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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **DECIDED ON: 28.02.2014**

+ ST.APPL. 4/2014

ALD AUTOMOTIVE PVT LTD. .... Petitioner  
Through: Mrs. Premlata Bansal, Sr. Advocate  
with Ms. Megha Mehta and Mr. Ruchir Bhatia,  
Advocates.

versus

COMMISSIONER TRADE AND TAXES DELHI ..... Respondent  
Through: Ms. Ruchi Sindhwani with Ms. Bandana  
Shukla, Ms. Megha Bharara and Ms. Madhu  
Bhatia, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE R.V. EASWAR**

**MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

1. Issue notice. Ms. Ruchi Sindhwani, Advocate accepts notice on behalf of respondent.

2. The present appeal seeks to urge the following substantial question of law: -

“whether the input credit claimed by the appellant/assessee was correctly disallowed and whether the Tribunal was justified in holding that the disallowance was valid in rejecting the application for pre-deposit.”

3. The brief facts are that the appellant is a VAT dealer engaged in leasing of motor vehicles. The VAT Audit Department conducted

inspection of its activities and observed that during the first quarter of 2007-08, the dealer has shown purchases of cars and accessories to the tune of ₹91,01,978/- and claimed input credit to the tune of ₹23,77,248/- in the return. The VAT authority was of the opinion that such input credit was not permissible as the cars have not been resold and only effective control and possession had been transferred to the customers and, therefore, it does not constitute resale in unmodified form. The input credit was sought to be disallowed in terms of Section 9 (2) (b) of the DVAT Act. The OHA rejected the contentions of the assessee which thereafter carried the matter in appeal to the DVAT Tribunal. Before the appeal could be heard on merits, the VAT Tribunal took up the assessee's request, through an application, for suspension and exemption of the requirement to pre-deposit. The impugned order directed pre-deposit of tax of ₹1,08,87,700/-, ₹5,44,38,503/- towards interest and ₹46,85,130/- towards penalty, holding that there was no resale in unmodified form and that the provisions of Section 9 (9) of the DVAT Act applied.

4. Learned counsel for the assessee points to the judgment of the Division Bench of this Court in *Commissioner of VAT v. Carzonrent India Pvt. Ltd.* (St. Appeal No.4/2011, decided on 17.01.2013). It is contended that three questions of law were framed in that appeal, each of them pertaining to identical transactions as to the permissibility of the input tax credit paid by the dealer who engages itself in leasing operations of vehicles. Learned counsel points out that even the issue of applicability of Section 9 (9) - which was strongly urged by the Revenue to negate the dealer's contentions was

negatived as is evident from a reading of paragraph 24 of the judgment where it was held as follows: -

*“24. From the provisions reproduced above, it can be seen that:*

*(a) input tax means the proportion of the price paid by the buyer for the goods which represents tax for which the selling dealer is liable under the Act (according to Section 2 (r);*

*(b) sale price (Section 2 (zd) means in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable;*

*(c) The amount of the tax credit to which a dealer is entitled in respect of the purchase of goods is "the amount of input tax arising in the tax period" (Section 9 (3));*

*(d) Where a dealer has purchased goods and the goods are to be used partly for the purpose of making the sales referred to in sub-section (1) of this section and partly for other purposes, the amount of the tax credit shall be reduced proportionately.*

*(e) Tax credit is inadmissible where the purchase of goods is from an unregistered dealer or where purchase of goods are for use exclusively for the manufacture, processing or packing of goods specified in the First Schedule (Section 9 (7));*

*(f) Tax credit is admissible in a proportionate manner, only in respect of capital goods (Section 9 (9)).*

*25. The entire regime of principles for granting input credit is contained in Section 9 (3), (4), (6) and (10). The general principle that tax credit is admissible, in respect of the input tax, is stated in Section 9(3). Section 9(4) visualizes a situation where credit is partly admissible, in respect of some transactions. It states that input credit would be proportionate to the extent the dealer is uses the goods for the purpose of sale under Section 9 ( 1).*

*Clearly, the allusion to proportion does not refer to the nature or type of sale. Section 9 (6) says that where a dealer purchases goods that are entitled to credit, the amount of tax credit shall be reduced by a prescribed percentage. Section 9 (9) is by far the most important provision. It enacts the principle of proportionate grant of input credit, in point of time, but only in respect of capital goods. The omission to enact a similar provision in respect of different categories of sale transactions (such as, for instance, the sale of the right to use) on the one hand, and the enactment of Section 2 (zd) (iii) which specifically deals with sale price in respect of transfer of the right to use, coupled with Section 2 (zm) ("turnover") - which states that turnover is aggregate of sale price, point to legislative deliberation that the theory of proportionality, of the kind, sought to be propounded by the revenue, - and accepted by the Tribunal, has no statutory basis. Once the legislature entitles the assessee- as in this case, to a certain benefit - of input credit, and puts in place a mechanism for working it out, which expressly provides one kind of proportional input credit, to a class of transactions, i.e. in relation to capital goods, it is not permissible for the Court to read into the statute another such proportional rule, without statutory sanction.*

*26. The reference to Section 12 ( 4) in this context, is unhelpful to the revenue, because that provision merely enables the Government to frame rules prescribing the time at which a dealer shall treat the (a) turnover; (b) turnover of purchases; and (c) adjustment of tax or adjustment to a tax credit; as arising for a class of transactions."*

Learned counsel for the Revenue urges that the judgment was in fact cited by the assessee and has been discussed by the appellate Tribunal in the present case. She also submitted that the assessee's appeal possibly canvasses other issues which may require to be gone into by the Tribunal.

5. This Court has considered the submissions. It is evident from

the appeal before the Tribunal that the principal issue which it had to consider was whether the assessee could claim input tax credit in terms of the Delhi VAT Act. In *Carzonrent* case, identical issues and all related questions were dealt with and the submissions of the Revenue was rejected decisively. The Tribunal's impugned order relies upon Section 9 (9). To this Court's mind, the understanding of the Tribunal as to its applicability appears to have been based upon a misreading of judgment passed in *Carzonrent* as is evident from the extract of that judgment. In this view of the matter, *ex facie*, the view of the Tribunal with regard to the disallowance of input tax credit appears to be incorrect. As a result, the impugned order rejecting the application for waiver of pre-deposit requires to be and is accordingly set aside. The appeal preferred by the assessee in this case shall be heard on its merits and disposed of at the Tribunal's earliest convenience and preferably within six months from today. This Court clarifies that the observations made in this case are not dispositive of the merits of the appeal. The contentions of both parties to urge all grounds in support of their submissions are kept open.

6. The appeal is allowed in the above terms. No costs.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.V. EASWAR**  
**(JUDGE)**

**FEBRUARY 28, 2014/vks/**