

\$~7

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

+ **VAT APPEAL 6/2018 & CM Appl. 9589/2018**

HI TECH AUDIO SYSTEMS PVT. LTD., Appellant
Through: Mr. Rajesh Jain, Mr. Virag Tiwari,
Ms. Aastha Gandhi & Mr. Ram
Ashish, Advs.

versus

COMMISSIONER OF TRADE & TAXES Respondent
Through: Mr. Shadan Farasat, ASC for GNCTD
with Ms. Hafsa Khan, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **15.01.2019**

1. The question of law framed by the Court on 19.04.2018 is as follows:-

“(i) Whether the Appellate Tribunal, DVAT was right in imposing two conditions – that the appellant should deposit 20% of tax and interest amount and 5% of the penalty amount, without commenting upon the merits of the case.”

2. The facts in brief are that the VATO/ Special OHA's final order led to the imposition of VAT demand to the tune of ₹ 12.94 lakhs and equal amount as penalty. This decision was appealed against, in the DVAT Tribunal which by the impugned order required the appellant (upon an application made for the waiver of the statutory pre-deposit condition) to pay 20% of the duty amount and 5% of the penalty amount.

3. Mr. Rajesh Jain, learned counsel for the petitioner contends that the DVAT Tribunal has in fact not recorded any reason for its direction, that the appellant should deposit the quantum specified in the impugned order. It is contended that the DVAT Tribunal has to necessarily consider at least the

prima facie contention urged and then record its appropriate order.

4. The relevant statutory provision under first proviso to Section 76(4) of the Delhi Value Added Tax Act, 2004 reads as follows:-

“(4) No appeal against an assessment shall be entertained by the Appellate Tribunal unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute and any other amount assessed as due from the person:

PROVIDED that the Appellate Tribunal may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount as it may direct:

PROVIDED FURTHER that no appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due from him has been paid.”

5. The operative portion of the impugned order that first records the contentions including that of the appellant reads as follows:-

“The foregoing submissions made by respective Ld. Counsel for the parties as well as perusal of the impugned orders, default assessment and 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. 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 at this stage the appellant is required a direction to deposit 20% of the disputed amount of tax & Interest and 5% of the disputed amount of penalty as precondition for entertainment of and hearing the appeals on merits within a period of 30 days. Orders passed accordingly. The applications stand disposed off. On compliance of the order by the appellant, the file be listed for hearing on merit on 27.03.2018.”

6. After hearing the counsels for the parties, we are of the opinion that given the nature of the mandate by proviso to Section 76(4), the DVAT Tribunal has to indicate some reason as to why it grants or denies the relief, or grants the quantum of relief in any given case. The reasons – per proviso of Section 76(4) – are to direct its mind to the facts of the particular case, given the structure of the statute, which mandates the deposit of the entire duty and any other amounts required. In that sense, the discussion and reasoning in para 8 falls short of the expected consideration required by the statute.

7. Consequently, we set aside the impugned order. The DVAT Tribunal after issuing notice shall pass fresh order in accordance with law.

8. In the meanwhile, the interim order of this court requiring deposit of ₹50,000/- shall govern the parties. The DVAT authorities shall not recover the amount, but shall proceed to decide the future course of action during the pendency of the appeal depending upon the orders made under Section 76(4) of the DVAT Tribunal.

9. The DVAT Tribunal is requested to complete the proceedings and accordingly pass an order on the nature and the quantum of the pre-deposit within 12 weeks from today.

10. The appeal is disposed of, in the above terms, alongwith the pending applications.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 15, 2019

pv'