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

Decided on: May 15, 2015

\+ **ST.APPL. 33/2009**

COMMISSIONER OF VALUE ADDED TAX ..... Petitioner
Through: None.

versus

M/S ABHISHEK ELECTRICALS ..... Respondent
Through: Ms. Latika Choudhury Adv. for Ms. Avnish Ahlawat, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. This appeal was originally dismissed following this Court's previous Division Bench's ruling in *Commissioner of Central Excise v. M/s Kandhari Radio & Ors.,* CEAC No. 6/2007 decided on 22.04.2009. The rationale for dismissing the appeal was that the High Court was not empowered to entertain a delayed appeal and it did not specifically assess the reason for delay in filing of the appeal. After the said decision, the provisions of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as "the DVAT Act") were amended by insertion of two provisos to Section 81(2)(a). The second proviso provided, *inter alia*, that the first proviso – inserted w.e.f.

01.02.2011 would deem to have been in force from 01.04.2005. As a result of this, the Supreme Court in the appeal preferred by Special Leave granted liberty to the Revenue to approach this Court in a review petition.

2. In furtherance of the leave granted, the Revenue filed C.M.Nos 11405-06/2014 seeking review. This review proceeding was ultimately allowed and the delay in the filing of the appeal was also condoned consequently by the order dated 07.11.2014. The appeal was thereafter listed before this Court on 20.01.2015 and subsequently today.

3. Having considered the submissions of the review petitioner/appellant, we are of the opinion that the delay of 14 days in filing of the appeal requires to be condoned in the interest of justice. Ordered accordingly.

4. In the appeal STA No. 33/2009, the only question which this Court is called upon to decide is the grievance against the DVAT Tribunal's order holding that upon the lapse of 8 months in considering the assessee's objection, such objections and contentions of the assessee would be deemed to have been allowed. This issue has now been decided in the Revenue's favour in *Commissioner of Sales Tax v. Behl Construction* ILR (2009) III Delhi 599. After noticing several decisions of the Supreme Court on the effective provisions which stipulate that something be done within a specified period, the Court ruled that the time limits indicated in Section 74 are "merely directory". In *Behl Construction* (supra), the Court observed pertinently as follows:-

> "*14. The time limits of three (3) months, five (5) months, six (6) months or eight (8) months are merely directory. However, if such time limit expires and the notice under section 74(8) of the said Act is issued then the period of 15 days would be*

mandatory. The consequence of not passing an order is clearly spelt out and that is that the objections would be deemed to have been accepted. It is apparent that the scheme is not left open-ended as submitted by the learned counsel for the respondents and wrongly assumed by the Tribunal. If it is contended that it is left at the whim and fancy of the commissioner to pass an order when he likes, the answer is, what prevents the objector from issuing a notice under section 74(8) of the said Act and thereby fixing a terminal date for passing the order? If the contention is that why should the objector issue such a notice as by virtue of section 35(2) of the said Act he enjoys a virtual stay during the pendency of his objections, the answer is that such an objector would have to choose between the protection of section 35(2) and invoking the deeming provisions of section 74(9). He cannot "eat his cake and have it too", as it were. He cannot let the applicable time limit (and more) slip by, all this while enjoying the virtual stay, and also say, at the end of it, without issuing the peremptory 15 day notice under section 75(8) of the said Act, that his objections are deemed to have been accepted. Accepting the contentions of the respondents and the conclusions of the Tribunal would amount to re-writing the provisions which are clear and unequivocal. When the meaning of a statutory provision is clear and without doubt, it does not call for any exercise of interpretation. Nor can we introduce a meaning which the legislature did not intend.

15. For all these reasons we hold that an objection pending before the commissioner cannot be deemed to have been accepted simply because of the fact that the time specified in section 74(7) of the Delhi Value Added Tax Act, 2004 has expired and the Commissioner has not exercised either of the options set out in section 74(7)(a) or 74(7)(b). The deeming provision of section 74(9) of the said Act would only get triggered if the conditions precedent provided under section 74(8) of the said Act are satisfied. We also hold that the Tribunal erred in law in fixing a mandatory period of eight months, within which the Commissioner has to dispose of the *objection pending before him under section 74(7) of said Act, particularly, when no such stipulation is provided by the statute. Consequently, both the questions of law are decided in favour of the revenue/appellant and against the respondents. While this will not alter the outcome in Behl Construction, as indicated above, it sets right the position in law which the Tribunal had erroneously taken and which was being followed in other cases before the Tribunal.*"

5. Having heard the submissions of counsel, this Court notices that para 9 of the impugned order of DVAT Tribunal in the Revenue's appeal in the present case (Appeal No. 296-297), *inter alia*, observed as follows:-

> "*9. We have considered the rival contentions and have also gone through the judgments relied upon by both the parties. Under the peculiar circumstances of the matter, without going into detailed reasoning, we are of the opinion that when there is no specific order staying or suspending the operation or execution of our order, then we feel obliged to follow our own judgments of M/s Behl Constructions judgment as also the M/s. Aravali Aluminium case since the present matters are fully covered by these judgments. This being so, we hold that the objections in the present cases are deemed to have been allowed since they had been decided on a date which was beyond the period of 8 months from the date of filing of the objections as has been held by us in M/s Behl Constructions.*"

6. Since the decision in *M/s Behl Constructions* (supra) has ultimately settled the law i.e. the objections cannot automatically deemed to have been allowed if they are not decided within 8 months, the matter is remitted to the first appellate authority/objection hearing authority who shall hear and decide the contentions of the parties after issuing due notice to the parties and granting due liberty in that regard. The appeal is allowed in above terms. Remanded to the DVAT Tribunal after notice.

7. Copy of the order be communicated to the directly to the respondent

assessee. Dasti, in addition, to the counsel to be served by the Revenue.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

MAY 15, 2015
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HIGH COURT OF DELHI
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