

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

M.A. Nos. 623-624/STAY/22  
In Appeal Nos. 449-450/ATVAT/22  
Date of Order: 12/12/2022

M/s Goldman Hosiery,  
3867, Mandir Wali Gali,  
Pahari Dhiraj, Delhi-110006.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. Rahul Gupta.  
Counsel representing the Revenue : Sh. M. L. Garg.

**ORDER**

1. This common order is to dispose of applications u/s 76(4) of DVAT, filed by the dealer-applicant-proprietor, one each in the above captioned appeal, with the prayer that the appeals be entertained without calling upon the dealer-applicant to deposit any amount by way of pre deposit.
2. Dealer-applicant has filed appeals challenging order dated 07/10/2022 passed by learned Special Commissioner-OHA, thereby disposing of two objections filed by the dealer u/s 74 of DVAT Act.





3. The matter pertains to tax period, 1<sup>st</sup> quarter of 2014-15.
4. On 19/08/2015, learned Assessing Authority framed assessment u/s 33 of DVAT Act and levied of penalty of Rs. 40,500/- under DVAT Act, due to the reason that the dealer violated provisions of section 86(9) of DVAT Act in having failed to furnish return on or before the due date.

Vide separate assessment of same date framed under Central Sales Tax Act (hereinafter referred to as CST Act), for the aforesaid tax period, learned Assessing Authority imposed penalty of Rs. 40,500/- for the same reason.

5. Feeling aggrieved by the assessments framed by learned Assessing Authority, dealer filed objections. Learned OHA reduced the penalty to Rs. 20,000/- each under DVAT Act and CST Act.
6. Still feeling aggrieved, dealer-applicant has challenged these appeals.
7. While arguing on the applications u/s 76(4) of DVAT Act, on behalf of the applicant, it has been submitted that the impugned assessments framed by learned Assessing Authority are system generated notices, issued without application of mind.

Another ground of challenge put forth on behalf of the applicant is that the impugned assessments neither contain the name of the





Assessing Officer nor the same have been digitally signed. In support of his submission, learned Counsel for the applicant has referred to decision in **M/s. Bhumika Enterprises vs. Commissioner, Value Added Tax**, (2015) 85 VST 367 (Del), which was relied on by him in **M/s. Choudhry Plastics Works vs. Commissioner of Trade & Taxes, Delhi**, Appeal Nos. 395-396/22, decided by this Appellate Tribunal on 17/06/2022.

8. On behalf of the Revenue, the applications have been opposed by arguing that no such ground was taken by the appellant – objector while challenging assessments before learned OHA and as such these grounds cannot be put forth before this Appellate Tribunal for the first time.
9. As noticed above, penalties came to be opposed due to late filing of returns. Feeling aggrieved by the assessee filed objections u/s 76(4) of DVAT Act. No such objections, which have now been put forth by learned Counsel for the applicant, were admittedly raised before learned OHA.
10. 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 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.

11. It is for the applicant to satisfy as to why no such objection was raised while filing objections u/s 76(4) of DVAT Act. Having



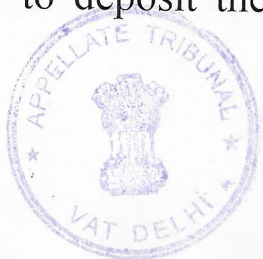
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not raised these objections, does it not mean that the applicant did not feel prejudiced by the impugned assessment on the said grounds i.e. the assessments did not contain the name of the officer and that the same were not digitally signed? During arguments on merits, the applicant-appellant will have to satisfy this Appellate Tribunal on the point of prejudice, if any.

The return came to be filed by the dealer after 81 days of the due date. No document has been put forth in support of the ground that mother of the applicant was unwell and had to be taken to doctor for treatment and check-up almost every week. Even before learned OHA, no medical record in support of the explanation for late filing of return, was filed.

12. Indisputably, keeping in view the request made on behalf of the objector that penalty may be reduced, learned OHA has already reduced the amount of penalty from Rs. 40,500/- to Rs. 20,000/- under each Act. The returns were filed after delay of 81 days.
13. In the light of the above decisions in Ravi Gupta vs. Commissioner Sales Tax, and in the case of UOI (supra), this appeal is entertained subject to deposit of Rs. 4,000/- in each appeal, by way of pre-deposit for the purpose of entertainment of these appeals.
14. Accordingly, the applicant is given time upto 27<sup>th</sup>, December, 2022 to deposit the amount of pre-deposit. Counsel for the



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applicant to apprise the Registry and Counsel for the Revenue regarding compliance with this order of pre-deposit, so that on the next date i.e. 28/12/2022 appeals are taken up for final arguments. Otherwise, law shall take its own course.

15. Copy of this order be placed in the connected file. 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 : 12/12/2022

*Narinder Kumar*  
12/12/2022

(Narinder Kumar)  
Member (J)

