

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ST.APPL. 1/2023**

M/S PAWAN HANS LIMITED (FORMERLY
KNOWN AS PAWAN HANS HELICOPTERS
LIMITED)

..... Appellant

Through: Mr. Tarun Gulati, Senior
Advocate with Mr. Rajat
Bose, Mr. Ankit Sachdeva,
Ms. Shohini Bhattacharya
and Mr. Kumar Sambhav,
Advs.

versus

COMMISSIONER OF TRADE AND
TAXES

..... Respondent

Through: Mr. Satyakam, Additional
Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.01.2023**

**CM APPL. 1318/2023 (exemption from filing original / certified
/ typed copies of the annexures)**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**CM APPL. 1319/2023 (exemption from filing clear and legible
copies of the annexures and / or annexures without the requisite
left margin and / or the requisite font size and / or the requisite
line spacing)**

3. The appellant shall file typed copies of all the documents
which are dim or illegible.
4. The application is disposed of with the aforesaid direction.

ST.APPL. 1/2023 & CM APPL. 1317/2023

5. The appellant has filed the present appeal impugning an
order dated 06.10.2022 passed by the Appellate Tribunal, Value
Added Tax, Delhi.

6. The appellant states that it is in the business of chartering helicopters and has entered into agreements with various State Government and public sector entities for hiring of its helicopters.

7. According to the VAT authorities, the agreements entail transfer of the right to use and therefore, the consideration would be taxable under the Delhi Value Added Tax Act, 2004.

8. The respondent has raised demand for a sum of ₹175,99,76,819 for the relevant period (year – 2006 to 2010). And, this demand has been confirmed by the impugned order.

9. Mr. Tarun Gulati, learned senior counsel appearing for the appellant submits that the helicopters continue to be in possession and control of the appellant. The pilots manning the said aircraft are under rolls of the appellant. Further, the maintenance of the helicopters is also done by the appellant.

10. He also submits that the appellant was registered with the Service Tax Authority for rendering the service of “Supply of Tangible Goods for Use Services”. And, has duly paid the Service Tax as chargeable under the Finance Act, 1994.

11. He submits that the impugned order is palpably erroneous. Notwithstanding the same, if it is held that there has been a transfer of right to use the aircraft, the appellant would not be liable to pay any Service Tax as both the taxes are mutually exclusive.

12. He also referred to an order dated 04.04.2018 passed by the Hon’ble Supreme Court in ***M/S Dominos Pizza International Franchising Inc v. Union Of India And 3 Others : Writ Tax No. – 569 of 2018*** and submitted that under somewhat similar circumstances, the Supreme Court had stayed any coercive action in respect of such demand for tax.

13. The issues raised in the present appeal require consideration.
14. The following questions of law arise for consideration:
 - a) Whether as per terms of agreements executed by the Appellant with its customers, hiring of helicopters is covered under the meaning of “Sale” under Section 2(g)(iv) CST Act?
 - b) Whether in the facts and circumstances of the case, the hon’ble Tribunal has erred in coming to the conclusion that the Appellant has transferred the effective control and possession and right to use the helicopters to its customer so as to consider the activity as “Deemed Sale”?
15. Issue notice.
16. We request, Mr. Satyakam, learned counsel who is on the panel of the respondent, to accept notice.
17. The appellant shall file a complete paper book placing all documents before the Appellate Tribunal on record.
18. The parties are directed to file written submissions not exceeding three pages along with reference to the authorities relied upon by them, before the next date of hearing.
19. List for final hearing on 16.03.2023.
20. In the meanwhile, the respondents shall not take any coercive steps for recovery of the demand as upheld by the impugned order.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 12, 2023

‘KDK’

