

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

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Judgment reserved on: 28th August, 2015
Judgment delivered on: 30th September, 2015

+ **WP(C) No. 4688/2015 & CM No. 8489-8490/2015**

LARK LABORATORIES (INDIA) LTD.

.... Petitioner

versus

COMMISSIONER, TRADE & TAXES, DELHI & ANR.

.... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr Rajesh Mahna, Mr Ruchir Bhatia and Mr
Ramanand Roy, Advocates

For the Respondents : Mr Satyakam, Addl. Standing Counsel for GNCTD

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. By the present petition, the petitioner has impugned the notice of default assessment of tax and interest dated 01.04.2015 and the notice of assessment of penalty dated 01.04.2015 on the ground that the same are

barred by limitation having been issued beyond the extended period of limitation of 6 years provided under Section 34 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as the Act).

2. The relevant year under consideration is financial year 2008 – 09.

3. It is the contention of the petitioner that for the year under consideration i.e. financial year 2008-09, the petitioner filed its returns as per Section 26 of the Act read with Rule 28 of the Delhi Value Added Tax Rules, 2005. On 29.02.2012, the petitioner received notice under Section 59 of the Act for the assessment years 2008 – 09 and 2009 – 10. It is contended that as per the information of the petitioner, on 15.07.2013 the assessment of the petitioner was completed under Section 32 of the Act read with Section 9 of the Central Sales Tax Act, 1956.

4. The petitioner is stated to have been informed that there was an outstanding demand for the year 2008 – 09 on account of missing forms. The petitioner deposited the demand on 07.05.2013. It is contended that the petitioner never received any notice or intimation for the payment of any arrears of tax for the year 2008-09.

5. On 11.03.2015 towards the fag end of the expiry of the sixth year from the end of the relevant year i.e. 2008 – 09, the petitioner received notice under Section 59 of the Act for furnishing certain information. On

25.03.2015, written objections were filed by the petitioner with regard to assumption of jurisdiction. It is contended that without furnishing the reasons for assumption of jurisdiction under Section 34 and without disposing of the objection raised by the petitioner, the impugned notice of default assessment of tax and interest dated 01.04.2015 and notice of assessment of penalty dated 01.04.2015 have been issued.

6. It is contended that the impugned notices have been issued beyond the statutory period of 6 years from the relevant year 2008 – 09, which period ended on 31.03.2015.

7. The respondents have filed the counter affidavit contending that the petitioner had failed to submit complete documents and information and had failed to produce relevant forms and documents and as such, the Assessing Officer recorded the orders of default assessment. It is contended that the notices of default assessment dated 01.04.2015 are well within time as the orders on the basis of which, the said notices had been issued were recorded in the daily order sheet on 31.03.2015. It is contended that the limitation is to be counted in relation to the period in which the return/revised return is filed and not the period to which the return/revised return relates to. It is contended that the petitioner had filed revised return for the financial year 2008 – 09, under Section 28, as late as on 02.04.2012 and as such the notices

for default assessment dated 01.04.2015 were well within the limitation having been issued within three years of the filing of the revised return.

8. Thus the question that falls for consideration is, whether the limitation for reassessment under section 34 of the act is to be counted in relation to the period in which the return/revised return is filed or whether the same is counted in relation to the period to which the return/revised return relates to?

9. Section 34 (1) of the Act, lays down as under: -

Section 34 – Limitation on assessment and re-assessment

(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period,

whichever is the earlier:

PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

10. Section 34 (1) (a) was substituted by the Delhi VAT (Amendment), Act 2013 dated 28.03.2013 with effect from 01.04.2013. Prior to substitution the section 34 (1) read as under:

(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the date on which the person furnished a return under section 26 or sub-section (1) of section 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period,

whichever is the earlier:

PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

11. Section 34 (1) (a) prior to its substitution by the Delhi VAT (Amendment), Act 2013 stipulated a period of 4 years from the date on which the person furnished a return under Section 26 or sub-section 1 of Section 28 of the Act. The period of limitation prescribed by the said provision prior to its substitution in 2013 related to the date of furnishing of return. The said provision has been substituted and the period of limitation is

now relatable to the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of the Act. Prior to its substitution, the period was relatable to the date of furnishing return. Post substitution the period of limitation is relatable to the tax period for which the return is furnished.

12. The period of 4 years computed for the tax period 2008 – 09 in terms of the amended provision would end on 31.03.2013. The extended period of 6 years as stipulated by the proviso under Section 34 (1) relatable to the tax period would end on 31.03.2015. Though it is disputed by the petitioner that the proviso is not applicable in the present case, however admittedly, in the present case, the impugned notices have been issued on 01.04.2015, which is beyond even the extended period of 6 years as stipulated by the proviso. This is also subject to that fact that the Commissioner has extended the said period by application of proviso.

13. The impugned notices issued after the expiry of 6 years, are thus not sustainable. The contention of the counsel for the respondent, that the notice of default assessment is within time because the orders for issuance of notices were actually recorded in the daily order-sheet on 31.03.2015 but the same were issued on 01.04.2015, also cannot be sustained in view of the mandate of Rules 36 of the Delhi Value Added Tax Rules 2005 (hereinafter referred to as the Rules).

14. Rule 36 of the Rules lays down as under:-

36. Assessments and enforcement of Tax and Penalties.

- (1) Where the Commissioner makes a default assessment of tax under section 32, he shall record the order in Form DVAT-24 and such notice of assessment shall be served on the dealer in the manner prescribed in Rule 62.
- (2) Where the Commissioner makes an assessment of penalty under section 33, he shall record the order in Form DVAT-24A and such notice of assessment of penalty shall be served on the dealer in the manner prescribed in Rule 62.
- (3) The Commissioner, shall, at the time of making an assessment under section 32, calculate the interest payable under sub-section (2) of section 42 for the period commencing from the date of such default for so long as the dealer continues to make default in payment of the amount of tax, penalty or other amount due under the Act.
- (4) The amount of interest payable under the preceding sub-rule, shall be included in the notice of assessment in Form DVAT-24.
- (5) At the time of issue of the recovery certificate, the Commissioner shall calculate the interest payable under sub-section (2) of section 42 for the period from the date of default till the date of issue of

recovery certificate and the amount shall be indicated separately in the recovery certificate.

15. Rule 36 mandates that where the Commissioner makes a default assessment of tax under Section 32 or an assessment of penalty under Section 33 of the Act, he shall record the order in Form DVAT-24 and DVAT-24A respectively and such notice of assessment or notice of assessment of penalty shall be served in the manner prescribed in Rule 62. The daily order-sheet recorded on 31.03.2015 is not in Form DVAT-24 or DVAT-24A, though the impugned notices dated 01.04.2015 are in Form DVAT-24 and DVAT-24A.

16. Since the daily order sheet is not in the Form as mandated by Rule 36, it cannot be countenanced that merely because the orders based on which the online orders were issued on 01.04.2015 were factually recorded in the order sheet dated 31.03.2015, there was sufficient compliance with Rule 36 and Section 34. Rule 36 also mandates that the order is to be served on the dealer in the manner prescribed under Rule 62. The daily order sheet recorded on 31.03.2015 is not a notice of default assessment, which could have been served on the dealer in the manner prescribed under Rule 62.

17. The daily order sheet dated 31.03.2015 does not satisfy the requirement of the Act and the rules and the impugned notices of default assessment and penalty in Form DVAT-24 and DVAT-24A based on the

daily order sheet have admittedly been prepared on 01.04.2015 and issued after the expiry of period of 6 years as stipulated in Section 34 of the Act.

18. Since the impugned notice of default assessment of tax and interest and the impugned notice of assessment of penalty dated 01.04.2015 have been issued beyond the statutory period, the same cannot be sustained and are accordingly quashed.

19. The writ petition is allowed in the above terms leaving the parties to bear their own costs. All the pending applications stand disposed of.

SANJEEV SACHDEVA, J

BADAR DURREZ AHMED, J

September 30, 2015
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