

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Application Nos. 304-305/ATVAT/2021

In Appeal Nos: 35-36/ATVAT/19

Date of decision: 4/7/2022

M/s. Rainbow Automotive,
3458/4, Nicholson Road,
Mori Gate, Delhi.

.....Applicant

v.

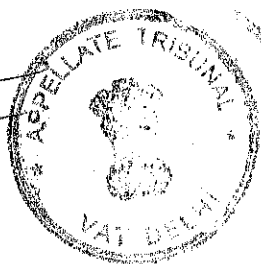
Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Ravi Chandhok
Counsel representing the Revenue : Sh. C.M.Sharma

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

1. This order is to dispose of two applications u/s. 76(4) of DVAT Act filed by the dealer with appeals No. 35-36/19 with prayer for entertainment of these appeals without calling upon the dealer to deposit any amount by way of pre deposit.
2. Dealer has challenged order dated 11/06/19 passed by Learned Objection Hearing Authority (OHA) – Special Commissioner –II whereby the Default Assessment of Tax, Interest and levy



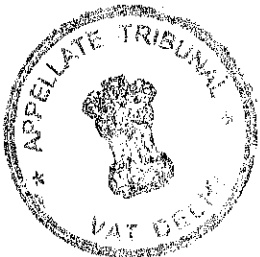
of penalty by the Assessing Authority (AVATO –Ward – 39) have been upheld.

3. Assessing Authority framed assessment vide orders dated 12/01/18 and 15/01/18 u/s. 9 of CST read with Section 32 & 33 of DVAT Act, and the dealer was directed to pay Rs. 32,27,708/- i.e. Rs. 20,73,231/- towards additional tax and Rs. 11,54,477/- towards interest, for the tax period -Annual 2013.

The Assessing Authority also directed the dealer to pay Rs. 20,73,231/- by way of penalty, u/s. 86(10) of the Act read with Section 9(2) of CST Act.

The above assessments came to be made due to the following reasons:-

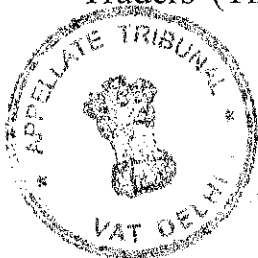
“A notice u/s. 59(2) with reference No. 10393109 dated 01/12/2017 for reassessment of 2013-14 on the basis of non verification of C Forms by the concerned States Commercial Tax Departments has been served by hand by the VATI Ward 39 on 05/12/2017 for reassessment of 2013-14 for which no one appeared before the AA. To give the natural justice, again a notice dated 01/01/2018 was served to the dealer by hand by the VATI-Ward -39. In response to the notice Sh. Sudheer Sangal, Advocate, was present for hearing on 08/01/2018 without POA, and other documents.



On the request AR the documents in possession of AA were provided. The request for further adjournment of the case for 15 days on 11/01/2018 has not been accepted as the high amount of revenue is involved. On the basis of letter No. 595 dated 15/11/17, letter No. 352 dated 16/11/17 from Commercial Tax Department, Kashipur, Uttarakhand, the dealer M/s. Deepanshu Enterprises (TIN 050079453378) is not a registered dealer and the C Forms (Sl. No. UK VAT C/2007/850776) of Rs. 3008072/- for second quarter 2013-14 and of Rs. 1595520/- (Sl. No. UK VAT/C/2007/851167) of third quarter 2013-14 have not been issued to the dealer, hence the Central Sale to M/s. Deepanshu Enterprises (TIN 050079453378) on statutory forms of amount of Rs. 2949089/- for second quarter 2013-14 and amount of Rs. 1564235/- for fourth quarter is disallowed.

On the basis of reply from Commercial Tax Department, Khatima, Uttarakhand vide letter 381 dated 27/11/2017, the 'C' (Sl.No. UK VAT/C 2009 5648114) of amount Rs. 3599512/- of M/s. S.K.Agencies (Tin No. 05012413697) for 2nd quarter 2013-14 has not been verified and said forms has not been issued to M/s. S.K.Agencies (Tin No. 05012413697) hence, the Central sale statutory forms of amount of Rs. 3528928/- is disallowed.

On the basis of letter No. 381 dated 22/12/2017 from Commercial Tax Department, Haridwar, Uttarakhand the statutory forms UKVAT / C 2009 1352787 & 1352786 of amount of Rs. 399482/- and Rs. 100760/- respectively have not been issued to M/s. Sai Traders (Tin No. 05009779274) and hence, the Central sale on

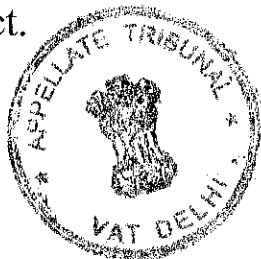


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statutory forms for 3rd quarter for 2013-14 of amount Rs.391649/- and for 4th quarter 2013-14 of Rs.98786/- is disallowed on the basis of reply from Dy. Excise and Taxation Commissioner, Sales Tax Gurugram (East) vide letter 1876 / E -6 dated 30/10/2017 the C Forms of M/s. Swaraj International (TIN 06821835520) for 3rd quarter 2013-14 of amount Rs.3924262/- (Sl.No. HR/13 C 02231096) and for 4th quarter 2013-14 of amount Rs.3277628/- (HR /13 C 02231095) are not getting verified and hence, the central sale of Rs. 3847317/- for 3rd quarter 2013-14 and of Rs. 3213361/- for 4th quarter 2013-14 against statutory forms is disallowed.

On the basis of letter No. 212/ISD/CT dated 24/11/2017 from office of Commercial Tax West Bengal, the statutory forms of M/s. Deepanshu Enterprises (TIN 19891337981) of Rs. 4199424/- (Sl.No. 18111411904456) is not verified. Hence the central sale of Rs. 4117081/- for 4th quarter 2013-14 on the basis of statutory forms is rejected. In view of the non – verification of C Forms the Central Sale against C Forms of these dealers is disallowed and the cases assessed accordingly with penalty. The time for payment of tax and penalty is being reduced as per Section 35 (4).”

4. Feeling aggrieved by the said assessment, the dealer filed objections u/s. 74 of DVAT Act. After hearing Counsel for dealer, Learned OHA rejected the objections. Hence, these two appeals by the dealer with applications u/s. 76(4) of DVAT Act.



5. The objections have been rejected while observing in the manner as :-

“It is undisputed that for claiming benefit of concessional rate of tax on the central sales made by a dealer, he is required to furnish valid statutory forms (i.e C Form) as per Section 8 of the CST Act read with Rule 12 of the Central Sales Tax (R & T) Rules, 1957. In the present case, most of the C Forms as furnished by the dealer/ objector are manual forms which could not be verified online on TINSYX. The respective Tax Authorities have specifically informed that the C Forms were either not issued by them or not verified by them. Therefore, this is not the case, where statutory forms were initially issued and subsequently declared invalid & obsolete by the Tax Authorities, but the said forms have never been issued by the said Tax Authorities. In view of the said - facts, benefit of concessional rate of tax cannot be given to the dealer/ objector in absence of valid C Forms and therefore, accordingly assessed by the Ld. AVATO. Further, the Ld. AVATO has rightly assessed the dealer with due interest.

As far as imposition of penalty u/s. 86(10) is concerned, it is relevant to note that as already stated in pre-paras, the dealer has claimed benefit of concessional rate of tax on the basis of C-Forms without having valid C Forms. The said Forms have never been issued by the respective Tax Authorities as informed by them and despite the said fact the dealer/ objector has furnished a return which is false, misleading and deceptive in material particulars,



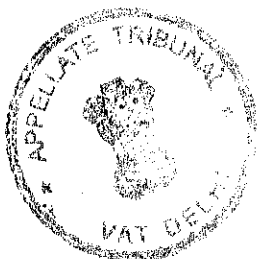
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therefore, penalty has been imposed accordingly u/s. 86(10) of the DVAT Act.

Keeping in view of the above facts, documents produced before the undersigned, arguments and legal position, I am of the considered opinion that the Ld. AVATO (W-39), after affording sufficient opportunity of hearing, has rightly framed default assessment and issued detailed speaking notices of default assessment order and penalty order dated 12/01/2018 & 15/01/2018 respectively u/s. 9 of the CST Act read with 32 & 33 of the DVAT Act. Therefore, the impugned default assessment notices are upheld and the two objections filed by the objector dealer are rejected / disallowed in above terms.”

6. Arguments heard. File perused.
7. 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



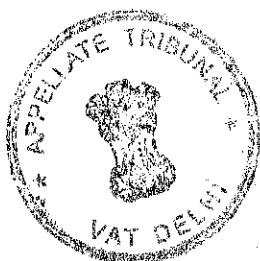
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the appellant furnishing in the prescribed manner security for such amount, as it may direct.

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
- (c) irreparable loss.

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

8. This is a case where reassessments have been made on the basis of reply received from Commercial Tax Departments of other States.

First argument advanced by the learned counsel for the dealer-applicant is that no reasonable opportunity of being heard was granted by the Assessing Authority to the dealer before making reassessments.

In this regard, a perusal of reassessment order dated 12/1/2018 would reveal that Assessing Authority had initially issued to the dealer notice dated 1/12/2017 for 5/12/2017 u/s 59(2) of DVAT Act. The notice was so issued on the basis of non verification of C-forms by the concerned Commercial Tax Departments. However, none appeared on behalf of the dealer



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before Assessing Authority on 5/12/2017. Admittedly, in the objections filed u/s ⁷⁴76(4) of DVAT Act, it was nowhere disputed/ denied by the dealer that notice u/s 59(2) dated 1/12/2017 was received by the dealer.

The Assessing Authority then issued another notice dated 1/1/2018. As regards this second notice, counsel for the applicant has submitted that when counsel for the dealer appeared before Assessing Authority on 8/1/2018, request was made for supply of copies of documents and the same were provided to the counsel on 9/1/2018; that thereupon on 11/1/2018, the counsel submitted an application for adjournment of the matter for about 15 days, but the Assessing Authority rejected this prayer and on the following day i.e. 12/1/2018 issued notices of default assessment by way of reassessment. Counsel submits that the said notices of default assessment/ reassessment were issued in haste.

Of course, on merits, Revenue will have to explain if reasonable opportunity was granted consequent upon issuance of the second notice.

However, firstly, as noticed above, the dealer – applicant shall have also to explain its ^{once}non-appearance before the learned



Assessing Authority on 5/12/2017 consequent upon service of notice dated 1/12/2017.

9. So far as the levy of tax, interest and penalty vide assessment dated 12/1/2018 and 15/1/2018, for the reasons given by the Assessing Authority that reply received from the Commercial Tax Departments of other States revealed that statutory forms i.e. C-forms in respect of 3rd quarter 2013-14 pertaining to sale of M/s. Deepanshu Enterprises were found to have not been issued; similarly statutory forms relating to 3rd & 4th quarter of 2013-14 said to have been given by M/s. Sai Traders i.e. selling dealer were found to have not been issued by the said department to the said ^{purchasing} selling dealer. Accordingly, the concession as regards the said statutory forms was specifically disallowed. *Other forms "could not be verified"*

10. However, taking into consideration decisions in **M/s. Swastik Industrial Powerline Ltd. v. Commissioner Trade & Taxes, Delhi**, ST.APPL.25/2013 decided by our own Hon'ble High Court on 28/8/2015; and **State of Haryana v. Inalsa Ltd. and Another**, VSTI 2011 Vol. 11, August Part-15 for DPH decided by Hon'ble Punjab & Haryana High Court on 1/9/2010, while arguing the appeals on merits, dealer shall have to satisfy that its case is covered by the said decisions and that at the time of the transaction, the dealer – appellant had relied upon the



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representations made to him by the purchasing dealer; that the dealer satisfied that the purchasing dealer was a registered dealer and the goods purchased were specified in its certificate.

11. As regards the point of limitation for making of reassessment and that the reassessment in respect of 1st & 2nd quarter of 2013-14 are barred by limitation, and learned OHA has rejected the contention raised on behalf of the dealer.

At the time of final arguments, this Appellate Tribunal has to be satisfied ~~it requires to satisfy~~ if a period of four years as provided u/s 34(1) in view of decision in **Samsung India Electronics Private Ltd. v. Govt. of NCT of Delhi**, 2016 SCC Online Del 2231, as contended by learned counsel for the applicant or if a period of six years as provided u/s 34(2) on account of production of fake statutory forms and furnishing of false information in the return, as per contention of learned counsel for the Revenue, is the prescribed period applicable to the facts of this case.

12. Learned counsel for the dealer has submitted that at the time of filing of objections, 10% of the disputed demand raised by the Assessing Authority was deposited by the dealer by way of pre-deposit and that this fact be taken into consideration.



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Learned counsel for the Revenue does not dispute this submission put forth by learned counsel for the applicant regarding pre-deposit for entertainment of objections.

13. In the given facts and circumstances, I deem it a fit case to entertain the appeals, subject to deposit Rs. 1,00,000/- ^{which shall be} ~~1.5~~ in addition to the pre deposit before the OHA, as against the disputed demand, by way of pre deposit.

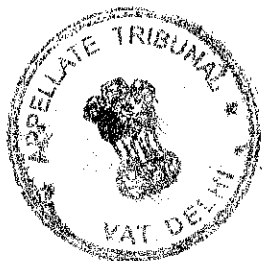
Accordingly, appellant-applicant to deposit by way of pre-deposit Rs. 1,00,000/- of the disputed demand of tax, [&] interest ~~and penalty~~ within 25 days from today. Counsel for appellant-applicant to apprise the Registry and counsel for the Revenue regarding compliance with this order, well in time, so that on the next date i.e. 24/8/2022, appeals are taken up for final arguments.

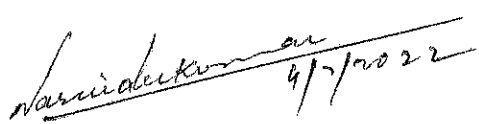
These applications u/s 76(4) ^{of DVAT Act -} are disposed of accordingly.

14. 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: 4/7/2022




(Narinder Kumar)
Member (Judicial)

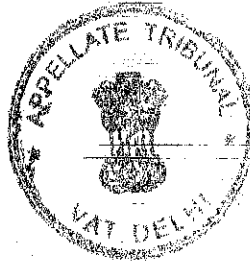
Application No- 304-305/ATVAT/21 / 4929-36

I Appeal No. 35-36/ATVAT/19

Dated: 04/07/22

Copy to:-

- (1) VATO (Ward-)
- (2) Second case file
- (3) Govt. Counsel
- (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.
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)



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