

**BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI**

Sh. Narinder Kumar: Member (Judicial)

Misc. Application No.397-400/Stay/ATVAT/2022

Appeal Nos. : 385-388/ATVAT/22

Date of Order: 3<sup>rd</sup> of June, 2022

M/s. Shivalaya Construction Co. P. Ltd.

.....Applicant

V.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Ravi Chandhok

Counsel representing the Revenue : Sh. P.Tara

**Order on Applications U/s 76(4) of DVAT Act**

1. This common order is to dispose of four applications u/s. 76(4) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) filed with four appeals bearing No. 385-388/ATVAT/22 as the same arise out of common order passed by Learned Objection-Heading-Authority (OHA) relating to tax and interest.

Applicant-dealer is engaged in civil works contract and registered under DVAT Act. As per facts, the dealer- applicant had opted for Composition Scheme declared vide Notification



dated 28/02/2013. The Composition Scheme falls under Scheme A of the said notification. The dealer opted to pay 3% tax of the entire turnover relating to work contract.

The reason for framing of assessment was that the dealer – appellant committed breach of the terms and conditions of the Composition Scheme, as in the returns and 2A and 2B for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2013-14, the dealer is stated to have shown purchases from interstate dealers to the tune of Rs. 36,74,822/-, Rs. 10,01,146/- & Rs. 96,88,959/- respectively, whereas under the said Composition Scheme, said purchases from inter-state dealers were not permissible.

3. Dealer is feeling aggrieved by order dated 29/12/2021 passed by Learned OHA vide which four objections filed under section 74 of DVAT Act, pertaining to 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Quarter of 2013-14, have been dismissed.
4. The objections were filed challenging assessments dated 29/07/2019 framed u/s. 32 of DVAT Act relating to each of the four quarters of 2013-14. Assessments were framed by VATO (Ward 63).
5. It may be mentioned here that for the same tax periods, initially assessments were made on 31/03/2018. The subsequent assessments are dated 29/07/19. These have been framed consequent upon remand of the matter in terms of order dated



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01/08/2018 earlier passed by Learned OHA. Remand order was passed considering the submission of the dealer-objector that Assessing Authority had not given it any opportunity of being heard, and so that entire record was taken into consideration.

6. It may be mentioned here that subsequent to the remand of the matter by learned OHA, Authorised Representative of the dealer appeared before Learned Assessing Authority and put forth the ground that it was due to mistake that local purchases made by the branches located outside Delhi were shown in column 2A meant of central purchases of the returns.

Vide assessment framed on 29/07/2019, Learned Assessing Authority observed that the dealer had failed to comply with the conditions specified in the Composition Scheme and as such it was not eligible for benefits under the said scheme. Consequently, demands of Rs. 2,06,93,532/- for the 1<sup>st</sup> quarter, Rs. 2,55,82,882/- for the 2<sup>nd</sup> Quarter, Rs. 2,14,66,320/- for the 3<sup>rd</sup> Quarter and Rs. 1,79,41,324/- for the 4<sup>th</sup> quarter were raised treating the dealer as a normal dealer and in this way the tax already deposited by it was forfeited.

However, benefit of tax credit was granted to the dealer to the tune of Rs. 7, 21, 044/- for the 1<sup>st</sup> quarter, Rs. 12,59,746/- for the 2<sup>nd</sup> Quarter, Rs. 11,04,514/- for the 3<sup>rd</sup> Quarter as per 2B issued by the selling dealers .



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7. Learned counsel for the appellant – applicant has submitted that four returns filed by the dealer, in respect of each quarter of the tax period 2013-14 were furnished on the following dates :

- i. 1<sup>st</sup> quarter 13/8/2013
- ii. 2<sup>nd</sup> quarter 22/11/2013
- iii. 3<sup>rd</sup> quarter 7/2/2014
- iv. 4<sup>th</sup> quarter 9/5/2014

Further the submission is that in view of provisions of section 34(1) of DVAT Act, assessments could be framed:

In respect of 1<sup>st</sup> quarter by 12/8/2017; 2<sup>nd</sup> quarter by 21/11/2017; 3<sup>rd</sup> quarter by 6/2/2018 and 4<sup>th</sup> quarter by 8/5/2018, but the Assessing Authority having framed assessment as regards the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> quarters on 31/3/2018, same are beyond the prescribed period of limitation, whereas the assessment relating to the 4<sup>th</sup> quarter, framed on 8/5/2018 is within limitation.

8. Another ground put forth by learned counsel for the appellant – applicant is that actually due to mistake of the accountant of the dealer, local purchases made by the branches of the dealer located outside Delhi were shown in the column meant for central purchases.

On the aforesaid two grounds, learned counsel has submitted that appeals be entertained waiving deposit by way of pre-



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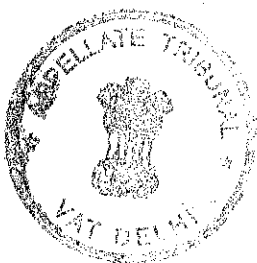
deposit of the disputed demands in support of his contention, learned counsel has relied upon following decisions :

- i. K.R. Anand v. Commissioner of Central Goods and Services Tax, W.P. (C) 2047/2021 decided on 16/2/2021 by our own Hon'ble High Court of Delhi.
- ii. Samsung India Electronics (P) Ltd. vs. Govt. of NCT of Delhi &Ors., W.P. (C) 2685/2014 decided on 7/4/2016 by our own Hon'ble High Court of Delhi.
- iii. M/s. Deepali Designs & Exhibits (P) Ltd. vs. Commissioner of Trade & Taxes, Delhi, Appeal No. 686-687/ATVAT/13-14 dated 5/10/2018 decided by this Appellate Tribunal.
- iv. M/s Ases Security (P) Ltd. vs. Commissioner of Trade & Taxes, Delhi, Appeal No. 196/ATVAT/20-21 dated 6/10/2021 decided by this Appellate Tribunal.

9. It may be mentioned here that it was only subsequently on 29/04/2022 that the dealer presented copies of the objections in DVAT 38 pertaining to all the 4 quarters of 2013-14.

As per the ground of objection, the reassessment orders were challenged on the grounds:

- (i) that the same were abinito, illegal, unjust and arbitrary;
- (ii) that no notice was issued to the dealer as regular dealer;



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- (iii) that the status of the dealer – applicant continues to be a composition dealer;
- (iv) that the Assessing Authority failed to follow directions of the Special Commissioner as contained in the order of remand.

However, orally it was argued by learned counsel for the objector that OHA does not enjoy powers under the DVAT Act to extend the period of limitation u/s 34(1) of the DVAT Act for the purposes of fresh assessment.

10. As regards entertainment of appeals and requirement of deposit by the dealer by way of pre-deposit of the demands under challenge, 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 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.



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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 dispensing of pre-deposit:

- (a) prima facie case,
- (b) balance of convenience, and



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(c) irreparable loss.

The discretion of stay has to be exercised judiciously by the Appellate Authority.

11. It is significant to note that the ground raised before learned OHA, in the second round, was <sup>in written submission</sup> ~~that~~ "that the reassessment orders were barred by limitation in view of the provision u/s 34 of DVAT Act", but in the course of arguments, the assessments initially made were also sought to be challenged on the ground that same were barred by limitation.

12. In reply to the argument, on the point of limitation in framing of reassessment, learned counsel for the Revenue has submitted that these matters pertain to assessment order 2013-14 and as per amendment in section 34(1), w.e.f. 1/4/2013, limitation of four years has been prescribed for making of reassessment u/s 32 of the Act and the same is to be calculated from the end of the year comprising of one or more tax periods for which the person furnished a return u/s 26 or 28 of this Act or from the date on which the Commissioner made an assessment of tax for the tax period, whichever is earlier.

The contention is that in view of this amendment, the assessments initially made on 31/3/2018 can safely be said to have been framed within the prescribed period of limitation. Further submission of learned counsel for the Revenue is that



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since the decisions relied on by learned counsel for the appellant i.e. in Samsung India's case (supra) and K.R. Anand's case (supra) pertain to the period prior to the said amendment u/s 34 of the Act, same do not come to the aid of the applicant.

13. Record reveals that earlier the matter was remanded by learned OHA to the Assessing Authority so as to provide opportunity of being heard to the dealer and that too in view of the submission of the dealer itself.
14. Remand order was passed by Learned OHA setting aside the previous assessments.

In case, the dealer was aggrieved by the remand order for any reason whatsoever, it could file appeal before the Appellate Tribunal. Undisputedly, the dealer did not challenge the previous order i.e. the remand order passed by Learned OHA.

Learned OHA who has passed the impugned order, was not sitting in appeal over the previous remand order and as such could not consider the validity of the remand order.

15. Undisputedly, K.R. Anand's case (supra) pertained to the tax period 2010-11 and Samsung India's case (supra) pertained to the tax period from April, 2009 to March, 2010. As regards, decision in M/s. Deepali Designs & Exhibits case (supra), by this Appellate Tribunal in that case the tax period was 2009-10 and 2010-11 i.e. prior to the amendment in the provisions of



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section 34 of the Act. Similarly decision in M/s. Ases Security (P) Ltd.'s case (supra), by this Appellate Tribunal, matter pertained to 4<sup>th</sup> quarter of 2012-13 i.e. prior to the amendment in section 34.

Here, the question arises as to how a dealer can challenge the previous assessments on the ground that the same were barred by limitation, especially when same were set aside by Learned OHA who remanded the matter to the Learned Assessing Authority and that too while accepting the submission raised on behalf of the dealer that it required reasonable opportunity of being heard, and furthermore when the dealer accepted that order passed by Learned OHA and participated in the proceedings before Learned Assessing Authority.

So the dealer shall have to explain the things as regards this question involved in these appeals, at the time of arguments on merits.

### **Mistake on the part of Accountant**

16. As regards the other submission i.e. mistake on the part of the accountant in depicting local sales as central sales, learned counsel for the Revenue has pointed out that nowhere it has been alleged by the applicant as to when this mistake came to the notice of the dealer. He further points that the applicant



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never took any steps for rectification of the returns. Question arises as to what prevented it from filing of return for the others. In reply to these submissions, learned counsel for the applicant has not put forth in submission in the course of arguments. But these are the questions involved here, which need to be addressed by the dealer at the time of final arguments.

17. Learned counsel for the Revenue has also referred to the assessments framed wherein it was observed that the dealer – applicant did not produce original bills, which were supposed to be available with its branches, the transactions allegedly made by the said branches. In this regard, no submission has been put forth by learned counsel for the applicant in the course of arguments. The question involved in the appeals also need to be answered by the dealer at the time of final arguments.
18. Learned counsel for the revenue has referred to the impugned assessments where learned Assessing Authority observed that in view of the reply received from the Dy. Commissioner-II, Hardwar, sales were made by M/s. Build Scaff, dealer – appellant vide bill dated 19/7/2013 and 7/8/2013, for a sum of Rs. 1,41,660/- and Rs. 87,625/-, and that learned Assessing Authority was justified in drawing the conclusion and framing of assessments. In the course of arguments, learned counsel for the applicant has not put forth any submission in reply to this



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submission and the observations made by the Assessing Authority in the impugned assessment. This question involved in the appeals also needs to be answered by the dealer at the time of final arguments.

19. While concluding arguments, Counsel for the applicant has submitted that refund claim of the dealer is yet to be decided by the department, and this fact be also taken into consideration.

On the other hand, Counsel for the Revenue submits that tax period being 2013-14, in absence of any material on record, it cannot be said if any refund claim remains to be decided or if any amount was carried forward or adjusted.

No such material having been brought to notice, it cannot be said at this stage, and would have to be addressed by counsel for the appellant at the time of final arguments, if it is a case of carrying forward or adjustment of any amount in view of provisions of section 38(3)(b) or (4) of the DVAT Act and if so, its effect.

20. In the given facts and circumstances, this Appellate Tribunal does not find any ground to completely waive off the condition referred deposit by way of pre deposit for entertainment of these appeals.



21. As a result, the applications are disposed of with the directions to the dealer – applicant to deposit 20% of the disputed demand towards tax and interest, within 25 days from today.
22. Counsel for appellant-applicant to apprise Appellate Tribunal and counsel for the Revenue regarding compliance with this order, well in time, so that on the next date i.e. 08/7/2022, appeals are taken up for final arguments.
23. 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 : 03/6/2022



*Narinder Kumar*  
3/6/22  
(Narinder Kumar)  
Member (J)

In Appeal No. *MA NO. 397-400/STAY/ATVAT/22 / 4628-35*  
*385-388/ATVAT/22*

Dated: 06/06/22

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<br>DVAT/GST, Delhi - through EDP branch. |                |

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