

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

M. A. No.: 103/23  
In Appeal Nos. : 47-48/ATVAT/2008  
Date of Order: 04/05/2023

M/s. IKEA Trading(India) Pvt. Ltd.,  
F-4, Pushpanjali Farm  
Indian Oil Road, Bijwasan,  
New Delhi

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Applicant : Sh. H.C. Bhatia with Sh.  
Anuj Bansal.  
Counsel representing the Revenue : Sh. M.L. Garg.

**ORDER**

1. On 10/03/2016, while disposing of application u/s 76(4) of DVAT Act (hereinafter referred to as Delhi Value Added Tax Act), applicant was directed to deposit 10% of the amount in dispute towards tax, interest and penalties, by way of pre condition in entertaining the appeals. Said amount was to be deposited within 30 days period.
2. It may be mentioned here that vide order dated 10/03/2016, the above said appeals were adjourned to 15/04/2016 for hearing on

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merits at the request of Sh. Ashok Dhingra, counsel representing the applicant.

3. These files were never put up before the Appellate Tribunal up to 21/11/2022. As reported by the Registry, these files were found from one of the almirahs of the Registry. Thereupon, court notices were issued.

On 03/01/2023, vakalatnama was sought to be filed by Sh. H. C. Bhatia, as counsel for the applicant. Sh. M. L. Garg, Advocate represented as counsel for the Revenue.

Dealer has not deposited any amount by way of pre deposit towards tax and interest. Various adjournments were sought on behalf of the applicant to show full compliance with the order dated 10/03/2016, but the same never came to be complied with by the dealer-applicant.

4. On 19/04/2023, on behalf of applicant, present application M.A. No. 103/23 came to be presented. Said application is being disposed of by this order.
5. Applicant claims that no funds are available with it, its business having come to an end in India by 31/03/2009.

Prayer in the application is that the dealer-applicant be allowed to submit an Undertaking that it shall not claim refund of sum of Rs. 2,55,19,403/- from the Registrar, Hon'ble High Court of Delhi till the disposal of the appeal No. of 2008 filed before this Appellate Tribunal challenging levy of tax and interest, for the tax period 2006-07.

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6. As regards penalty of Rs. 1,30,000/- and deposit of 10% of the said demand, by way of pre-deposit u/s 76(4) of DVAT Act, separate Application-M.A. No. 101/2023, has been disposed of while observing in the manner as:

"In view of the above submissions, this application is disposed of, making it clear that in case Revenue does not adjust this amount of Rs. 13,000/- towards 10% of the pre deposit for the year 2005-06 i.e. towards penalty, the applicant shall deposit said amount of Rs. 13,000/- before disposal of this appeal No. 48/08."

7. As regards pre-deposit of Rs. 76,424/- i.e., 10% of the total demand towards tax, counsel for the applicant has submitted that the business of the applicant having come to an end by 31<sup>st</sup> March, 2009, the applicant is unable to deposit the said amount by way of pre-deposit, and as such the applicant be allowed to furnish an undertaking as prayed in the application.

At the same time, counsel for the applicant has submitted that applicant is ready to furnish personal security with guarantee for the purpose of deposit of the said amount.

8. Learned counsel for the Revenue opposes the application and the contentions advanced by counsel for the applicant, while submitting that Revenue has deposited a sum of Rs. 2,55,19,403/-, with the Hon'ble High Court, in another Writ Petition, in which prayer of the dealer-applicant was for refund of amount stated to be due from the Revenue. Learned counsel

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for the Revenue has further submitted that the dealer-applicant has already applied for the release of the said amount.

9. No statement of account or copies of account books have been placed on record to show that ever since 31/03/2009 business operation of the applicant came to an end and further that the applicant has no funds or that it has been facing financial hardship since then. In absence of any such material, prima-facie, it cannot be said that the applicant has been facing financial hardship or that the order passed by this Appellate Tribunal u/s 76(4) of DVAT Act calling upon the applicant to deposit amount of 10% by way of pre-deposit, would cause financial hardship to the applicant.
10. So far as, prayer for furnishing of personal security with guarantee, learned counsel has placed reliance on following decisions:

1. **Babulal Mohanlal Kande v. Commissioner of Sales Tax, M.P.**, 1981, (47) STC 164;
2. **B.M. Moidin Kunhi v. The State of Mysore**, 1971 (27) STC 154;
3. **Alok Spices v. Deputy Commissioner (Appeals), Sales Tax & Agricultural Income-Tax, Ernakulam, and Another**, 1988 (71) STC 347;.

11. Indisputably, dealer-applicant is required to deposit a sum of Rs. 76,424/-, by way of 10% of the disputed demand towards tax and interest, as per order u/s 76(4) of DVAT Act. Appeals were presented in the year 2008. Order u/s 76(4) of DVAT Act was

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passed on 10/03/2016. Since then applicant has not complied with the said order. No such application was filed by the applicant before this Appellate Tribunal soon after passing of the order u/s 76(4) of DVAT Act, seeking modification in the said order. Said order was also not challenged by the dealer-applicant before the Hon'ble High Court. At no point of time, any prayer was made by the applicant seeking extension of time of 30 days granted vide order dated 10/03/2016. No application was ever moved on behalf of the applicant pointing out to the Appellate Tribunal that the appeals were not being listed since long.

12. In the given facts and circumstances of the case, decisions cited on behalf of the applicant do not come into application, as this is not a fit case to allow the applicant to furnish personal security with or without guarantee instead of deposit of 10% of the disputed demand towards tax and interest.
13. As a result, this Application No. 103/2023 is hereby dismissed. However, in the interest of justice, as prayed by counsel for the applicant in the end of the arguments, applicant is allowed 15 days time to deposit the amount required to be deposited by way of pre-deposit in terms u/s 76(4) of DVAT Act, as not opposed to on behalf of the Revenue.
14. Accordingly, be put up on 26/05/2023. In case of non-deposit of the amount of pre-deposit within 15 days, law shall take its own course. In case of compliance within the period granted, counsel





for the applicant to submit compliance report with the Registry and also to apprise counsel for the Revenue, so that on the next date i.e., 26/05/2023 the matter is taken up for final arguments.

15. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority.

Announced in open Court.  
Date : 04/05/2023

  
4/5/23

(Narinder Kumar)  
Member (Judicial)

