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

\+ ST.APPL. 26/2009 & C.M. No. 5597/2009 (stay)

COMMISSIONER OF VALUE ADDED TAX

..... Petitioner

Through Mrs. Avnish Ahlawat and Ms. Anchal Chaudhary, Advs.

versus

M/S INDIA OVERSEAS CO. PV.T LTD.

..... Respondent

Through None

\+ ST.APPL. 28/2009 & C.M. No. 5603/2009 (stay)

COMMISSIONER OF VALUE ADDES TAX

..... Petitioner

Through Mrs. Avnish Ahlawat and Ms. Anchal Chaudhary, Advs.

versus

M/S IMPEX SYDICATE

..... Respondent

Through Mr. Suraj Prakash, Adv.

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

ORDER

% **03.02.2015**

CM No.5598/2009 in ST.APPL. 26/2009
CM No.5604/2009 in ST.APPL. 28/2009

For the reasons stated in the applications the delay in filing the appeals is condoned.

The applications are disposed of.

ST.APPL. 26/2009
ST.APPL. 28/2009

(12)

1. In St.Appl. No.26/2009, there is no appearance on behalf of the respondent-assessee despite service of notice. Notice was also served upon counsel for the assessee.

2. In St. Appl.28/2009, the assessee is represented.

3. We have heard counsel for the parties. The only question agitated was with respect to the correctness of the view expressed by VAT Appellate Tribunal, that upon the expiry of time period specified in Section 74 of the Delhi Value Added Tax Act, 2004, the objections filed by the assessee were deemed to be accepted. This Court has in its reported order *Commissioner of Sales Tax V. M/s BEHL Construction* (STA 12/2008 and connected cases decided on 23.01.2009), reversed such a view, as is evident from the following extract of the decision :

> *"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*

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Tribunal had erroneously taken and which was being followed in other cases before the Tribunal."

4. In the light of the above, it is not disputed that the appeals have to be decided by the VAT Appellate Tribunal on the merits. The appeals are accordingly allowed and the matter is remitted for decision on merits. The VAT Appellate Tribunal shall ensure that the parties are served and heard before a final decision is rendered in each of the appeals. The appeals are accordingly allowed. The parties are directed to be present before the VAT Tribunal on 12.02.2015.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 03, 2015
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