

\$~

*

6&7.

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ST.APPL. 3/2015 & CM No. 345/2015

TRIVENI ENGINEERING AND INDUSTRIES
LTD.

.... Petitioner

Through: Mr. M.P. Devnath, Mr. Abhishek
Anand and Mr. Bhuvnesh Satija, Advocates.

versus

COMMISSIONER OF TRADE AND TAXES,
DELHI

...Respondent

Through: Mr. Sanjay Ghose with Mr.
Rhishabh Jaitley, Advocates.

AND

ST.APPL. 4/2015 & CM No. 348/2015

TRIVENI ENGINEERING AND INDUSTRIES
LTD.

..... Petitioner

Through: Mr. M.P. Devnath, Mr. Abhishek
Anand and Mr. Bhuvnesh Satija, Advocates.

versus

COMMISSIONER OF TRADE
AND TAXES, DELHI

..... Respondent

Through: Mr. Sanjay Ghose with Mr.
Rhishabh Jaitley, Advocates.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

15.07.2015

Dr. S. Muralidhar, J.

1. These appeals are directed against the common Order No. ATVAT/2014/3015-3020 dated 21st August/1st September 2014 passed by the Appellate Tribunal, Value Added Tax, Delhi ('AT') in Appeal No. 604-605/ATVAT/09-10 and Appeal No. 397-424/ATVAT/09-10 pertaining to Assessment Years ('AYs') 2006-07 and 2007-08. The said appeals were directed against the separate impugned orders dated 31st July 2009 passed by the Joint Commissioner-V & Deputy Commissioner Zone-III [the Objection Hearing Authority ('OHA'), rejecting the objections of the Appellant and upholding the order of default assessment of tax, interest and penalty under Section u/s 9(2) of the Central Sales Tax Act, 1956 ('CST Act') read with Sections 32 and 33 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') read with Section 86 (10) of the DVAT Act for the years 2006-07 and 2007-08 respectively.

Background facts

2. The Appellant is a registered dealer engaged in the business of manufacturing and trading of Reverse Osmosis ('RO') water purifying systems, water treatment plants, their parts and accessories etc.

3. The Audit Officers of the Trade and Tax Department conducted a DVAT audit in the premises of the Appellant on 22nd August 2008. According to the Appellant, it provided the explanations, clarifications and documents sought by the Audit Officers regarding the transactions under Section 5 (2) of the CST Act (sale or purchase of goods in the course of import of the goods) and Section 6 (2) of the CST Act (liability to tax on inter-State sales). According to the Department, however, the Audit team noted discrepancies in the books of accounts and returns filed by the Appellant.

Default Assessment Orders

4. Accordingly, the Value Added Tax Officer (VATO) issued on 4th and 11th January 2009 default assessment orders of tax and interest under Section 9 (2) of the CST Act read with Section 32 and penalty assessment orders under Section 33 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') for the periods May 2006 to February 2007 and April to September, 2007 respectively. The VATO held that the transactions involving E-I/C Forms (for inter-state sales) and high sea sales did not conform to the conditions prescribed under the CST Act for claiming exemption. Accordingly demands of tax, interest and penalty were raised against the Appellant for the said periods.

5. Broadly, the discrepancies pointed out by the Audit Officers related to the following two types of transactions:

(a) **Sale in transit:** The Appellant claimed to have sold the goods, which were purchased for sale in the course of inter-state trade and commerce in transit against E-1/C Forms during the aforementioned tax periods [amounting to Rs. 2,24,99,200 for the months of April, June, August, September, December, January and March 2006-07 and Rs.54733784/- for the months April, May, June, July, August, September 2007-08]. According to the VATO the said sales did not satisfy the conditions prescribed. The claim for exemption was rejected on the ground that the description of the goods as mentioned on the purchase bills and the corresponding sales bills was different. Accordingly, tax @4% was levied on all the said transactions and penalty for tax deficiency was also imposed under Section 9 (2) of the CST Act read with Section 33 of the DVAT Act, 2004.

(b) **High sea sales:** The Appellant had in its returns filed for the tax periods August, September, October, November, December 2006 and January and February 2007 claimed High Seas Sales of goods amounting to Rs. 31,03,833 and for the periods April, May, July and September 2007-08, amounting to Rs. 80,37,000, which were stated to have been imported from outside India and sold in the course of inter-state without charging CST and without fulfilling the conditions prescribed under the said Act for claiming exemption. The returns were rejected on the ground that no high seas sale agreement (duly executed/stamped) between the high sea seller and the Indian customer was available or produced by the Appellant; that the bill of entry was in the name of the Appellant and not in the name of final

buyer/consumer and the Appellant had received the goods and had also got them cleared from the customs. Accordingly, tax @4% was levied on all the aforesaid transactions and penalty for tax deficiency was also imposed under Section 9(2) of the CST Act read with Section 33 of the DVAT Act, 2004.

Orders of the OHA

6. The Appellant's objections to the above orders of default assessment were rejected by the OHA by two separate but identical orders dated 31st July 2009 confirming the demand of tax, penalty and interest for the aforementioned periods. In the said orders, the OHA noted that there were broadly two issues that arose for consideration:

"1. Validity/ admissibility of exemptions in respect of sales claimed to be high sea sales/sales in course of import, and

2. Admissibility of exemptions in respect of sales against E-1/C forms."

7. As regard the sales for which exemption was claimed under Section 5 (2) of the CST Act, the OHA noted that in the returns filed the Appellant had claimed these to be high seas sales but in the objections filed before the OHA it had changed its stand and claimed them to be sales in the course of imports. The OHA noted that the Appellant had claimed that the sales made to Maruti Udyog Ltd. (MUL), Bharat Sugar Mills Ltd., Gularia Chini Mills, Indorama Petrochemicals Ltd. and Arasmeta Captive Power Co. Pvt. Ltd. etc. were high sea sales and

therefore the Appellant was entitled for exemption under Section 5(2) of the CST Act. The OHA then took up for discussion the sales made to MUL. The OHA concluded that the agreement between the Appellant and MUL did not contain any clause which laid down that the goods would be imported from a specific country/foreign company and supplied to the purchasers. The OHA observed:

"The agreement is simply regarding supply of plants/machinery/equipment and not regarding its import. The purchasers are not party to the act of importing goods... There is no privity of contract between the parties in regard to the element/aspect of import."

8. Consequently, the OHA held that these sales did not qualify for exemption as sales in the course of imports.

9. As regard the inter-state sales for which exemption was claimed under Section 6 (2) of the CST Act, the OHA held that the explanation offered by the Appellant was not convincing. According to the OHA:

"The transactions against E-I/C Forms involve diversion of movement of goods from original destination to some other/different destination by the purchasing dealer by way of endorsement on transportation documents while the goods are in transit. In such a situation, there is absolutely no question of change in the description of goods/items should remain the same, simply the title and destination or goods would change. Keen perusal of sales and purchase invoices shows significant difference in the description of items. It is not understandable as to how the description of the items can change' when item is the same only the point of delivery/destination has got changed consequent upon endorsement on the GR regarding change in

respect of point of delivery. Thus, the argument/contention of the objector on this account is also not tenable."

Order of the AT

10. Aggrieved by the above orders two appeals were filed before the AT. Appeal No. 397-424/ATVAT/09-10 was for AY 2007-08 and Appeal No. 604-605/ATVAT/09-10 for 2006-07.

11. At the time of admission of the appeals the AT passed an order in the stay application on 8th June 2011 observing that on a cursory look at the documents produced with the appeal as regards the E-1/C Form sales, it appeared that "there was no break in the movement of the goods and the invoice and other documents raised by the first supplier clearly shows that that goods had directly moved to the ultimate customer." The Appellant was, *inter alia*, asked to deposit 10% of the tax as pre-deposit in each appeal.

12. By the common impugned final order dated the 21st August 2014, the AT dismissed the appeals. The AT concurred with the findings of the VATO and the OHA that the sales under the E-1/C Forms as well as the sales claimed to be in the course of import did not qualify for exemption under Sections 6 (2) and 5 (2) of the CST Act respectively.

The questions of law

13. At the time of admission of the present appeals, this Court by order dated 9th January 2015 framed the following questions of law:

(i) Did the AT fall into error in holding that the transactions which were the subject matter of appeal before it were not in the course of inter-State sale under Section 6 (2) of the CST Act in the circumstances of the case for AY 2007-08; and

(ii) Did the AT fall into error in holding that the transactions which were the subject matter of appeal before it - in respect of the period concerned i.e. 2006-07 - were not covered by Section 5 (2) of the CST Act and were to suffer local sales tax consequently?

Submissions of counsel

14. Mr. M.P. Devnath, learned counsel for the Appellant first submitted as follows:

(i) The VAT authorities overlooked a fundamental aspect, viz., that it was not the entire water purifier but only some of the components thereof that were the subject matter of either inter-state sales or sales in the course of import.

(ii) As far as sales in the course of imports were concerned, although in the first instance before the VATO the Appellant claimed them to be high seas sales, later, it corrected its submission before the OHA and contended that they were sales in the course of import.

(iii) In none of the default assessment orders or the orders of the OHA and the AT is there a discussion of the voluminous documents placed on record by the Appellant. There is no indication of the particular

documents with reference to which the conclusions, viz., that they do not answer the exact description of the commodity for which order was placed or have been diverted to a different destination, have been drawn. Even as regards sales in the course of imports, only one transaction with MUL has been discussed and then again the correct legal principles have not been applied.

(iv) Reference was made to sample invoices under each category to illustrate the factual errors in the impugned orders of the VATO, the OHA and the AT. Reliance was placed, *inter alia*, on the decisions in ***K.G. Khosla & Co. (P) Ltd. v. Dy. Commr. of Commercial Taxes (1966) 3 SCR 352*** and ***ABB Ltd v. The Commissioner (2012) 55 VST 1 (Del)***.

(v) The cases ought to be remanded to the VATO for a fresh determination in accordance with law.

15. In reply it was submitted by Mr. Sanjay Ghose, learned counsel for the Respondent, as under:

(i) Both sets of transactions during the relevant AYs did not qualify for exemption under Sections 5 (2) or 6 (2) of the CST Act as the case might be.

(ii) After having initially averred that the sales in respect of which exemption under Section 5 (2) of the CST Act were high seas sales, the Appellant ought not to be permitted to change its stand, without

revising the returns filed, and claim that they were sales in the course of imports.

(iii) None of the transactions in respect of which exemption was claimed, whether under Section 5 (2) or 6 (2) of the CST Act, satisfied the test of there having to be an unbroken integral link between the transaction in the course of inter-state sale or sale in the course of import and the transaction of sale with the ultimate purchaser. At best, they were back to back independent contracts of sale which did not qualify for exemption. Reliance was placed on the decisions in *Mohd. Serajuddin v. The State of Orissa* (1975) 2 SCC 47, *State of Karnataka v. Azad Coach Builders Pvt. Ltd.* JT 2006 (2) SC 599, *A&G Projects and Technologies Limited v. State of Karnataka* (2009) 2 SCC 326 and *Giescke & Debrient I.P. Ltd. v. Commissioner of Sales Tax, Delhi* [2012] 47 VST 343 (Del).

(iv) The two important tests were whether for the breach of the contract, action could be taken against the ultimate purchaser or the consignor (which in this case was the Appellant) and whether there was privity of contract between the ultimate purchaser and the supplier of the goods.

(v) The fact that these were back to back contracts meant that the purchase order placed on the Appellant did not by itself occasion the movement of goods either from the foreign supplier or the domestic supplier outside Delhi. Moreover, there was no privity of contract between the supplier of the commodity and the ultimate buyer. There

was also no obligation on the Appellant in terms of the POs placed on it to source the commodity from a supplier either outside Delhi or outside India.

(vi) Even assuming that the matters had to be remanded, the exercise must be completed in a definite time frame.

Sales in the course of import

16. The Court would like to first discuss the issue concerning the claim of exemption under Section 5 (2) with reference to sales in the course of imports.

17. An objection raised by the Respondent before the AT was the Appellant had initially claimed the said transactions to be 'high seas' sales but later changed its stand, without revising its returns, and claimed them to be 'sale in the course of import'. It is seen that in the objections filed before the OHA in para 15 it was specifically stated that the Appellant had all along been submitting that "it had effected sales in the course of import of goods into India and the same were not liable to tax" under Section 5 of the CST Act. In the appeal filed before the AT, it was stated in para 18, *inter alia*, as under:

“Earlier the company was of the *bonafide* belief that the transaction was a ‘sale on high sea’ but later it was advised that the transaction was ‘a sale in the course of import of the goods into India.’”

18. The Appellant appears to have corrected its stand at an early stage in the proceedings. Allowing it to do so was not going to cause any prejudice to the Respondent particularly since in the circumstances it was a plausible contention. Consequently, the Court rejects the above objection of the Respondent.

19. The legal position as regards sales in the course of imports, with reference to Section 5 (2) of the CST Act, has been explained in several decisions. In *K.G. Khosla & Co. (P) Ltd. v. Dy. Commr. of Commercial Taxes (supra)*, the Appellant assessee K.G. Khosla & Co agreed to supply to the Director-General of Supplies and Disposal, New Delhi, axle-box bodies manufactured by its principals in Belgium. The sales tax authorities negated the assessee's claim that the said sales were 'in the course of import' under Section 5(2) of the CST Act since there was no privity of contract between the DGSD and the foreign manufacturer. Secondly, the latter had consigned the goods directly to the assessee by ship under bills of lading. Thereafter they were cleared by the assessee and despatched for delivery to the buyers. Thirdly, the sale was completed only when the goods were delivered and could not be said to be 'occasioning the import.' The Constitution Bench of the Supreme Court held to the contrary and observed that the import was in pursuance of the contract between the assessee and the consignee and that there was no possibility of the goods being diverted for any other purpose. It held:

“It seems to us that it is quite clear from the contract that it was incidental to the contract that the axle-box bodies would be

manufactured in Belgium, inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place in the course of import of goods within Section 5(2) of the Act, and are, therefore, exempt from taxation.”

20. In *Deputy Commissioner of Agricultural Income-tax and Sales Tax, Ernakulam v. Indian Explosives Ltd.* [1985] 4 SCC 119, the Supreme Court explained:

“The test of integral connection or inextricable link between the sale and the actual import or export in order that the sale could become a sale in the course of import or export has been clearly enunciated by this court in *Ben Gorm Nilgiri Plantations Company's case* [1964] 15 STC 753 (SC). There the question related to sale of tea which was claimed to be in the course of export out of the territory of India and though by majority it was held that the sales in question were not ‘in the course of export’, the court at page 711 of the report (page 759 of [1964] 15 STC 753) laid down the test thus:

‘A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be actual export. The obligation may arise by reason of statute,

contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India.’

Conversely, in order that the sale should be one in the course of import, it must occasion the import and to occasion the import there must be integral connection or inextricable link between the first sale following the import and the actual import provided by an obligation to import arising from statute, contract or mutual understanding or nature of the transaction which links the sale to import which cannot, without committing a breach of statute or contract or mutual understanding, be snapped.”

21. At this stage it must be noticed that the reliance by Mr. Ghose on the decision in ***Mohd. Serajuddin v. The State of Orissa*** (*supra*) is misplaced. That was a case concerning a sale in the course of export. In the circumstances of that case, it was held that a back-to-back contract did not satisfy the legal requirement to qualify for exemption. However, thereafter with effect from 1st April 1976, sub-section (3) was inserted in Section 5 of the CST Act to recognise even a

penultimate sale i.e the last sale preceding the sale occasioning the export of goods, as "deemed to be in the course of such export".

22. In *Indure Ltd. v. Commercial Tax Officer* [2010] 34 VST 509 (SC) the Court applied the test in *K.G. Khosla* and concluded that the import in that case had been occasioned only on account of an agreement between the parties and that the imported pipes in that case “were used exclusively for erection and commencing of the plant.” Additionally, it was observed that the Respondent in that case had “failed to establish that these pipes were not used in the plant of NTPC.” The crucial factor to be examined was whether there exists such a bond between the contract of sale and the actual exportation or importation, that each link is inextricably connected with the one immediately preceding India. There could be at least four sources of the obligation to import: the statute, the contract, the mutual understanding between the parties or the nature of the transaction and which obligation cannot be snapped “without committing a breach of statute or contract or mutual understanding.”

23. In *ABB Ltd v. The Commissioner* (*supra*) the Court considered a contract between the Assessee-appellant and the DMRC for supply, installation, testing and commissioning of traction electrification, power supply, power distribution and SCADA systems for a section of the Delhi Metro Project. In pursuance of that contract certain equipments were imported and certain others were brought in from a manufacturing unit located outside Delhi. The assessee sought

exemption from VAT and Central Sales Tax as they contended that these were sales effected in the course of import. It was held:

“The common thread of reasoning which runs through all the decisions is that to determine whether the sale was in the course of import, the Court has to see whether the movement of goods through was integrally connected with the contract for their supply. Questions such passing of title, or whether the end user has a privity of contract with the supplier, or where the consideration flows from, are not determinative or decisive of the issue. Section 5 does not prescribe any condition that before a sale could be said to have occasioned import, it is necessary that the sale should have preceded the import.”

24. The Appellant has with these appeals enclosed sample invoices for transactions relatable to Section 5 (2) of the CST Act. One of these pertains to an order placed on the Appellant by NCS Sugar Mills Limited on 1st March 2006 for the design, engineering, procurement, manufacture, fabrication etc. of a water treatment plant. One of the components to be supplied included a high pressure pump. A purchase order (PO) for it was placed in turn by the Appellant with Grundfos (Singapore) Pte. Ltd. ('Grundfos'). The said PO contained an instruction that the invoice should be in the name of the Appellant and that bill of lading (B/L) should state that the goods were consigned to NCS Sugars Ltd. Andhra Pradesh (India). Copies of the invoice prepared by Grundfos and the B/L show that the consignee named therein is NCS Sugars Ltd.

25. The Court finds that there is no discussion in either the order of the VATO or of the OHA or the AT of the documents with reference to the transactions of sale in the course of import. The only reference made is to the agreement with MUL. The mere fact that the agreement executed by the Appellant with the dealer did not contain a clause requiring goods to be imported or that the Appellant had itself got the goods released from the Customs authorities would not by itself be factors determinative of the issue whether it was a sale in the course of import. It would have to be examined whether there was an inextricable link between the said import and the subsequent sale and whether the imported goods could have been diverted to some other buyer or destination. In the sample document concerning the PO placed on the Appellant by NCS Sugars Ltd., the mention of the name of NCS Sugars Ltd. as the consignee in the invoice raised by Grundfos and in the B/L might be the link factor. However since the documents produced are unverified copies, no definitive opinion thereon can be expressed at this stage. They would have to be examined in detail by the VATO transaction-wise with reference to the settled legal position as explained in the aforementioned decisions.

26. The Court finds that the OHA has merely repeated what has been stated by the VATO and in turn the AT too has virtually reproduced the order of the OHA. The latter two orders are of an omnibus type with reference to all transactions for both periods i.e. AYs 2006-07 and 2007-08. However, there is no detailed examination of the different transactions and the documents in support thereof produced

by the Appellant. This exercise ought to have been undertaken at the level of the VATO at least. Consequently, the Court finds that the impugned order of the AT and the corresponding orders of the VATO and the OHA pertaining to the claims for exemption with reference to Section 5 (2) CST Act for the AYs in question require to be set aside and the matters remanded to the VATO for a fresh determination.

Inter-state sales

27. The Court next examines the issue pertaining to inter-state sales with reference to Section 6 (2) of the CST Act. The burden here is on the Appellant which is claiming exemption to show that the sale of goods has "occasioned the movement of goods from one State to another." There should have been a movement of the goods from one state to another as a result of a prior contract of sale.

28. In *Hyderabad Engineering Industries v. State of AP (2011) 4 SCC 705*, in the context of inter-state sales as defined under Section 3 (a) of the APGST Act, it was explained as under:

“For a sale to be in the course of inter-State trade or commerce under Section 3(a), the two conditions must be fulfilled. There must be sale of goods. Such sale should occasion the movement of the goods from one State to another. A sale would be deemed to have occasioned the movement of the goods from one State to another within the meaning of Clause (a) of Section 3 of the Act when the movement of those goods is the result of a covenant or incidence of the contract of sale, even though the property in the goods passes in either State. With a view to find out whether a particular transaction is an inter-State sale or not,

it is essential to see whether there was movement of the goods from one State to another as a result of prior contract of sale or purchase.”

29. The case of the Appellant is that it received orders from buyers outside Delhi for providing RO water treatment systems or parts for manufacturing RO water purification systems. The Appellant purchased some of the components from various suppliers situated outside Delhi against Form-C and directed the supplier to despatch the goods to the place/address of the ultimate buyers. The goods were sent by the supplier outside Delhi to the ultimate buyers outside Delhi. The supplier only sent the invoice and the GR/RR to the Appellant at Delhi. The Appellant made payment and issued C-Forms against the said purchases and, in turn, requested and obtained E-1 Form from the supplier. The Appellant then sent its invoices along with the GR/RR to the ultimate buyers who in turn would get the goods retired/released from the transporters at his end and would issue form C to the Appellant. It is claimed that since this was a sale transaction effected by the Appellant while the goods were in movement therefore, the Appellant is entitled to exemption on the said subsequent sale effected during movement by furnishing certificate in form E-1 given by the supplier and C-Form given by the ultimate purchaser.

30. The VATO denied the Appellant the above benefit on the ground that the documents produced by the Appellant were not found convincing “as transactions against E-1/C-Forms involve diversion of

movement of goods from original destination to some other/different destination by the purchasing dealer by way of endorsement on transportation documents while the goods are in transit.” Further on perusal of the sale and purchase invoices there were “significant differences” in the description of the items. It was therefore concluded that the Appellant had failed to prove that the purchase of goods by E-1/C-Forms was a case of sale of RO water purification systems in the course of inter-state transaction under Section 6 (2) of the CST Act. The OHA repeated the above reasons and so did the AT. It is significant that none of the above orders refer to any particular transaction.

31. A set of sample documents have been enclosed with the appeals in respect of the transactions of inter-state sale. One of them pertains to the PO placed on the Appellant by Ramgarh Chini Mills on 27th August 2006 for supply of a water treatment plant. Two of the components were 'cation resin' and 'anion resin'. In turn the Appellant appears to have placed a PO on Auchtel Products Ltd. ('APL'). It is stated that the said two components have been described in the PO by their brand names, viz., Auchtel Duolite A-113 and Auchtel Duolite C-20 respectively. It was contended by Mr. Devnath that the Appellant had placed sufficient material before the VATO to substantiate the above plea and yet the VATO proceeded on the basis that the description of the commodities did not match. He further pointed out that Annexure-1 mentions the Job Order No. PXD-597 which is also mentioned in the PO and finds mention in Auchtel's invoice.

Secondly, it is pointed out that Auchtel's Tax Invoice contained an instruction that the goods were to be despatched directly to Ramgarh Chini Mills. Thirdly, the lorry receipt also showed that the consignee was Ramgarh Chini Mills, Ramgarh. This is stated to be the proof of the inextricable link and yet none of the documents were actually examined and discussed in the default assessment above orders of the VATO.

32. As already observed, the default assessment orders of the VATO give no indication of any detailed examination of the documents. It is not clear which document the VATO is referring to when he concludes that the description of the commodity is different or when he concludes that there is "diversion of movement of goods from original destination to some other/different destination." Even the OHA and the AT make no reference to any particular transaction or document pertaining to inter-state sales and have simply repeated the reasoning of the VATO. At least the documents produced for the sample transaction concerning the PO placed on the Appellant by Ramgarh Chini Mills do not show that there is any diversion of the goods to some other destination. Also, if indeed it is correct that 'Duolite' is the brand name for 'Cation' or 'Anion' resin, then the exemption cannot be denied on the ground of the description of the commodity not matching that mentioned in the PO. In any case, as explained in *State of Karnataka v. Azad Coach Builders Pvt. Ltd. (2010) 9 SCC 524*, where it is able to be shown that the local sale or purchase between the parties is "inextricably linked with the export of

the goods" then a claim for exemption is justified and "the same goods theory has no application."

33. The Court finds that the general cursory approach of the authorities and the VATO, in particular, is unhelpful when the High Court is called upon to examine the correctness of their orders. They must reflect application of mind to the materials on record. Consequently, even in respect of the transactions of inter-state sales, the Court finds that the impugned order of the AT and the corresponding orders of the VATO and the OHA require to be set aside and the matters remanded to the VATO for a fresh determination.

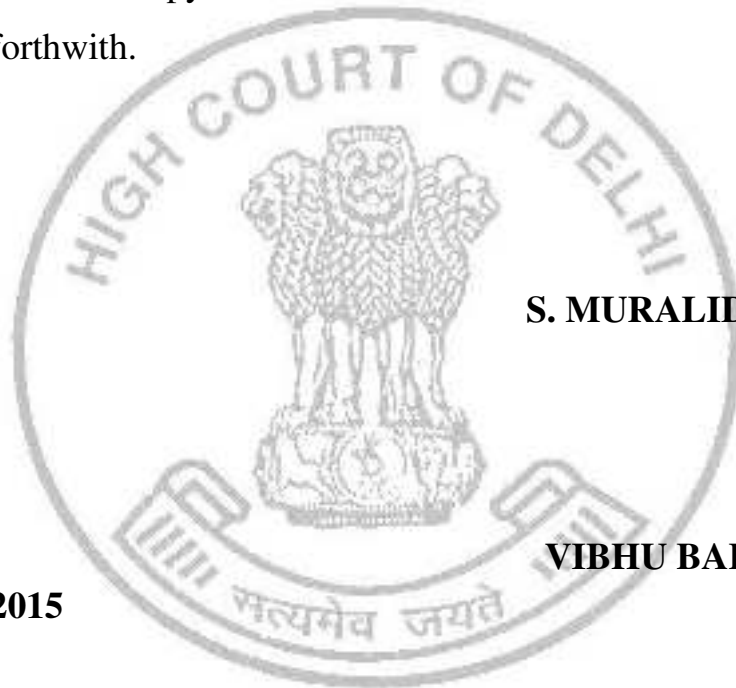
Conclusion

34. The impugned Order No. ATVAT/2014/3015-3020 dated 21st August/1st September 2014 passed by the AT and the corresponding orders of the VATO and OHA challenged before it in the appeals are hereby set aside. The matters pertaining to the Appellant for the AYs 2006-07 and 2007-08 are remanded to the VATO concerned for a fresh consideration on the basis of the documents already on record. Needless to say that the VATO will examine each transaction with reference to the legal position explained in the aforementioned and other relevant decisions and determine whether the claim for exemption in each case is justified. The exercise is to be completed within a period of six months from the date of the first hearing before the VATO pursuant to the remand. The Assessee and the Revenue will

extend their full co-operation to the VATO and not seek any unnecessary adjournment.

35. It is clarified that the Court has not expressed any view on the merits of the contentions of the parties.

36. The appeals and the applications are disposed of in the above terms. A certified copy of this order be delivered to the VATO concerned forthwith.



S. MURALIDHAR, J

VIBHU BAKHRU, J

JULY 15, 2015
dn