

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

Stay Application No. : 524/22
In Appeal Nos. 436-443/13
Date of Order : 31/8/2022

M/s V.B. Enterprises,
219, Syndicate House,
3, Old Rohtak Road, Inderlok,
Delhi 35.

.....Applicant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. M. L. Garg.
Counsel representing the Revenue : Sh. S. B. Jain.

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

1. This order is to dispose of application dated 28/03/2016 filed on behalf of the dealer on 08/04/2016 with prayer for modification of conditions imposed for entertainment of appeals i.e. for modification of the amount of pre-deposit.
2. Vide order dated 12/05/2014, applications filed by the dealer with the appeals were disposed of and the appeals were entertained subject to deposit of 20% of the tax and interest levied and 10% of the penalty imposed.
3. By way of this application, the dealer has prayed for modification. The ground put-forth by the dealer is that he was



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suffering from skin problem, as a result whereof he could not walk or attend to his business. He is also alleged to have faced great financial hardship and consequently he was unable even to make payment of medical expenses for his treatment.

4. Vide default assessment dated 24/02/2011, following demands were raised:

Periods	Disputed Amount			Total Rs.	Obi. U/s
	Tax	Interest	Penalty		
1st qtr. -2008-09	106776/-	40590/-	-	147366/-	32
2nd qtr. -2008-09	103699/-	35584/-	-	139283/-	32
3rd qtr. -2008-09	107252/-	32837/-	-	140089/-	32
4th qtr. -2008-09	117197/-	31547/-	-	148744/-	32
1st qtr. -2008-09	-	-	206776/-	206776/-	33
2nd qtr. -2008-09	-	-	203699/-	203699/-	33
3rd qtr. -2008-09	-	-	207252/-	207252/-	33
4th qtr. -2008-09	-	-	217197/-	217197/-	33

5. The above said assessments came to be framed after audit and test check of records such as DVAT-30/31, cash book, ledger, sale/purchase vouchers, audited balance sheet for 2008-09 and other related documents.

In the default assessment, Assessing Authority observed in the manner as:

“That the firm is making central sale against C form amounting to Rs. 106020/- but dealer failed to provide the proof of



movements of goods at the time of visit or till date. The dealer in his statement dt. 24-12-2010 under took to produce the GR/RR and other documents on or before 30-12-2010. No one appeared on 30-12-2010 so a Show Cause Notice dt. 07-01-2011 was issued to the dealer to produce the documents mentioned in his statement on 18-01-2011. On 18-01-2011, Sh. Rakesh Kumar, Asst. To the firm's advocate appeared and submitted some documents but again failed to produce the copy of GRs/RRs and under took to produce the same on 19-01-2011 but failed to submit till date. Even the dealer in his statement dated 24.12.2010 has stated that the delivery of goods in respect of goods sold against "C" forms is made to the purchasers in Delhi itself and the purchaser themselves arrange the transport to carry the goods outside Delhi and so the central sale of the firm is not supported by any GR/RR. And since the dealer failed to submit any proof of movement of goods out of Delhi in respect of sale against 'C' form hence sale shown against 'C' form amounting to Rs. 106020/- is rejected and treated as local sale and is taxed @ 12.5%. However the benefit of CST paid is allowed. Interest @ 15% is charged on tax deficiency."

6. Feeling aggrieved by the above said assessments, the dealer filed objections u/s 74 of DVAT Act.
7. Learned OHA-Additional Commissioner -IV & IX vide impugned order dated 17/01/2013 dismissed the objections and upheld the assessment framed by the Assessing Authority.

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8. Feeling dissatisfied by the impugned order, the objector filed present appeals in 2013.

As per order dated 06/05/2016, applications u/s 76(4) of DVAT Act filed with the appeals were disposed of and as noticed above, the appeals were entertained subject to deposit of 20% of tax and interest and 10% of the penalty levied.

9. It may be mentioned here that the files were not put up by the staff for about six years. No complaint was submitted by Counsel for the parties to the Appellate Tribunal that these files were not being listed. It was on 26/04/2022 that Sh. S. B. Jain, Counsel for the Revenue submitted a list of files which had not been listed by the staff of this Appellate Tribunal since long. It was thereupon that this file was ^{got} traced out by the Registry and put up on 14/07/2022 i.e. after about six years.

In this regard, matter has already been reported to the Commissioner, Department of Trade & Taxes for disciplinary action against the concerned staff, who withheld the file.

10. In the course of arguments, Learned Counsel for the applicant has referred to affidavit of the dealer-proprietor wherein he has testified having no source of income at present and that he is fully dependent on his relatives and friends to meet his day-to-day needs. Reference has also been made to this affidavit on the point that five accounts of the dealer-assessee were freezed due

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to non-payment to ESI. Reference has also been made to the copies of Bank Statements.

The contention is that keeping in view the financial constraints and pendency of litigation against the dealer-assessee for recovery of amount and also by way of complaints u/s 138 of Negotiable Instruments Act, he is unable to pay the amount of pre-deposit.

11. Learned Counsel for the Revenue has opposed the application. Learned Counsel has referred to the latest Statements of Accounts pertaining to March 2022, June 2022, July 2022 and Bank Statements for the last two years filed with this application presented in 2016.

The contention raised by Learned Counsel for the Revenue is that the dealer-assessee was receiving money and withdrawing the same from time to time and as such it cannot be said that due to financial constraints he is not in a position to deposit the amount of pre-deposit as already ordered by this Appellate Tribunal.

12. So far as illness of the dealer-assessee is concerned, as noticed above the application seeking modification was filed in March 2016. The dealer-assessee-proprietor has been appearing before this Tribunal ever since this file has been got traced out. No difficulty in walking has ever been noticed at the time he has been appearing in these proceedings. Even in the course of arguments, no submission for modification has been made on the ground of illness of the dealer.



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13. As regards financial constraints, a perusal of the statements issued by different banks would reveal that he has been receiving payments and withdrawing amounts from time to time. He has not filed any Statement of Account for the period from 2016 to February 2020, for the reasons best known to him.
14. In the course of arguments, this Appellate Tribunal inquired from the dealer while referring to the papers of litigation pending against him under Negotiable Instruments Act. The query was as to whether he has repaid any amount to the complainant(s) in any of the complaint case u/s 138 of Negotiable Instruments Act. The reply is that he has repaid amounts to the complainants in 28 cases under Negotiable Instruments Act and those cases stand settled and withdrawn. This fact goes to show that the dealer-applicant has repaid the amounts keeping in view his liberty, but so far as payment to the Revenue is concerned, he has shown his reluctance.
15. In the course of arguments, it has been brought to the notice of this Appellate Tribunal today for the first time by Counsel for the appellant that a separate assessment in respect of Central Sales was made even before the assessment under challenge i.e. under DVAT Act. This Appellate Tribunal has inquired as to whether the factum of framing of assessment under CST Act was brought to the notice of the Assessing Authority or Learned OHA. Learned Counsel for the applicant has candidly admitted that on the basis of documents available in his brief, this fact appears to have not been brought to the notice of the Assessing Authority or Learned OHA.



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As per copies of Form 38, the dealer-objector nowhere disclosed the factum of assessment under CST Act.

16. Keeping in view the above discussion, and the affidavit filed by the dealer-assessee that his five accounts stand freezed due to non-payment to ESI, the amount of pre-deposit is reduced from 20% to 10% so far as demand of tax and interest only is concerned. As regards pre-deposit towards demand by way of penalty, in view of *freezing of accounts and* the modification on the point of tax and interest, dealer need not deposit any amount for the present.
17. Dealer-assessee to deposit the amount of pre-deposit as per this order, within 15 days from today and report compliance to the Registry and also apprise Learned Counsel for the Revenue, so that on the next date i.e. 20/09/2022, the appeals are taken up *on that date* for final arguments.
18. The application is disposed of accordingly.
19. 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: 31/8/2022



Narinder Kumar
31/8/22
(Narinder Kumar)
Member (Judicial)

Stay Application no. 524/22

Appeal no. 436-443/13/5426-33

Dated: 31/08/22

Copy to:-

- (1) VATO (Ward-)
- (2) Second Case File
- (3) Govt. Counsel
- (4) Secretary (Sales Bar Association)
- (5) PS to Member (J) for uploading the judgement on the portal of DVAT/GST, Delhi-through EDP branch
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)

REGISTRAR

