

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 12.08.2014
Judgment pronounced on : 14.10.2014

W.P.(C) 2214/2013 & CM Nos.4220/2013, 5669/2013

M/S SHUBHAM MARKETING

..... Petitioner

versus

COMMISSIONER VALUE ADDED TAX

..... Respondent

AND

W.P.(C) 2919/2013 & CM No.5497/2013

BHARAT RAM RAJ KUMAR & CO

..... Petitioner

Versus

COMMISSIONER OF VALUE ADDED TAX

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Jain, Mr Sanjay Sharma, Mr Virag Tiwari, Mr K.J. Bhat and
Mr P.C. Aggarwal, Advocates in W.P.(C) 2214/2013
Mr Vinod Srivastava, Ms Vertika Sharma and Mr Ravi Chaudhary,
Advocates in W.P.(C) 2919/2013
For the Respondents : Mr S.D. Salwan, ASC, GNCTD

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present two writ petitions have been filed by M/s Shubham Marketing and Bharat Ram Raj Kumar & Co. (hereinafter referred to as “petitioners”) seeking to quash the default notices dated 08.03.2013 and 21.02.2013 (impugned herein) of assessment of penalty in form DVAT-24A issued under Section 33 of the Delhi Value Added Tax Act, 2004 (hereinafter referred as “the said Act”) for non-filing of stock statement online in form Stock-I. Since these petitions raise identical issues, they are being disposed of by a common order.

2. The VATO/AVATO issued the default notices of assessment of penalty. In the said notices it is observed that the petitioners have a liability to pay penalty under Section 86 of the said Act. The VATO/AVATO has imposed a fine of ₹10,000/- under Section 70(5) of the said Act.

3. The learned counsel appearing on behalf of the petitioners states that the respondent-commissioner or his delegate does not have the power or jurisdiction to impose fine as a punishment under the provisions of Section 70(5) of the said Act, as the power to impose fine vests with the courts of criminal jurisdiction only.

4. The learned counsel appearing on behalf of the petitioners further states that the power to punish is a judicial power which can only be exercised by a court. It is argued that when Section 70(5) of the said Act uses the expression "punishable with fine", it leads to only one conclusion that only the court of competent jurisdiction, and no other person, can take cognizance of the offence. It is further argued that, "fine" as an expression used under section 70(5) of the said Act, cannot have a different interpretation. The expressions "fine" and "penalty" are not interchangeable.

5. The learned counsel on behalf of the petitioners further contends that when the expression "fine" does not find any specific mention in the provisions relating to recovery/special mode of recovery under Sections 36, 43 and 46 of the Act read with Rules 31, 37 and 39 of the Rules and the DVAT challans 20 and 27 also do not use the word "fine", then it

means that the power to impose and collect fine does not vest with the Commissioner.

6. The vires of the three notifications dated 16.08.2012, 30.10.2012 and 12.11.2012 were also challenged as being contrary to the provisions of the said Act.

7. The learned counsel appearing on behalf the respondent argues that the notices issued, impugned herein, are correct in law and there is nothing illegal, as the commissioner is vested with the power to impose such fine under the provisions of the said Act.

8. We have heard the counsel for the parties. Although the vires of the notifications dated 16.08.2012, 30.10.2012 and 12.11.2012 are challenged as being contrary to the provisions of the said Act, as discussed hereinafter, to grant the main relief which is prayed and pressed upon by the learned counsel for the petitioners, we are not going into the question of vires of the aforesaid notifications. We are not examining this issue and it is, therefore, kept open.

9. According to us, the short question involved in these present writ petitions is, *whether the respondent-commissioner has the power or jurisdiction to impose fine as a punishment under the provisions of*

Section 70(5) of the said Act through his delegate or such power to impose fine vests with the courts of criminal jurisdiction?

10. The following provisions are considered for effective adjudication: -

11. Section 70(5) of the said act reads as under:

“70(5) Failure to comply with a requirement in a notification may be punishable with fine provided that the amount of the fine does not exceed ten thousand rupees or such other amount as may be prescribed.”

(Underlining added)

12. The expression “punishable with fine” as stated in section 70 (5) of the said Act draws our attention to Section 3(38) of the General Clauses Act, 1897 which reads as under:

“3(38) “offence” shall mean any act or omission made punishable by any law for the time being in force.”

(Underlining added)

13. A bare reading of Section 3(38) of the General Clauses Act, 1897, reveals that the expression “punishable with fine” stated under section

70(5) of the said Act indicates that section 70(5) of the said Act deals with “offence” as defined under the General Clauses Act, 1897.

14. Further, Section 26 (b) of the Code of Criminal procedure, 1973 provides that an offence may be tried by the High Court or any other court by which such offence is shown in the First schedule to be triable. Under Section 26 read with the first schedule, any magistrate can try an offence under any other law if punishable with less than three years imprisonment or fine only. Section 26 (b) of the Code of Criminal procedure, 1973 reads as under:

“26 (b) Any offence under any other law shall, when any court is mentioned in this behalf in such law, be tried by such court and when no court is so mentioned, may be tried by –

- (i) The High Court, or
- (ii) Any other court by which such offence is shown in the first schedule to be triable.”

15. The relevant part of the first schedule of the Code of Criminal Procedure, 1973 is reproduced below:-

II- CLASSIFICATION OF OFFENCES AGAINST OTHER LAWS

Offence	Cognizable or non- cognizable	Bailable or non-bailable	By what court triable
1	2	3	4
If punishable with death, imprisonment for life, or imprisonment for more than 7 years,	Cognizable	Non-bailable	Court of Session.
If punishable with imprisonment for 3 years, and upward but not more than 7 years.	Cognizable	Non-bailable	Magistrate of first class.
If punishable with imprisonment for less than 3 years or with fine only.	Non-cognizable	Bailable	Any Magistrate.

16. In view of the foregoing discussion, we decide the present issue in favour of the petitioners. It is clear that the fine imposed under section 70(5) of the said act is for an “offence” as defined under Section 3(38) of the General Clauses Act, 1897 which shall be tried by the court of criminal jurisdiction in accordance with section 26(b) of the Code of Criminal Procedure, 1973. The commissioner or its delegates do not have power or jurisdiction to impose such fine. Thus, the impugned notices are liable to be quashed on the ground of jurisdiction alone.

17. The impugned notices dated 08.03.2013 and 21.02.2013 are accordingly quashed.

18. The writ petitions are allowed accordingly. Pending applications also stand disposed of.

19. There shall be no order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

OCTOBER 14, 2014

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