

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

M.A. No. : 597/22  
In Appeal No.: 221/16  
Date of Order : 03/11/2023

M/s Nutrionex Manufacturers Ltd.,  
(previously known as M/s. Shri Lal Mahal Ltd.)  
B-16, Bhagwan Dass Nagar,  
East Punjabi Bagh,  
New Delhi-110026.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. M. L. Garg.  
Counsel representing the Revenue : Sh. P. Tara.

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

1. Vide order dated 03/04/2018, this Appellate Tribunal disposed of application u/s 76(4) of DVAT Act, while observing that the appellant did not have a prima facie case, and accordingly, required the appellant-applicant to deposit, by way of pre-deposit, 15% of the disputed amount of tax and interest, within a period of 30 days.
2. It may be mentioned here that this appeal was once dismissed in default of appearance. It was restored to its original number and adjourned to 13/05/2020. But, it was never put up by the

*Narinder Kumar*  
3/11/23



staff before the Appellate Tribunal for about one and a half year. The Registry traced out the file and put up the same for the first time on 30/09/2021.

A perusal of file reveals that earlier also an application was filed on behalf of the appellant seeking modification of the order u/s 76(4) of DVAT Act. On 23/05/2018, adjournment was sought on behalf of the applicant and accordingly, the file was adjourned to 11/06/2018. Arguments were advanced on the said application seeking modification and orders were reserved. However, vide order dated 24/07/2018, application was adjourned to 17/08/2018 for fresh arguments. In this way, fresh arguments were yet to be advanced on the application seeking modification of the order u/s 76(4) of DVAT Act, but, as mentioned above, the file was never listed upto 29/09/2021.

3. Subsequently, dealer-applicant filed amended application dated 04/10/2022 u/s 76(4) of DVAT Act seeking modification in the order passed under the said provision.
4. In the application, it has been alleged that compliance of the previous order dated 06/04/2018 passed u/s 76(4) of DVAT Act is beyond the reach of the applicant for the reasons ~~earlier~~<sup>✓</sup> recorded in the earlier application seeking modification of the said order.

  
3/11



At that time, the applicant had put forth the ground of financial constraints, as its financial condition was not good and it was facing difficulty even to meet day-to-day expenses, particularly when all the bank accounts of the applicant-company stood freezed by the Directorate of Revenue Intelligence since December, 2016.

As further alleged, accounts of the applicant were classified as NPA, by the working capital lenders, on 27/03/2017, and as such the applicant-company was not in a position to utilize its working capital. The applicant-company could not draw any benefit, as the working capital lenders did not permit any withdrawal from the accounts.

The applicant is stated to have filed <sup>even</sup> two writ petitions before the Hon'ble High Court.

5. As alleged in the subsequent application dated 04/10/2022 due to the financial hardship, State Bank of India opted to file an application u/s 7 of IBC 2016, whereupon CIRP was initiated, but said process could not succeed as no resolution <sup>plan</sup> application was received. Therefore, Resolution Professional filed an application u/s 33 of IBC seeking orders for liquidation of the applicant-company. Vide order dated 26/05/2022, Hon'ble NCLT ordered issuance of copies to the concerned respondent / suspended Board of Directors.

3/11/23





6. Learned VATO (Ward-52) framed assessment dated 30/03/2015 under Section 9(2) of Central Sales Tax Act thereby creating demand towards tax and interest of Rs. 11,06,37,578/- (Tax Rs. 6,95,23,485/- + Interest Rs. 4,11,14,093/-).
7. These proceedings pertain to assessment year 2010-11.
8. The impugned demand came to be raised due to the reason that as per central sales declared in the latest return furnished for the year 2010-11, the applicant had not declared the status of central statutory forms received by him against the concessional sales claimed either in column R-10 or in reconciliation return in CST Form 9.
9. Being aggrieved by the assessment, the appellant filed objections.
10. Vide impugned order dated 15.09.2016. Learned OHA disposed of the objections granting certain exemptions. Still feeling aggrieved, dealer filed appeal during pendency of which, present application came to be filed seeking modification of the order regarding pre-deposit condition.
11. Earlier, at the time of arguments on the first mentioned application u/s 76(4) of DVAT Act, following submissions were put forth on behalf of the applicant:

“11. Praying for entertainment of appeals without any



2/11

condition of pre-deposit the appellant has submitted that petitioner has no funds to clear the impugned demand due to financial crisis and the petitioner is filing their income tax returns even for earlier periods after lapsing of due dates as it has no funds to deposit their due tax. In support of copies of income tax returns have been enclosed.”

On the other hand, following submissions were put forth on behalf of the Revenue:

- “12. Ld Counsel for the Revenue submitted that there is no illegality or irregularity in the impugned orders and the grounds taken by the appellant and the fact of the nature of sale etc can only be decided on the basis of evidence and documents to be produced by the appellant when the matter is heard on merits. Presently the application for consideration being under section 76(4) suitable condition of pre-deposit is required to be prescribed.”

Counsel for the Revenue also submitted at that time that the appellant had not submitted any documents on record to substantiate its claim of weak financial position of the appellant.

12. Learned Appellate Tribunal disposed of that application while observing in the manner as:

- “13. The foregoing submissions made by respective Ld. Counsel for the parties as well as perusal of the impugned orders, default assessment, grounds of appeal, this Tribunal is of the considered view that point raised for consideration can only be meticulously considered for determination at the time of final hearing on the basis of evidence / document to be produced on record by the parties. More so, the provisions of the Act u/s 76(4) cannot be termed as





undue hardship or irreparable loss to the appellant in this regard.

14. However considering the submissions made by Ld. Counsel for Revenue as well as law and procedure which require entertainment of the appeals on merit being not an absolute right of the appellant but always subject to the fulfillment of the condition to be prescribed u/s 76(4) of the DVAT Act, this Tribunal is of the view that the appellant at this stage does not have a prima facie case and is required a direction to deposit 15% of the disputed amount of tax & interest rounded off to the next tenth digit as precondition for hearing the appeals on merits within a period of 30 days. Orders passed accordingly.”
13. Counsel for the applicant has referred to the liquidation proceedings u/s 33 of IBC pending against the dealer, presently known as M/s Nutrionex Manufacturers Ltd. and submitted that in the given facts and circumstances, the order dated 06/04/2018 passed u/s 76 (4) of DVAT Act, be modified and appeal be entertained without calling upon the dealer-applicant to deposit any amount by way of pre deposit, and the appeal be adjourned for final arguments.
14. Learned counsel for the Respondent submits that even though the proceedings u/s 33 IBC are pending against the applicant, interest of the Revenue is required to be protected, and the application be disposed of accordingly.
15. As per copy of order dated 19/09/2023 passed by Hon'ble NCLT, liquidator has been appointed and he is to follow up the

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3/11/23



pending applications etc. for their disposal during the process of liquidation.

When this Appellate Tribunal has enquired from counsel for the Revenue, claim if any, regarding the present liability in terms of the impugned assessment has been filed before the liquidator, counsel submits that he has already apprised the concerned branch i.e. L & J Branch of Department of Trade & Taxes and it is for them to follow up. Counsel for the applicant submits that he has no information if any claim has been filed by the Revenue before the liquidator in proceedings u/s 33 of IBC.

16. Having regard to the significant fact that the liquidation proceedings have already commenced, no resolution plan having been received from any resolution applicant, as regards the dealer, this is a fit case where the previous order passed u/s 76(4) of DVAT Act needs to be modified.

As regards ~~the~~ safeguarding of the interest of the Revenue, the liquidation process under IBC provides for filing of claim by the operational creditors, like the Department of Trade & Taxes. Accordingly, it is for the Revenue to proceed in accordance with law to safeguard its interest as regards the liability already assessed, though under challenge before this Appellate Tribunal after the same has been upheld by the learned OHA in the manner indicated therein.

17. As a result, the application is allowed and while modifying the previous order dated 06/04/2018, the appeal is entertained

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3/11



without requiring the applicant to deposit any amount by way of pre deposit towards the disputed demand.

18. 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: 03/11/2023

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(Narinder Kumar)  
Member (Judicial)

