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

Stay Application No.: 18/23
In Appeal No.: 460/ATVAT/22
Date of Order: 16/02/2023

M/s Chitra Hardware,
2748/6 Floor: Ground floor,
Paharganj, Chuna Mandi-110055. .....Applicant

V.

Commissioner of Trade & Taxes, Delhi. .....Respondent

Counsel representing the Applicant : Sh. Rohit Gautam.
Counsel representing the Revenue : Sh. P. Tara.

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

1. On 14/12/2022, the above captioned appeal came to be presented. Dealer-objector-assessee has challenged order dated 28/11/2022 passed by learned Objection Hearing Authority- Joint Commissioner (hereinafter referred to as OHA).
2. Initially, no application u/s 76(4) of DVAT Act was filed. It came to be filed subsequently on an objection having been raised on behalf of the Revenue to the maintainability of appeal on account of non-deposit of the disputed demand raised by the Assessing Authority and upheld by Learned OHA.

APPELLATE TRIBUNAL VAT DELHI

16/2/23

3. Vide impugned order, learned OHA has dismissed the objections filed by the dealer-objector on 10/06/2022, u/s 74 of DVAT Act. Said objections were filed challenging default assessment of tax and interest framed by learned Assessing Authority u/s 32 of DVAT Act.

4. Default assessment of tax and interest pertains to the year 2013-14.

5. Default assessment was framed while observing in the manner as:

> "A notice u/s 59(2) was issued on 16/01/2018 to the dealer to submit his records including purchase invoices, DVAT-30/31 & other supporting documents in respect of his ITC claim for the period but dealer has failed to produce the same. It appears that the dealer is not in possession of such documents, therefore ITC of equal amount of his refund claim Rs. 12,15,432/- alongwith interest is hereby dis-allowed under section 9(8) of DVAT Act 2004. Accordingly demand is hereby framed."

6. While disposing of the objections filed against the assessment, learned OHA observed in para 7, 8 and 9 as under:-

> "7. I have perused the records available/made available and also the oral arguments made by the Ld. Counsel. As far as claim of ITC is concerned, it is observed that verification of the purchase and ITC/ refund is a question of fact and can be best examined by way of documentary evidences such as tax invoices, DVAT-30 & 31, bank records etc. It is also observed that unless and until bonafide of purchase transactions are under doubt, the dealer deserves the benefit of ITC and incase the bonafides of purchases are doubtful, it would be necessary to go into other details of transactions to verify the bonafide of purchases. In the instant case, the Counsel for the Objector Dealer despite being accorded due opportunities of being heard on various occasions

has failed to justify his claim by failing to provide the necessary documentary evidences.

8. In view of the above facts, it is undisputed that objector has failed to produce relevant records such as DVAT-30-31, bank statements, proof of movements of goods etc. before the Assessing Authority during the present proceedings and therefore, I have no option but to hold that impugned assessment notice has been issued correctly in accordance with law.

9. In view of the above, present objection filed by the objector-dealer is disposed of following terms:-

i) Objection ref. no. 772022 dated 10.06.2022 is hereby dismissed for reasons mentioned hereinabove;

ii) Impugned notice of default assessment of tax & interest dated 31.03.2018 for the year 2013-14 issued u/s 32 of the DVAT Act is upheld."

7. While dealing with the contention raised on behalf of the objector that no copy of default assessment of tax and interest was served upon the dealer-assessee, learned OHA observed in the manner as :

"The learned counsel for the Objector Dealer has assailed the impugned Assessment Notice/Order on the premise that same were never served on the Objector Dealer which came to their knowledge only when the Objector Dealer visited the office of the Department of Trade & Taxes in connection with the pending refund. However, the counsel has failed to furnish/produce any documentary evidence to show that the impugned order issued by the Assessing Authority has never been issued on their DVAT Portal. In this context, reliance is

placed upon the judgment passed by the Hon'ble Delhi High Court in the matter of **Bajrang Fabrics v. Commissioner of VAT & Anr.,** in which it has been affirmed that once the notices/orders/summons are issued online on the portal of the dealer, service is deemed to be completed in terms of Rule 62 of the DVAT Rules, 2005. Further, sub-section (2) of Section 100A (Automation) of the DVAT Act provides for:

> "Where a notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by the Commissioner."

In the light of the above, there is no merit in the contentions of the objector dealer and accordingly rejected."

8. Counsel for the applicant has submitted that OHA, while disposing of the objections, acted in callous manner by holding that the objections were barred by limitation, even though Sh. G. P. Singh, OHA, earlier seized of the matter had condoned the delay in filing of the objection, vide order dated 23/08/2022.

This contention raised by Counsel for the applicant is against record. It stands recorded in para No. 5 of the impugned order passed by learned OHA that dealer had assailed the impugned

assessment on the ground that the assessment order was never served upon the objector and the dealer came to know about it only when it visited the Department of Trade & Taxes in connection with pending refund.

It is true that learned OHA dealt with the said contention and while relying on decision in **Bajrang Fabrics v. Commissioner of VAT & Anr.**, rejected the above said contention on behalf of the dealer, ~~but~~ prima facie, it cannot be said that learned OHA thereby held that the objections were barred by limitation.

9. Another contention raised by Counsel for the applicant is that Assessing Authority rejected ITC claim in view of provision of Section 9(8) of DVAT Act. He further submits that before OHA, the dealer submitted tax invoices, but even then no benefit thereof was granted to the dealer.

On the other hand, learned Counsel for the Revenue has rightly pointed out that despite notice u/s 59(2) of DVAT Act issued by the Assessing Authority on 16/01/2018, calling upon the dealer to submit records including purchase invoices, DVAT 30/31 and other documents in respect of the ITC claim, the dealer failed to produce the same.

In the course of arguments, this fact of non-production of the above documents before Assessing Authority, has not been disputed on behalf of the applicant.

10. As regards proceedings before learned OHA, Revenue has rightly pointed out that there it was submitted by counsel for the objector that the dealer was in possession of all the relevant record to substantiate its claim of ITC, but it did not produce all the relevant record stated to be in its possession.

As observed by learned OHA in the impugned order, the dealer placed on record copies of only certain purchase invoices, and as such learned OHA rightly expressed that it was not possible to ascertain genuineness of ITC merely on the basis of some tax invoices.

In the course of arguments, this Appellate Tribunal has inquired from Counsel for the applicant as to how many purchase invoices and how many tax invoices were submitted by the dealer before learned OHA. The response is that all the tax invoices were submitted before OHA. Thereupon, Counsel for the applicant has been asked to show proof in support of submission of all the tax invoices before OHA. However, he has not produced any list before this Appellate Tribunal in proof of the fact that all tax invoices were submitted by the dealer – applicant before learned OHA. Therefore, at this stage, it cannot be said that the entire relevant record or tax invoices, required in connection with ITC claim of the dealer were made available before OHA.

11. Counsel for the applicant has submitted that as regards claim of the dealer for refund of Rs. 12,15,432/-, on 24/12/2019, Adjustment order came to be passed thereby adjusting a sum of Rs. 11,49,679/- and depicting a sum of Rs. 7,95,012/- as due. The contention is that this Adjustment Order is in contradiction with the default assessment of tax and interest framed u/s 32 of DVAT Act on 31/03/2018, and as such the appeal be entertained without calling upon the dealer to deposit any amount.

12. Admittedly, as per Adjustment Order dated 24/12/2019, a sum of Rs. 11,49,679/- was adjusted against the present demand of Rs. 19,44,691/-. Dealer has not submitted copy of order vide which refund of Rs. 12,15,432/- is stated to have been allowed to the dealer. In absence thereof, it cannot be said as to the reasons recorded in allowing of the said refund in the year 2019.

    The fact remains that on adjustment of Rs. 11,49,679/- against the present disputed demand, still a sum of Rs. 7,95,012/- is due from the dealer.

13. 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.

16/2

APPELLATE TRIBUNAL VAT DELHI

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.

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."

14. Keeping in view the above decision on the point of waiving of condition regarding pre-deposit for the purpose of entertainment of appeal, and applying the same to the present case, dealer-applicant is directed to deposit 20% of the pending demand i.e. 20% of Rs. 7,95,012/- within 20 days.

    Dealer to submit compliance report with the Registry and also apprise Counsel for the Revenue, so that on the next date i.e. 14/03/2023, appeal may be taken up for final arguments subject to compliance.

15. 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 : 16/02/2023

16/2/2023

(Narinder Kumar)
Member (J)

APPELLATE TRIBUNAL VAT DELHI