Mr. Mukesh Chhibber and Mrs. Poonam Chhibber (husband and wife).

That Mr. Mukesh Chhibber was suffering from prolonged illness since 2013 which continued till 2015 and thereafter he died on 18-06-2015. In 2013, Mr. Mukesh Chhibber illness was diagnosed and the family underwent emotional turmoil during the treatment procedures and as a result, both the Directors of the Company being husband and wife were not professionally active. Entire day to day business activities were carried out by the staff as per their knowledge in unsupervised environment without intervention of the Directors of the Company.

Further during the period 2013 to 2015, the parents of Mrs. Poonam Chhibber (Director of the Company) also died. Mrs. Poonam Chhibber was not in a position to take care of the company post emotional instability and events in her family. Mr. Hemant Kumar Sachdeva, brother-in-law of Mr. Mukesh Chhibber has now taken charge of the Company as the Director of the Company and came to know about the demand of penalties for the relevant periods as mentioned above in table under para 2.2 total amounting to Rs. 2,01,200/- for late filing of return.”

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4. Arguments heard. File perused.
5. Learned Counsel for the dealer-applicant has referred to copy of death certificate dated 18/06/2015 which pertains to Sh. Mukesh Chhibber, one of the directors of the dealer-applicant. He has also referred to scanned copy of certificate issued by director of HCR Institute, Psychiatry and De-addiction Centre, Bijwasan, Dwarka, New Delhi to submit that Sh. Mukesh Chhibber remained under treatment at the said institute for major depression disorder during the period from 2013-15. Learned Counsel has also referred to copy of death of certificate dated 15/08/15 which pertains to Sh. Madan Mohan Chhabra father of Smt. Poonam Chhibber, the other Director of the appellant and w/o Sh. Mukesh Chhibber.

In the course of arguments, Learned Counsel for the applicant has submitted that the husband and wife were the only two directors of the dealer –applicant.

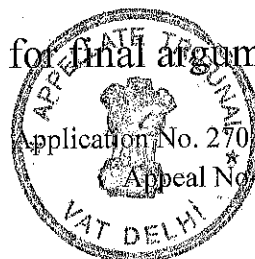
The contention is that the delay in filing of the returns occurred because of the said facts and as such the appeal be entertained without calling upon the dealer to deposit any amount by way of pre-deposit.

6. As per certificate dated 12/12/2019 issued by Psychiatry and De-addiction Centre, Bijwasan, Dwarka, New Delhi that Sh.



Mukesh Chhibber remained under treatment at the said institute for major depression disorder during the period from 2013-15. As further certified Sh. Mukesh Chhibber was unable to perform any purposeful, personal and professional activities.

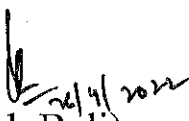
7. Learned Counsel has further submitted that matter is pending before Hon'ble NCLAT regarding Insolvency of the dealer. However, on query she is unable to tell as to by whom those proceedings have been initiated. No document in support of this submission has been filed.
8. Keeping in view the medical certificate in respect of Sh. Mukesh Chhibber, and that the said director ultimately left this world, we deem it a fit case to entertain the appeal against the impugned order, subject to deposit of a sum of Rs. 7,500/- each as regards each penalty u/s. 33 of DCAT Act and u/s. 9(2) of CST Act, relating to the tax period 3rd and 4th quarter i.e. Rs. 30,000/- in all, and Rs. 600/- each as regards tax period 1st quarter 2013 u/s. 33 of DCAT Act and u/s. 9(2) of CST Act, i.e. Rs. 1200/- in all.
9. Application u/s. 76(4) of DVAT Act is disposed of accordingly. Dealer to deposit said amount within 25 days. The dealer to inform the Tribunal and Learned Counsel for the Revenue regarding compliance, so that on the next date i.e. on 30/05/22 the appeal is taken up for final arguments.




10. 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 : 26/4/2022


(Rakesh Bali)
Member (A)

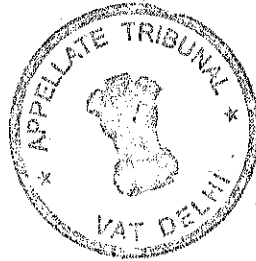

(Narinder Kumar)
Member (J)

MA NO. 270/Stay/21 | 4204-11
Appeal No. 303/ATVAT/21

Dated: 27/4/22

Copy to:-

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|---------------------------------------------------------------------------------------------------------|----------------|
| (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