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

% Judgment delivered on: 15.12.2015

\+ **W.P.(C) No.6340/2013**

YONGNAM ENGINEERING & CONSTRUCTION (PRIVATE) LIMITED .... Petitioner

versus

COMMISSIONER, DELHI VALUE ADDED TAX & ORS. ..... Respondents

<u>Advocates who appeared in this case:</u>

For the Petitioner : Mr Surender Kumar and Mr A.K.Babbar, Advocates.
For the Respondents : Mr Satyakam, Advocate

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SANJEEV SACHDEVA

<u>JUDGMENT</u>

<u>BADAR DURREZ AHMED, J (ORAL)</u>

1. In this petition, a writ of *certiorari* has been sought quashing the impugned order dated 07.08.2013 in respect of the assessment years 2008-09 and 2009-2010 passed by the respondent No.2/Value Added Tax Officer (hereinafter referred to as "the VATO").

2. The contention of the petitioner is that the order which has been passed under Section 36A(8) of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as "the said Act") is without jurisdiction. It is submitted that under the said provision, it is only the Commissioner, who

could pass an order and not the VATO. While there could be delegation of the Commissioner's powers under Section 68 of the said Act, it is the case of the petitioner that there has been no such delegation of the Commissioner's powers in favour of the VATO for passing an order under Section 36A. Therefore, it is submitted, the impugned order is liable to be set aside for being without the authority of law.

3. Mr Satyakam, the learned counsel appearing on behalf of the respondents, submits that though there has been no specific delegation of power by the Commissioner in favour of the VATO for passing an order under Section 36A of the said Act, the Commissioner had "authorized" the VATO to pass such an order. Therefore, according to Mr Satyakam, the order passed by the VATO is not without jurisdiction and cannot be set aside on this ground.

4. Before we comment upon the rival contentions, it would be necessary to set out the provisions of Section 36A(8) of the said Act, which reads as under:-

> "36A. xxxx xxxx xxxx xxxx
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> (8) If any person as is referred to in this section fails to make the deduction or, after deducting fails to deposit the amount so deducted as required in this section, the Commissioner may, by order in writing, direct that such person shall pay, by way of penalty, a sum not exceeding twice the amount deductible under this section besides tax deductible but not so deducted and, if deducted, not so deposited into the appropriate Government treasury.
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> xxxx xxxx xxxx xxxx"

5. It would also be necessary to examine the provisions of Section 68 of the said Act, which deals with delegation of the Commissioner's powers. The said Section reads as under:-

"68 Delegation of Commissioner's powers Rules:

(1) Subject to such restrictions and conditions as may be prescribed, the Commissioner may delegate any of his powers under this Act to any Value Added Tax authorities.

(2) Where the Commissioner delegates his powers under Chapter X, the delegate shall carry and produce on demand evidence in the prescribed form of the delegation of these powers when exercising the powers.

(3) Where the Commissioner has delegated a power to a Value Added Tax Authority, the Commissioner may supervise, review and rectify any decision made or action taken by that Authority. Explanation.- The exercise of this power of supervision, review or rectification will not lead to the issue of an assessment or re-assessment after the expiry of the time referred to in section 34 of this Act.

(4) Notwithstanding any law or doctrine to the contrary, the power delegated by the Commissioner to a person to determine an objection under section 74 of this Act may be exercised by that person, even though the person determining the objection is equal in rank to the person whose decision is under objection."

6. Section 66 of the said Act is also relevant and the same reads as under:-

“66. <u>Value Added Tax Authorities</u>:

(1) For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.

(2) To assist the Commissioner in the administration of this Act, –

(a) the Government may appoint as many Special Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and

(b) the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties; in this Act referred to as “Value Added Tax Authorities”.

(3) The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(4) The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions.”

6. On examining the aforesaid provisions, it is evident that an order under Section 36A(8) has to be passed by the Commissioner in writing. Section 66(3) specifically provides that the Commissioner and the Value Added Tax Authorities shall exercise such powers, as may be conferred upon them, and perform such duties, as may be required by or under this Act. In other words, it is only the Commissioner who can pass an order under Section 36A(8) unless and until the power of the Commissioner has been delegated under Section 68 of the said Act to the VATO.

7. An order dated 31.10.2005 (Annexure P-15) was placed before us by the learned counsel for the petitioner to demonstrate that wherever there has been any delegation of power, it has been done by virtue of an order such as the order dated 31.10.2005. On going through the said order dated 31.10.2005, we find that the Commissioner has delegated various powers under different Sections of the said Act, but there has been no delegation of powers insofar as Section 36A is concerned. We had, on an earlier occasion, when this matter had come up for hearing, required Mr Satyakam, the learned counsel who appears for the respondents, to verify as to whether there was any subsequent order passed by the Commissioner, whereby powers had been delegated in respect of Section 36A(8) of the said Act. Today, Mr Satyakam has confirmed that there has been no specific order delegating such power in respect of Section 36A(8) of the said Act. He, as pointed out above, merely argued that the VATO had passed the impugned order under the "authority" of the Commissioner.

9. We are afraid that we cannot agree with the submission made by Mr Satyakam that an order passed under the so-called "authority" of the Commissioner would be valid order, when Section 36A(8) specifically provides that it is the Commissioner who has to pass the order in writing. We could have understood if this power of the Commissioner had been delegated by the Commissioner in terms of Section 68 of the said Act to the VATO. But that has, admittedly, not been done. As such, the impugned order dated 07.08.2013 is liable to be quashed as the VATO did not have the jurisdiction to pass such an order. The impugned order is quashed.

10. The writ petition is allowed as above. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

DECEMBER 15 , 2015 **SANJEEV SACHDEVA, J**
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