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IN THE HIGH COURT OF DELHI AT NEW DELHI

ST.APPL. 90/2014

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

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ST.APPL. 91/2014

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

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ST.APPL. 92/2014

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

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+ **ST.APPL. 93/2014**

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

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+ **ST.APPL. 94/2014**

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

19.
+ **ST.APPL. 95/2014**

HARBANS SINGH & SONS ..... Petitioner

Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

WITH

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ST.APPL. 96/2014

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

AND

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ST.APPL. 97/2014

HARBANS SINGH & SONS ..... Petitioner
Through: Mr. Vinod Srivastava with Mr. Ravi Chandhok and Mr. Pramod Gandhi, Advocates.

versus

THE COMMISSIONER VALUE ADDED TAX ..... Respondent
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **11.12.2015**

1. These are eight appeals by the Petitioner Assessee under Section 81 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') against an order dated 29th August 2014 passed by the Appellate Tribunal for Value Added Tax ('Tribunal') for the assessments made for the four quarters of Assessment Year ('AY') 2008-09. While four of the appeals deal with the issue of the quantum of tax, four deal with the issue of penalty.

2. The facts leading to the filing of these appeals are that the Appellant is a registered dealer under the DVAT Act. It is stated that he undertook both local sales as well as inter-state sales during all the four quarters of the AY in question. He furnished three C-Forms for sales in the value of Rs. 40,09,508 by way of inter-state sales and six H-Forms for Rs.41,05,603 for the sales made by way of exports for the AY in question. It appears that the dealer was unable to furnish C-Forms for sales in the value of Rs. 1,20,900 which he claimed were inter-state sales. A default assessment order was passed on 7th February 2011 by the Value Added Tax Officer ('VATO') under Section 9 (2) of the Central Sales Tax Act, 1956 (CST Act) directing the Appellant to pay tax in the sum of Rs.12,695 after accepting the above C and H Forms in respect of inter-state sales and export sales respectively. The tax amount computed was to the extent of sales made by the dealer for which he was unable to furnish C-Forms. It is not in dispute that the

Appellant has remitted the above amount of tax as demanded.

3. Thereafter on 1st December 2011/13th February 2012 the VATO issued a notice to the Appellant stating that he had filed an incomplete return or incorrect return or a return which did not comply with the requirements of the DVAT Act. Similar notices were issued in respect of each of the four quarters of the AY in question. The notices *inter alia* stated that when enquiries were made with certain transporters viz., Inland Movers (P) Ltd., Kolkata, Vijay Lakshmi Transport Company, Delhi and Assam Bombay Cargo Carriers, New Delhi it appeared that the goods receipts ('GRs') which were furnished by the Appellant were unable to be verified. It was accordingly stated by the VATO that in the absence of such verification, the entire central sales against the C-Forms and H-Forms were liable to be rejected and were to be treated as local sales which would be taxable at 12.5%. The differential tax amount was computed for each of the quarters along with interest on tax deficiency at 15%. Penalty under Section 33 read with Section 86 (10) of the DVAT Act was also imposed.

4. Aggrieved by the above notices, the Appellant filed objections before the Objection Hearing Authority ('OHA'). By a common order dated 17th December 2012 for all the four quarters of AY 2008-09, the OHA rejected the objections and confirmed the demand of tax, interest and penalty.

5. The Appellant then filed appeals before the Tribunal which has, by the impugned order dated 29th August 2014, dismissed the appeals after taking note of the fact that the reopening happened as a result of information

gathered by the 'Audit Team'.

6. In the present appeals, one of the points urged is that the Respondents could not have brought the same transaction to tax both under the DVAT Act as well as the CST Act. It is further submitted that no notice of reassessment under Section 32 of the DVAT Act was issued. During the course of the hearing a point has been raised that the initial assessment which was completed under Section 9(2) of the CST Act had attained finality since it was were never sought to be revised by the authority superior to the VATO. On the strength of the judgment of this Court in ***Nav Bharat Enterprises Ltd. v. Sales Tax Officer [1987] 66 STC 252*** it is contended that till such time the assessments under CST Act are not set aside, it is not possible to subject the same transaction to VAT. Reliance is also placed on the decision in ***Sri Krishna Das v. Town Area Committee, Chirgaon [1990] 183 ITR 401*** and ***R.H. Enterprises v. Sales Tax & Others [1992] 85 STC 251***.

7. However, the issue concerning the initial assessment under Section 9 (2) of the CST Act was not raised in the memo of appeal and was also not urged at the time this Court framed the following questions in the present appeal by its order dated 13th July 2015:

> "(i) Whether a transaction can be taxed twice, once under the Delhi VAT Act as intra-State sale in the State of Delhi and again as interstate sale under the CST Act?
>
> (ii) Whether re-assessment can be made without issuing notice of assessment under Section 32 of the Delhi VAT Act?"

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8. During the hearing of the case on 27th November 2015 it was contended by Mr. Vinod Srivastava, learned counsel for the Appellants, that the impugned order of the Tribunal had erroneously proceeded on the basis that audit action under Section 58 (4) of the DVAT Act was in fact taken in accordance with law. The thrust of the submission was that evidence had been gathered behind the Appellant without any opportunity to the Appellant to counter such evidence. Further, that evidence formed the basis for reopening an assessment which already attained finality under Section 9 (2) of the CST Act.

9. In light of the above submissions, one of the questions that arose was whether any notice at all had been issued to the Assessee in the course of the audit proceedings prior to issuance of the notice for reassessment and penalty under Sections 32 and 33 of the DVAT Act. Mr. Gautam Narayan, learned counsel for the Respondent, referred to the fact that a notice had indeed been issued to the Appellant through its Proprietor on 8th September 2011, which was however disputed by Mr. Srivastava. The Court then passed the following order on 27th November 2015:

> "1. Mr Gautam Narayan, learned counsel for the Respondent, states that he would like to examine the records and produce before the Court the relevant documents including copy of the notice purportedly issued to the Assessee 8th September, 2011. Copies of the said notice, the statement made by the Assessee in writing in response thereto and any other relevant document be filed by the Respondent as a compilation, with an advance copy to counsel for the Appellant, before the next date of hearing.

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2. List on 11th December, 2015."

10. Since then Mr. Narayan, learned counsel for the Respondent, has filed a compilation of documents. The first document in this compilation is a copy of a notice dated 8th September 2011 sent to the Assessee under Rule 46 of the DVAT Rules. This in fact is a notice for audit under Section 58 of the DVAT Act. The notice is in Form DVAT-37. *Inter alia*, it requires the Assessee to appear before the VATO on 19th September 2011 for recording his statement, produce his book of accounts and evidence being relied upon by him. It requires him to produce a host of documents including the "record of interstate sales and transfer of goods along with statutory declaration form, supporting documents regarding export sales...", "GR/RRs, Form-4 and Form-7 and copy of returns and balance sheet with audit report." A second document in this compilation is a notice dated 19th October 2011 issued by the VATO to the Assessee noting that the Assessee had appeared and sought time from the VATO till 23rd September 2011 for filing the documents and given the Assessee a final opportunity of submitting the requisite documents by 31st October 2011. Further the compilation also contains copies of the notices dated 20th October 2011 issued to the three transporters mentioned hereinbefore. The compilation also contains certain letters, one of them is by Vijay Lakshmi Transport company dated 25th October 2011 to the VATO enclosing the abstracts of the booking register relating to two of the GRs.

11. Importantly, this compilation contains a copy of a hand written statement dated 8th November 2011 of the sole Proprietor of the Assessee, Mr.

Harbinder Pal Singh. This runs into four pages and each of the pages bears his signature with the rubber stamp of the proprietary concern. *Inter alia*, in para 5 he refers to the fact that the audit of the business affairs of the concern was conducted by the VAT Audit Branch "vide notice dated 8th September 2011, date of first appearance as 19th September 2011". The compilation also contains further show cause notice issued on 16th November 2011 to the other two transporters i.e. Inland Movers (P) Ltd., Kolkata and Assam Bombay Cargo Carriers, New Delhi. It also has the audit report signed both by the VATO as well as the Assistant VATO analysing the statements made by the Assessee as well as the responses received from the transporters.

12. Learned counsel for the Appellant submitted that when they inspected the file of the Department, they did not find in it many of the documents which have been produced in the compilation. That apart, the statement dated 8th November 2011 given by the sole proprietor of the Appellant was doubted and it was suggested that it was possibly obtained under coercion. Significantly, Mr. Srivastava, learned counsel for the Assessee did not at that stage dispute that the letter was in the handwriting of Mr. Harbinder Pal Singh and that it was signed by him on each page. He maintained that the notice purportedly issued by the VATO to the Appellant on 8th November 2011 did not show that such a notice had in fact been either dispatched or delivered/served on the Appellant. When the attention of Mr. Srivastava was drawn to the para 5 of the handwritten statement of Mr. Harbinder Pal Singh, he volunteered that it was unlikely that Mr. Harbinder Pal Singh could have voluntarily written that paragraph.

13. In light of the documents that have been emerged during the course of the present hearing and which the Appellant claims not to have received earlier, and since these documents have a vital bearing on the validity of the assessments initially made and the reassessment made subsequently, the Court considered it appropriate to remand the matter to the VATO for a de novo re-assessment proceeding after giving the Appellant a proper opportunity to explain the materials now placed on record.

14. Mr. Srivastava contended that the above course was not available to the Court since in any event the assessment made on 7th February 2011 under Section 9 (2) of the CST Act has not been set aside by following the procedure envisaged thereunder. He further submitted that the limitation for reopening assessment with reference to AY 2008-09 would expire on 31st March 2015 when the six year period from the end of that AY is concluded in terms of Section 34 of the DVAT Act.

15. As far as second submission is concerned, the present appeals are in continuation of the assessment proceedings and the reassessment that commenced with the issuance of the default notice issued by the VATO to the Assessee on 1st December 2011/13th February 2012. That notice was within limitation. Merely because this Court in appeal is remanding those very proceedings to the VATO will not mean that the further proceedings in continuation of the assessment proceedings would be barred by limitation within the meaning of Section 34 of the DVAT Act.

16. As regards the first submission concerning Section 9(2), the Court is of the view that if it is able to be established by the Department that an audit did take place in accordance with Section 58 of the DVAT Act and the audit report showed that the Appellant was not entitled to avail of the benefit of the C-Forms and H-Forms produced by him in support of the claim of interstate and export sales, that would go to the very root of the matter and render the initial assessment made under Section 9(2) of the CST Act unsustainable in law.

17. The VATO will therefore be required to enquire, *inter alia,* into the aspect whether the above hand-written statement dated 8th November 2011 of the proprietor of the Appellant was given voluntarily. He will also examine if the entire exercise of audit took place in accordance with the procedure laid down under Section 58 of the DVAT Act and the relevant Rules.

18. A further point that arises is whether the assessment under Section 9(2) of the CST Act pertained, as is contended by the Appellant, to all the quarters of AY 2008-09 or only the first quarter as is contended by learned counsel for the Respondent.

19. Even the issue raised by Mr. Srivastava on whether the assessment already made under Section 9 (2) of the CST Act can be overturned as a result of an audit exercise undertaken under Section 58 of the DVAT Act, without first setting aside the said assessments, is a point that has to be considered by the VATO once he is satisfied about the validity of the audit

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exercise undertaken under Section 58 of the DVAT Act. Therefore, there are several aspects of the matters, both legal and factual, an investigation into which cannot obviously be undertaken by the Court in the present proceedings. The Court clarifies that it will be open to both the Assessee and the Department to urge any further grounds that they may wish to in relation to the re-assessment proceedings before the VATO, which are being remanded to him by this order.

20. One other aspect requires to be adverted to. Now that the Appellant has been given all the documents, which the counsel for the Respondent assures form part of the record, there should be no difficulty in the VATO proceeding further in the matter on the basis of the said documents. Nevertheless, to allay the concerns expressed by counsel for the Appellant, the Court directs that the VATO will ascertain whether the documents that have been produced before this Court do form part of the record of the assessment and re-assessment. The VATO will give the Assessee an inspection of the original files of the Department containing the said documents.

21. The impugned order dated 29th August 2014 of the Tribunal, and the corresponding orders dated 1st December 2011/13th February 2012 of the VATO and the order dated 17th December 2012 of the OHA are hereby set aside. The matters are remanded to the VATO for a fresh determination from the stage at which they were when the aforementioned order dated 1st December 2011/13th February 2012 was passed, in accordance with law in light of the above directions. The VATO is requested to proceed

expeditiously with the matters on remand and complete the re-assessment proceedings not later than six months from the date of receipt of this order.

22. The appeals are disposed of in the above terms. A certified copy of this order will be sent forthwith to the VATO concerned.

S. MURALIDHAR, J

VIBHU BAKHRU, J

DECEMBER 11, 2015
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