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

\+ ST.APPL. 4/2017 & CM No.34934/2017

M/S CALCOM ELECTRONICS LIMITED ..... Appellant
Through: Mr. Balram Sangal, Advocate

versus

THE COMMISSIONER OF SALES TAX / VAT ..... Respondent
Through: Ms. Deboshree Mukherjee, Advocate for Mr. Anuj Aggarwal, ASC

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

O R D E R

% **17.01.2018**

Having heard learned counsel for the parties, we frame the following substantial question of law in this appeal preferred by M/s Calcom Electronics Ltd. against the order dated 12.6.2017 passed by the Appellate Tribunal, Value Added Tax, Delhi ('Tribunal' for short) in Appeal No.385-386/ATVAT/14-15 for the Assessment Year ('AY') 1996-1997:

> "Whether the Tribunal was justified and correct in directing the appellant assessee to deposit Rs.10,00,000/- as pre-deposit and as a pre-condition for hearing the appeal on merits."

2. With the consent of the parties and, as a short issue arises for consideration, we are taking up the appeal for hearing and decision.

3. The appellant is a Company, which was registered under the Delhi Sales Tax Act, 1975 ('Local Act' for short) and under the Central Sales Tax Act, 1956 ('Central Act' for short). The appellant

used to import and manufacture black & white television sets and was also original equipment supplier to third parties. The impugned order records that the appellant had suffered losses and had closed its business in the year 2003. They have surrendered registration certificates under the Local and the Central Acts.

4. The appeal preferred by the appellant before the Tribunal relates to AY 1996-1997. The additions made under the Local and the Central Acts are under challenge. The total demand against the appellant is Rs.48,09,104/- inclusive of interest of Rs.12,20,948/- under the Local Act and Rs. 7,21,506/- under the Central Act.

5. The impugned order, which decides the question of pre-deposit, mentions that the demand under the Local Act was created due to enhancement in turnover by 10% and relates to ST-35 and ST-49 forms. There are questions regarding discount and effect on the levy of tax and also on the value of goods returned. Under the Central Act, the issue relates to return of rejected goods and declarations in Forms C and H, which it is stated, were not produced.

6. The Tribunal has recorded the contention that the appellant had filed Form ST-35 for claim of deduction of Rs.87,52,400/- and the originals were produced before the first appellate authority ('Authority' for short), which refused to accept the same and grant benefit on the ground that Form ST-49 were required to be furnished. The aforesaid reasoning of the Authority is under challenge before the Tribunal. The appellant has also given explanation in respect of other demands. The impugned order also refers to the contention that the appellant is a sick company and had filed a reference under Sick

Industrial Companies (Special Provisions) Act, 1985 before the Board for Industrial and Financial Reconstruction (BIFR).

7. On the question of pre-deposit, the impugned order refers to the decision of the Delhi High Court titled M/s. Calcom Electronics Ltd. v. The Commissioner of Sales Tax/VAT in ST. APPL. No.48/2014 and other connected matters, decided on 16.12.2014, whereby the appellant was asked to deposit Rs.10,00,000/- in two instalments. The sister concern, Calcom Vision Ltd., was asked to deposit Rs.5,00,000/- for hearing of the appeal.

8. Learned counsel for the appellant submits that the High Court had directed deposit of Rs.10,00,000/- in these appeals preferred by the appellant for the AYs 1997-1998 and 1998-1999. In these two years, the demand raised was to the tune of Rs.1,24,39,138/- and Rs.18,29,303/- under the Local Act and Rs.2,11,19,411/- and Rs.28,42,429/- under the Central Act.

9. It is highlighted that the case is rather an old one and the AY involved is 1996-1997. Lastly, it is contended that the appellant has deposited Rs.3,50,000/- under the Local Act and Rs.25,000/- under the Central Act. These deposits have not been taken into consideration by the Tribunal.

10. We have considered the cumulative effect of the facts, including the financial condition of the appellant assessee. The issues and contentions raised by the appellant require deeper and extensive examination. The appellant should be given an effective chance to establish its case. In the given facts, we feel that the directions for pre-deposit require a slight modification. The appellant is directed to

deposit Rs.5,00,000/- within a period of one month, and on the said deposit being made, the appeal would be heard on merits. However, in case the said amount is not deposited within one month, the appeal will be dismissed for non-compliance of this order and failure of pre-deposit. The aforesaid deposit would cover the appeal preferred both under the Local and the Central Acts. The question of law is accordingly answered in the above terms. The appeal is partly allowed and disposed of, with no order as to costs. CM No.34934/2017 is also disposed of.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JANUARY 17, 2018
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