

\$~3,4,24,25,27 to 30, 32 to 35 & 61

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

+ W.P.(C) 7379/2015 and CM No. 13592/2015

BHUMIKA ENTERPRISES

..... Petitioner

Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
Mr Ravi Chandhok

versus

COMMISSIONER VALUE ADDED TAX & ANR.

..... Respondents

Through: Mr Aytar Singh

+ W.P.(C) 8107/2015 and CM No. 16780/2015

BHUMIKA ENTERPRISES

..... Petitioner

Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
Mr Ravi Chandhok

versus

COMMISSIONER VALUE ADDED TAX & ANR.

..... Respondents

Through: Mr Avtar Singh

+ W.P.(C) 6288/2015 and CM No. 13507/2015

NESTOR PHARMACEUTICALS LTD.

..... Petitioner

Through: Mr Rajesh Jain, Mr Virag Tiwari and
Mr K.J. Bhat

versus

COMMISSIONER OF TRADE & TAXES

..... Respondent

Through: Mr Gautam Narayan for R-1

+ W.P.(C) 6561/2015 and CM No. 13506/2015

J.P. METALS

..... Petitioner

Through: Mr Rajesh Jain, Mr Virag Tiwari and
Mr K.J. Bhat

versus

COMMISSIONER OF TRADE & TAXES

..... Respondent

Through: Mr Gautam Narayan for R-1

+ W.P.(C) 6788/2015 and CM Nos. 12387/2015, 13168/2015

HELLO FURNITURE

..... Petitioner

Through: Mr Rajesh Jain, Mr Virag Tiwari and
Mr K.J. Bhat

versus

COMMISSIONER OF TRADE & TAXES

..... Respondent

Through: Mr Avtar Singh

Signature Not Verified
Digitally Signed
By:AMULYA W.P.(C) 6789/2015 and CM No. 12389/2015

SHIVA ENTERPRISES

..... Petitioner

5

- Through: Mr Rajesh Mahana, Mr Sanjay Sharma,
Mr Ramanand Roy and Mr Rakesh Kumar
versus
GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr Avtar Singh
- + W.P.(C) 6934/2015 and CM No. 12705/2015
ESQUIRE ELECTROVISION PVT. LTD Petitioner
Through: Mr Rajesh Mahana, Mr Sanjay Sharma,
Mr Ramanand Roy and Mr Rakesh Kumar
versus
GOVERNMENT OF NCT OF DELHI & ORS. Respondents
Through: Mr Satyakam for R-1
- + W.P.(C) 7276/2015 and CM No. 13349/2015
GLOBUS METAL TRADING PVT LTD. Petitioner
Through: Mr A.K. Babbar and Mr Surinder
versus
COMMISSIONER OF DELHI VALUE ADDED TAX & ANR..... Respondents
Through: Mr Avtar Singh
- + W.P.(C) 7512/2015 and CM No. 14350/2015
BHUMIKA ENTERPRISES Petitioner
Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
Mr Ravi Chandhok
versus
COMMISSIONER VALUE ADDED TAX & ANR. Respondents
Through: Mr Avtar Singh
- + W.P.(C) 7513/2015 and CM No. 14354/2015
BHUMIKA ENTERPRISES Petitioner
Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
Mr Ravi Chandhok
versus
COMMISSIONER VALUE ADDED TAX & ANR. Respondents
Through: Mr Avtar Singh
- + W.P.(C) 7514/2015 and CM No. 14355/2015
BHUMIKA ENTERPRISES Petitioner
Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
Mr Ravi Chandhok
versus
COMMISSIONER VALUE ADDED TAX & ANR. Respondents
Through: Mr Avtar Singh

- 6
- + W.P.(C) 7515/2015 and CM No. 14356/2015
 BHUMIKA ENTERPRISES Petitioner
 Through: Mr Vasdev Lalwani, Mr S.K. Kapoor and
 Mr Ravi Chandhok
 versus
 COMMISSIONER VALUE ADDED TAX & ANR. Respondents
 Through: Mr Avtar Singh
- + W.P.(C) 8255/2015 and CM No. 17341/2015
 R.D. SALES THROUGH ANIL BANSAL, PARTNER Petitioner
 Through: Mr V.K. Sabharwal and Mr Ashok Babbar
 versus
 COMMISSIONER OF DELHI VALUE ADDED TAX,
 DEPARTMENT OF TRADE & TAXES Respondent
 Through: Mr Avtar Singh

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% 28.08.2015

The common issue in these writ petitions is with regard to the issuance of notices under Section 59(2) of the Delhi Value Added Tax Act, 2004, which were all system generated on 19.06.2015. By virtue of each of the notices in these petitions, the petitioners were required to produce documents relating to the purchases specified therein in the office of the concerned VATO on 26.06.2015. However, without waiting for 26.06.2015, notices for default assessment of tax and interest and penalty have been passed on 19.06.2015 itself purportedly by the concerned VATO.

As pointed out by us on an earlier occasion, the two notices read together make out a very depressing story insofar as the functioning of the Department of Trade and Taxes, Government of NCT of Delhi is concerned. We had indicated that, on the one hand, on the same day, a notice for production of records on 26.06.2015 is issued and on the other hand, on that very day, the default assessment notices were issued in which it is stated that the dealer has not filed any reply / satisfactory reply. Apart from the fact that

2

the principles of natural justice have been violated, there is also the serious concern that the notices under Section 59(2) of the DVAT Act as well as the default assessment notices have been 'system generated' and have not, in fact, been 'human generated' by the concerned VATOs.

We are now informed by the learned counsel appearing for the Commissioner of Trade and Taxes, Government of NCT of Delhi that all the default assessment notices issued on 19.06.2015 stand withdrawn whereas the notices issued on 19.06.2015 under Section 59(2) stand and have been continued through letters issued on 17.07.2015. We are of the view that since both the notices under Section 59(2) and the default assessment notices were system generated, both the notices have to go. Consequently, the notices under Section 59(2) of the said Act issued on 19.06.2015 in all these matters stand quashed. The letters issued on 17.07.2015 are also quashed.

The learned counsel appearing on behalf of the petitioners have drawn our attention to a circular dated 29.07.2015 issued by the Additional Commissioner (System) on the subject of 'Schedule for system generated orders'. A copy of the said circular is as under:-

“DEPARTMENT OF TRADE AND TAXES, GOVERNMENT OF NCT OF DELHI
VYAPAR BHAWAN, I.P. ESTATE, NEW DELHI – 110002
SYSTEM BRANCH

Sub: Schedule for System Generated Orders

Competent authority has decided to carry out the following Assessment / Penalty Orders as per the given Schedule:-

S. No.	Subject of Assessment	Expected date of Completion of Assessment
1	Review of 2010-11 central assessment orders who have filed from-9; however, assessment framed on the basis of returns.	25.07.2015
2	Penalty assessment orders for late filing of Return for financial year 2014-15 (All Quarter).	30.07.2015

8

3	Mismatch assessment order for All Quarter of financial year 2014-15.	16.08.2015
4	Assessment for central forms for financial year 2011-12 based on form-09.	25.08.2015
5	Review of 1 st – 4 th quarters (2014-15) 2A/2B mismatch order.	15.09.2015
6	Assessment of 1 st quarter 2015-16 2A/2B Mismatch on 2015-16.	15.09.2015
7	Penalty assessment orders for late filing of return for financial year 2015-16 of 4 th Quarter.	30.09.2015
8	Assessment for central form for financial year 2012-13 based on form-09	31.10.2015

(GOVIND JAISWAL)
Addl. Commissioner (System)

No. 4435

Dated 29.07.2015

Copy to forwarded to

- i) PS to Commissioner
- ii) All Spl. Commissioners/Addl. Commissioners/ Joint Commisisoners.
- iii) Sales Taxes of Bar Association.
- iv) JD (IT) with the request to upload.
- v) MD (ICSIL) Administrative Building, Above Post Office, Okhla Industrial Estate, Phase-II, New Delhi – 110020.
- vi) Director ESPL.”

This circular has been placed in CM No. 17437/2015 in W.P.(C) 6788/2015.

On going through the above circular, we find that a direction has been given for system generated orders. This is clearly in the teeth of our directions given earlier. Consequently, this circular is also quashed. Interestingly, before we part with this discussion of this circular, we note that the default assessment orders for the late filing of returns for the financial year 2015-16 for the fourth quarter is given as 30.09.2015 when

9

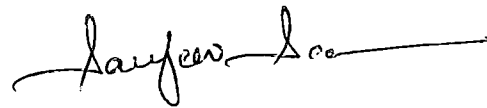
the fourth quarter itself begins in January 2016. We deprecate such kind of mindless orders and circulars which has been issued by the respondent / Department.

As a result all the notices under Section 59(2) issued on 19.06.2015 which were system generated stand quashed. The consequent passed orders thereon are already withdrawn by the letters dated 17.07.2015. The circular dated 29.07.2015 is also quashed.

This, however, does not come in the way of the Department to issue fresh notices under Section 59(2) after application of mind by the concerned VATO and in accordance with law and to take steps pursuant thereto which would also be in accordance with law and would not be system generated notices or orders without human interface.

The writ petitions stand allowed to the aforesaid extent.


BADAR DURREZ AHMED, J


SANJEEV SACHDEVA, J

AUGUST 28, 2015
SU