

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

Stay Application No. : 433/22

Appeal No. : 390/ATVAT/22

Date of Order: 29-04-2022.

M/s. DRS Fitking Pvt. Ltd.,
Khasara No. 84/24, South Side,
South Side Gali No. 2, Mundka
2, Mundka, Ind. Area,
Delhi-110041.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi

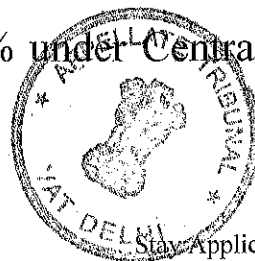
.....Respondent

Counsel representing the Appellant : Sh. S.P. Gogia
Counsel representing the Revenue : Sh. N.K. Gulati

Order on Stay Applications u/s 76(4) of DVAT Act

1. This order is to dispose of application u/s 76(4) of DVAT Act with prayer that Appeal No. 390/22 filed by the dealer be entertained without calling upon the dealer to pay any amount by way of pre-deposit towards the disputed demand of interest.
2. Dealer-appellant is feeling aggrieved by order dated 23/02/22 passed by learned OHA whereby it has been directed to pay Rs. 9,11,272/- by way of tax @ 3% under Central Sales Tax

29/4/22 29/4/22



Act, with interest, as regards "C" forms not produced even during objections.

3. Learned Assessing Authority framed assessment dated 27/03/2018 under CST Act, creating demand of Rs. 12,29,011/-, on account of non-production of "C" forms worth of Rs. 73,74,205/-.

It may be mentioned here that said demand of tax came to be reduced before learned OHA on account of production of 7 "C" forms and exemption allowed by him in respect thereof.

4. The submission of the dealer-appellant is that it having deposited the entire tax in respect of all the remaining "C" forms, not produced before the Department, the demand regarding interest may be waived.
5. In the course of arguments, learned counsel for the applicant has submitted that the waiver is being ^{reverted} ~~short~~ only in respect of the amount of interest levied i.e. Rs. 1,12,619/-. He further submits that remaining C-forms are awaited from the concerned dealer.
6. Learned counsel for the Revenue has submitted that interest has been levied on the additional tax of Rs. 95,684/- as the dealer failed to submit remaining statutory forms, and that simply because amount of additional tax has been deposited,

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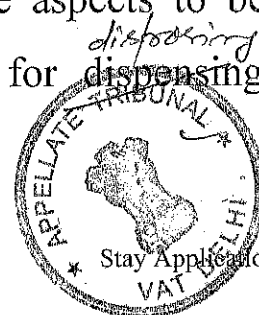


this is no ground for waiver from deposit of the disputed demand towards interest, by way of pre-deposit.

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.”

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 ^{disposing} 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.


8. Keeping in view, the issue involved in this appeal, it is to be seen if the appellant took steps to collect remaining C-forms, we deem it a fit case to admit this appeal, but subject to deposit of 15% of the disputed demand towards interest.

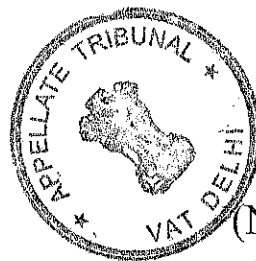
Accordingly, appellant-applicant ^{is directed} to deposit by way of pre-deposit 15% of the disputed demand of interest within 25 days from today. Counsel for appellant-applicant to apprise counsel for the Revenue regarding compliance with this order, well in time, so that on the next date i.e. 6/6/2022, appeal is taken up for final arguments.

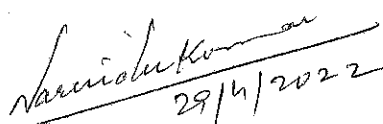
9. The application u/s 76(4) is disposed of accordingly.
10. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date: 29/4/2022


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

MA. NO. 433/stay/22 / 4252-59
Appeal No. 390/ATNAT/22

Dated: 2/5/22

Copy to:-

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| (1) VATO (Ward-43) | (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 28/22