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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: December 16, 2014

- + ST.APPL. 48/2014 & CM No. 13821/2014
M/S. CALCOM ELECTRONICS LTD Appellant
Through: Mr.Balram Sangal, Advocate
versus
THE COMMISSIONER OF SALES TAX /VAT DELHI
..... Respondent
Through: Mr.Sushil Dutt Salwan, ASC with
Ms.Latika Dutta, Advocate
- + ST.APPL. 51/2014 & CM No. 14002/2014
M/S. CALCOM ELECTRONICS LTD Appellant
Through: Mr.Balram Sangal, Advocate
versus
THE COMMISSIONER OF SALES TAX / VAT DELHI
..... Respondent
Through: Mr.Sushil Dutt Salwan, ASC with
Ms.Latika Dutta, Advocate
- + ST.APPL. 52/2014 & CM No. 14048/2014
M/S. CALCOM ELECTRONICS LTD Appellant
Through: Mr.Balram Sangal, Advocate
versus
THE COMMISSIONER OF SALES TAX / VAT DELHI
..... Respondent
Through: Mr.Sushil Dutt Salwan, ASC with
Ms.Latika Dutta, Advocate
- + ST.APPL. 59/2014 & CM Nos. 16290-92/2014
M/S. CALCOM VISION LIMITED Appellant
Through: Mr.Balram Sangal, Advocate
versus
THE COMMISSIONER OF SALES TAX / VAT DELHI
..... Respondent
Through: Mr.Sushil Dutt Salwan, ASC with

Ms.Latika Dutta, Advocate

+ ST.APPL. 60/2014 & CM Nos. 16293-95/2014
M/S. CALCOM VISION LIMITED Appellant
Through: Mr.Balram Sangal, Advocate
versus
THE COMMISSIONER OF SALES TAX /VAT DELHI
..... Respondent
Through: Mr.Sushil Dutt Salwan, ASC with
Ms.Latika Dutta, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

CM Nos. 16290/2014 & 16292/2014 (condonation of delay) in ST. APPL. 59/2014

CM Nos. 16293/2014 & 16295/2014 (condonation of delay) in ST. APPL. 60/2014

These are the applications for condonation of delay in filing and refiling the appeals. There is a delay of 47 days in filing and a delay of 15 days in refiling of the appeals. We condone the delay in filing and refiling noticing the fact that the appellant has earlier filed applications for review before the Appellate Tribunal, constituted under the Delhi Value Added Tax Act, 2004. Upon dismissal of the review applications, the present appeals were preferred. Counsel for the respondent revenue has waived his right to file reply. The applications are accordingly allowed.

ST.APPL. Nos. 48, 51, 52, 59 & 60 of 2014

1. Looking at the similarity of issue and questions raised in these appeals, we are disposing the same with the consent of the counsel for the parties, by this common order.

2. The following substantial question of law is framed in the appeals preferred by the appellant Calcom Electronics Ltd.:

“Whether Appellate Tribunal, Value Added Tax was justified and correct in directing the appellant assessee to deposit 10% of the disputed amount as pre-deposit and therefore a pre-condition for hearing of the appellant on merits?”

3. In the appeals filed by Calcom Vision Ltd., the following substantial question of law is framed:

“Whether Appellate Tribunal, Value Added Tax was justified and correct in directing the appellant assessee to deposit 20% of the disputed amount payable under Delhi Sales Tax Act and Central Sales Tax Act and 10% of the disputed penalty as a pre-condition for hearing of the appeals on merits?”

4. Counsel for the parties have stated that as a short issue arises for consideration, arguments may be heard and the appeals be decided.

ST APPL. Nos. 48, 51 & 52 of 2014 (filed by Calcom Electronics Ltd.) (filed by Calcom Electronics Ltd.)

5. The appeals pertain to the Financial Years 1997-98, 1998-99 and 1999-00.

Financial Year : 1997-98

6.1 For the Financial Year 1997-98, by the Assessment Order dated 30.08.2000, the tax demand of Rs.1,24,39,318/- and Rs. 2,11,19,411/- was created under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956. In the first appeal, the Additional Commissioner, vide order dated 05.09.2001, directed the appellant herein to deposit Rs.45 lacs and Rs. 5 lacs under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956 respectively, as a condition precedent for hearing appeal on merits.

6.2 Aggrieved, the appellant filed the appeals before the Sales Tax Appellate Tribunal, which were decided by order dated 16.10.2001, directing the appellant herein to make pre-deposit of Rs. 4 lacs under the Delhi Sales Tax Act, 1975 and Rs. 2000/- under the Central Sales Tax Act,

1956. The said deposits were duly made.

6.3 The first appellate authority, after a gap of 11 years vide order dated 7.9.2012, rejected the first appeal on merits. Thereupon, the appellant assessee preferred an appeal before the Appellate Tribunal and by the impugned order dated 28.03.2014, has been directed to deposit 10% of the disputed amount as a condition precedent for hearing appeals on merits.

Financial Year :- 1998-99

7 By the Assessment Order dated 27.02.2001 relating to the Financial Year 1998-99, demand of Rs. 18,29,303/- and Rs. 28,42,429/- was created under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956, respectively. The First appellate authority vide order dated 5.9.2001 directed the appellant to deposit Rs.10 lacs and Rs. 50,000 under Delhi Sales Tax Act 1975 and Central Sales Tax Act, 1956, respectively, as a condition precedent for hearing appeals on merits. Aggrieved, the appellant preferred an appeal before the Sales Tax Appellate Tribunal, where the amount of pre-deposit was reduced to Rs.3000/- and Rs. 4000/- under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956, respectively. Again, after a gap of 11 years, the first appellate authority rejected the appeal vide order dated 07.09.2012. The appellant thereupon, preferred an appeal before the

Appellate Tribunal, Value Added Tax and by order dated 28.03.2014, has been directed to deposit 10% of the disputed amount as a pre-condition for hearing of the appeals on merits.

Financial Year: - 1999-00

8 In respect of the Financial Year 1999-00, by Assessment Order dated 31.12.2001, demand of Rs. 3,11,075/- and Rs. 7,17,961/- was created under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956, respectively. Subsequently, a reassessment order was passed on 30.09.2002, creating additional demand of Rs. 6,93,616/- and Rs.31,29,853/- under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956, respectively. The appellant assessee preferred appeals and vide order dated 13.3.2003, the First Appellate Authority directed the appellant to make a pre-deposit of Rs.24,000/- under the Delhi Sales Tax Act, 1975 and Rs. 3 lacs under the Central Sales Tax, 1956. The aforesaid pre-deposits were in relation to both the assessment and reassessment orders. Aggrieved, the appellant preferred an appeal before the Sales Tax Appellate Tribunal whereby the pre-deposit was reduced to Rs. 10,000/- under the Delhi Sales Tax Act, 1975 and Rs. 40,000/- under the Central Sales Tax Act, 1956. The appellant was however asked to furnish a surety of Rs.2.5 lacs and Rs. 3 lacs

under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956, respectively. The said deposits were made and surety were furnished. After about 10 years, vide order dated 7.9.2012, the first appellate authority dismissed the appeal on merits. Aggrieved, the appellant assessee has filed appeals before the Appellate Tribunal, Value Added Tax and has been asked to deposit 10% of the disputed amount.

ST. APPL. No. 59 of 2014 (filed by Calcom Vision Ltd.)
(Financial Year 1997-98)

9. As per the Assessment Order dated 08.09.2000, additional demand of Rs. 53,48,221/- was created under the Delhi Sales Tax Act, 1975 and Rs.2,03,233/- under the Central Sales Tax Act, 1956. The first appellate authority, by order dated 22.8.2001, directed the appellant to pay 20% of the disputed tax amount under the Delhi Sales Tax, 1975 and 10% of the disputed tax amount under the Central Sales Tax Act, 1956. Aggrieved, the appellant assessee filed appeal before the Sales Tax Appellate Tribunal and the amount of pre-deposit was reduced to Rs.2 lacs. The deposit was duly made. After about 11 years, by order dated 21.09.2012, the first appellate authority dismissed the appeal on merits. Aggrieved, the appellant assessee has filed an appeal before the Appellate Tribunal, Value Added Tax and has been asked to deposit 20% of the disputed tax amount under the Delhi Sales

Tax Act, 1975 and the Central Sales Tax Act, 1956 and 10% of the disputed penalty amount as a pre-condition for hearing of the appeals on merits.

ST. APPL. No. 60 of 2014 (filed by Calcom Vision Ltd.)
(Financial Year 1998-99)

10. By Assessment Order dated 09.01.2001, demand of Rs.17,41,950/- and Rs.1,82,002/- was created under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956 respectively. The first appellate authority, vide order dated 22.8.2001, directed the appellant herein to deposit 10% of the disputed amount under both the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956. The said deposit was duly made. By order dated 21.09.2012, an order of remand was passed in respect of Form 'C', but, rest of the demand under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956 was sustained. Aggrieved, the appellant assessee preferred an appeal before the Appellate Tribunal, Value Added Tax and by impugned order dated 06.03.2014, has been directed to make pre-deposit of 20% of the disputed amount of tax under the Delhi Sales Tax Act, 1975 and the Central Sales Tax Act, 1956 and 10% of the disputed penalty amount.

Findings

11. What is highlighted and pointed out before us is that the disputed amounts pertain to the Financial Years 1997-98 to 1999-2000. It has been

further highlighted that the proceedings have remained pending for over a decade and the appellant assessee cannot be blamed and was not responsible for the same. It is further highlighted that the appellant is not in a position to pay the said amounts because of the change in circumstances and their weak financial position/condition. Before us, the appellants have filed various charts to illustrate that the demand primarily is on account of the sales tax statutory forms. It is stated that the photocopies of the said forms were duly filed before the authorities on different dates, but, have not been verified and considered by them. It is highlighted that the Appellate Tribunal has incorrectly observed that the forms were filed for the first time before Tribunal and have to be verified and checked. Our attention is drawn to various orders in which it is recorded that the appellant assessee had produced Forms 'C', ST-49 and ST-35 Forms. Before us also the assessee has produced the said forms in original. It is stated that the record maintenance by the respondent revenue is not satisfactory and of required standard. The forms often get misplaced or become untraceable. Even proper receipt is not given. Even photocopies of forms stated to have been filed by the appellant, are not traceable.

12. We have gone through the contentions raised by the parties and have

also examined various appellate orders in which reference to the forms etc. has been made. The orders do indicate that forms were certainly filed either before the Assessing Officer or the first appellate authority or before the Appellate Tribunal on or before 2001, though some forms were filed for the first time before the Appellate Tribunal in 2014. Primarily, the demand created is on account of the said forms. It is noticeable that in the cases filed by Calcom Electronics Ltd., the appellant relies upon ST-35 forms of Rs. 6,21,91,904/- from their sister concern Calcom Vision Ltd., the other appellant. It is also noticeable that the question of pre-deposit had earlier become the subject matter of an order passed by the Tribunal in the case of Calcom Electronics Ltd. for the Financial Years 1997-98, 1998-99 and in the case of Calcom Vision Ltd. for the Financial Year 1997-98. The said deposits as directed were made. The financial position of the appellant company, it is apparent, rather weak and any harsh condition would put them in difficulty as the appeals would not be heard and decided on merits but dismissed on the ground of non-payment of pre-deposit.

13. It has been rightly highlighted before us that the Appellate Tribunal, Value Added Tax has primarily proceeded and erred in holding that the forms had been filed for the first time before it in 2014, whereas the case of

the appellants is that most of the forms were filed earlier but have not been verified. The value of the forms now filed in 2014 is only miniscule.

14. Keeping in view the aforesaid position, we modify the directions given by the Appellate Tribunal, Value Added Tax in respect of the pre-deposit as under:

- (i) Calcom Electronics Ltd. will deposit a consolidated amount of Rs. 10 lacs, which will be deposited in two instalments. The first instalment of Rs.5 lakh will be deposited within a period of one month from today and the second instalment of Rs. 5 lacs will be paid within a period of two months after the payment of first instalment.
- (ii) Calcom Vision Ltd. will make pre-deposit of Rs.5 lacs within two months from today.

The said deposits will be made before the Appellate Tribunal, Value Added Tax and will abide by the orders passed by the said Tribunal. The deposits will be kept in an interest bearing FDR.

- (iii) Calcom Vision Ltd. will file an undertaking before the Appellate Tribunal, Value Added Tax, stating that they shall not sell, alienate or encumber the immovable property located at Greater Noida, U.P. and in case the appellants i.e. Calcom Electronics Ltd. or Calcom Vision Ltd. are

not able to pay the sales tax dues as per the final determination, the sales tax authorities can proceed against the said property for recovery of dues of the appellants i.e. Calcom Vision Ltd. as well as dues payable by Calcom Electronics Ltd. The said undertaking will be filed within a period of one month from today before the Appellate Tribunal, Value Added Tax.

(iv) Another set of photocopies of all the forms available with the appellants will be submitted to the respondent revenue within a period of one month and revenue will be entitled to ask for and examine the originals. The said request will be made in writing, specifying the date and time when the original should be produced. The appellants will fully co-operate in the said enquiry.

15. We, accordingly, answer the substantial question of law in terms of our directions given above. The appeals are partly allowed and disposed of.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

DECEMBER 16, 2014/akb