

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

M.A. No. 273/2023

In Appeal Nos. 73 & 74/ATVAT/2023;

Date of Order: 07/08/2023

Commissioner of Trade & Taxes, Delhi.

.....Applicant

v.

M/s HDFC Bank Ltd.
Plot No. 31, Najafgarh Industrial
Area, Tower "A", 1st Floor, Shivaji
Marg, Moti Nagar, New Delhi-110015.

...Respondent

Counsel representing the Applicant : Sh. P. Tara.
Counsel representing the Respondent : Sh. Atul Gupta.

ORDER

1. This order is to dispose of application No. 273/23 filed in appeals No. 73-74/23. The application has been filed on behalf of the Commissioner, Trade & Taxes (respondent in the appeals) through Government Counsel.

The prayer in the application is that ~~the~~ the 2 appeals captioned above, be dismissed as the dealer [✓] - appellant has failed to deposit the full amount of pre-deposit in compliance with order

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dated 19/06/2023 passed by this Appellate Tribunal u/s 76(4) of DVAT Act passed in the above captioned appeals.

2. Vide common order dated 19/06/2023, while disposing of applications M.A No. 153-154/23 and 155-170/23, filed u/s 76(4) of DVAT Act, in the above captioned two appeals and 16 other appeals No. 75-90/23, this Appellate Tribunal directed the appellant in the manner as:

“In the given facts and circumstances, I find that when application u/s 76(4) of DVAT Act has been argued at length, and in view of the above discussion, the dealer – applicant, which is a bank, is directed to deposit 75% of the amount of demands towards tax which was deductible, but not deducted by the dealer – bank, with 75% of the demands by way of interest on such amount, and 75% of the amount of demands of penalties imposed, pertaining to the tax period 2006-07 and 2008-09, as regards non-deduction of TDS on the payments made by the dealer to the contractors.

Said amounts by way of pre-deposit shall be by way condition u/s 76(4) of DVAT Act, and for the purpose of entertaining all these appeals. The amount to be deposited within 20 days.

Dealer – applicant to comply with the order within the above said period and apprise Registry and counsel for the respondent, so that on compliance, the appeals are taken up on the next date i.e. 11/07/2023 for final arguments, and in case of non-compliance, for further orders due to the non-compliance.”

3. Thereupon, on behalf of the appellant, copies of two challans dated 05/07/2023 came to be submitted.

Vide one challan, in respect of appeals No. 73-74/23, the appellant has deposited Rs. 1,56,17,745/- (for the year 2008-09)

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towards tax, interest and penalty and vide other challan, appellant has deposited Rs. 23,44,160/- (for the year 2006-07) towards tax, interest and penalty in respect of appeals No. 75-90/23.

4. When the files were taken up on 11/07/2023, counsel for applicant herein, submitted that he intended to raise objection, the appellant having not fully complied with the order u/s 76(4) of DVAT Act. That is how, on 17/07/2023, applications No. 273/23 and 274/23 came to be filed.
5. Today, in the course of arguments, counsel for Revenue has not pressed application No. 274/23 in respect of appeals No. 75-90/23, pertaining to the tax period 2006-07. That is how, the only application No. 273/23 is being disposed of by this order.
6. In para 5 of the application, it has been alleged that while submitting compliance report, appellant has not disputed the factum of direction by the Appellate Tribunal for deposit of 75% of the demand towards tax which was deductible, but not deducted by the appellant; the direction to deposit 75% of the demand by way of interest on the aforesaid amount; and the direction to deposit 75% of the amount of demand of penalties imposed, pertaining to the tax period 2008-09 as regards non-deduction of the TDS made by the dealer to the contractors.
7. As alleged in the application, the dealer has failed to abide by the directions as contained in para 13 of the order dated



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19/06/2023, in having deposited lesser amount by way of pre-deposit, and that too as per its own calculations.

8. Dealer has opposed the application by filing reply and sticking to the compliance report.
9. Arguments heard. File perused.
10. Counsel for Revenue-applicant has contended that as per demands, dealer was required to deposit Rs. 17,24,94,348/- towards tax and interest being 75% of the total demands and Rs. 7,29,01,130/- towards demand of penalty, but the dealer has deposited Rs. 1,80,18,919/- and as such, the appeals deserve to be dismissed.
11. As is available from the assessments and from the impugned order following two points were considered:

- “1. Sale of repossessed motor vehicles – non payment of VAT by the dealer bank.
2. Non-deduction of VAT in the form of TDS on payments made for works contracts.”

In its order dated 19/06/2023, particularly para 16, this Appellate Tribunal observed that demand of tax and interest on the sales of repossessed vehicles were no longer required to be mentioned in the assessments, same being not subject matter of remand proceedings.

In the course of arguments on this application, counsel for the parties are in agreement that the amount of the demands towards



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tax, interest and penalty pertaining to sale of repossessed vehicles have not been included in the above said demands of tax, interest and penalty.

12. On the point of non-deduction of TDS, in the order dated 19/06/2023, this Appellate Tribunal directed the dealer-applicant to deposit 75 % of the demand towards tax, which was deductible but was not deducted by the bank, with 75 % of the demand by way of interest thereon, and 75% of the demand of penalty, pertaining to the tax period i.e., 2008-09.
13. As regards Appeals No. 73-74/23, Para 3 and para 4 of the compliance report submitted by the applicant read as under:

“3. It is the understanding of the Appellant that, for the period 2008-09, it has been directed to pay 75% of the demands on tax, interest and penalty on the issue of non-deduction of TDS as follows:

- a. The tax deduction at source in respect of works contract is computed as follows:

Computation of WCT TDS	In Rs.		
WCT TDS as per finding in the original assessment order		2% of 5% of 4,11,60,90,000/-	41,16,090/-
		2% of 4,45,70,568/-	8,91,411/-
		Total	50,07,501/-

As per finding only 5% of Rs. 4,11,60,90,000/- was spent in the State of Delhi and Rs. 4,45,70,568/- was not included in Rs. 4,11,60,90,000/- for the purpose of waiver [para 21 and 22 of the Stay Order dated 19.06.2023].

- b. Computation of interest and penalty:



Calculation of pre-deposit of WCT/TDS, interest and penalty											
Tax period	Issue in Appeal	Tax Section	Taxable Value	Tax Rate (%)	Tax	Return Due Date	Interest upto	Total Interest		Penalty @ 2 times of tax	Amount in INR
								Number of Days	Interest @ 15%		Total
2008-09	Works Contract	32	20,58,04,518/-	2%	41,16,090/-	25-04-2009	12-01-2017	2,819	47,68,462/-	82,32,180/-	1,71,16,733/-
		32	4,45,70,568/-	2%	8,91,411/-	25-04-2009	12-01-2017	2,819	10,32,694/-	17,82,822/-	37,06,927/-
	Total	—	25,03,75,086/-	—	50,07,502/-	—	—	—	58,01,156/-	1,00,15,002/-	2,08,23,660/-

4. Accordingly, the Appellant paid the pre-deposit amount, as computed above as under and the copy of the Challan is attached herewith as Annexure 1:

Nature of deposit	Demand (INR)	Amount payable as per the stay order [75% of column B] (INR)	Particulars of the challan
(A)	(B)	(C)	(D)
Tax demand on non-deduction of TDS	50,07,502/-	37,55,626/-	Ref No 420303679490723 Dated 05-07-2023 CIN : CKX3S04469
Interest	58,01,156/-	43,50,867/-	Do
Penalty	1,00,15,002/-	75,11,252/-	Do

14. Counsel for the dealer has submitted that as per re-assessment dated 12/01/2017, the Assessing Authority referred therein to the previous assessment dated 12/07/2012. Wherein, it was observed that the dealer had failed to furnish any proof in support of its claim that the dealer had carried out works contract of Rs. 4,45,70,568/- only, in Delhi or any proof regarding deduction of TDS on work contract.
15. In the previous assessment dated 12/07/2012, while dealing with the issue of TDS on work contract, the Assessing Authority had

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observed that in respect of expenses of Rs. 108,67,68,000/- and Rs. 302,93,22,000/- i.e. total Rs. 4,11,60,90,000/- towards advertisement & publicity and repair & and maintenance, shown by the dealer, the dealer was directed to furnish details to show as to how much amount had been spent in Delhi under the two heads, but it deliberately avoided to furnish the information. Accordingly, the Assessing Authority held that the dealer was liable to deduct TDS to the tune of Rs. 8,23,21,800/- on Rs. 4,11,60,90,000/-.

16. Learned Assessing Authority also went on to hold in the previous assessment that the dealer had not deducted TDS on works contract carried out for constructing different type of work in Delhi, which amounted to Rs. 4,45,70,568/-.
- That is how, learned Assessing Authority held that dealer had to deduct a sum of Rs. 8,32,13,211/- on Rs. 4,11,60,90,000/- plus Rs. 4,45,70,568/-.
17. As regards, a sum of Rs. 4,45,70,568/-, in the course of arguments, counsel for the dealer has not raised any dispute.
18. Counsel for the dealer has referred to the previous assessment dated 12/07/2012 ~~and~~ wherein the Assessing Authority had specifically concluded that out of a sum of Rs. 4,11,60,90,000/- at least 5% must have been spent on repair & maintenance and advertisement & publicity in Delhi, and further that expenses

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shown in audited balance sheet were on all India basis and that expenses on this head, as regards Delhi will be at least 5%.

The contention is that keeping in view the above said conclusion by the Assessing Authority while framing previous assessment, the amount spent on repair & maintenance and towards advertisement & publicity in Delhi must have been at least 5% amount, dealer has correctly deposited amount by way of pre-deposit as per order dated 19/06/2023, on the basis of said 5%.

19. On the other hand, counsel for the applicant-revenue has submitted that the above observations made in the previous assessment to the fact that the amount spent on repair & maintenance and towards advertisement & publicity in Delhi must have been at least 5% amount, reflect the contention/claim of the dealer before the Assessing Authority, who framed the previous assessment, and not the findings of the Assessing Authority, and that the dealer was required to deposit 75% of the total demand raised on the basis of total work contract of Rs. 4,16,06,60,568/- and not 75% of the total demand on the basis of 5% of the total value of Rs. 4,16,06,60,568/-.
20. As regards reflection of 5% spent on repair & maintenance and advertisement publicity in Delhi, in the previous assessment order, having regard to the observations made at page 22 under the heading 'TDS On Work Contract', it cannot be said at this

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stage that the same was reflection of claim of the dealer, and rather, it appears to be a finding recorded by the previous Assessing Authority, as regards expenses in respect of Delhi, even though the audited balance sheet was for all over India. Consequently, dealer was required to deposit, by way of pre-deposit towards the amount of tax (on account of non-deduction of TDS), on account of interest and towards penalty, as per calculations/^{correctly} made by the dealer in para 4 of the compliance report, reproduced above

Since, the dealer has complied with the order dated 19/06/2023 regarding pre-deposit, the application is dismissed so far as the ground is that the dealer has failed to deposit the pre-deposit amount as per order dated 19/06/2023. *is concerned.*

21. However, nothing said herein shall have any bearing on the decision of the appeals on merits.
22. 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 : 07/08/2023.


(Narinder Kumar)
Member (J)

