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

\+ W.P.(C) 9232/2015 & CM 21131/2015

SHREE SIDHI GRAPHICS PROPRIETOR,
MRS. VRUSHALI BHARGAVA ..... Petitioner

Through : Mr Vasdev Lalwani with Mr S. K. Kapoor, Mr Ravi Chandhok and Mr Rohit Gautam

versus

THE COMMISSIONER VALUE ADDED TAX & ANR ...... Respondent

Through : Mr Satyakam

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

O R D E R

% 16.10.2015

This writ petition pertains to the third quarter of 2013-14. The petitioner has made the following prayers:-

> "a) Issue a Writ of declaration or any other Writ, order, or direction setting aside/quash the impugned notice of Default Assessment of Tax & Interest order Nos. 150081673823 dated 15.06.2015 and 150081745285 dated June 19, 2015 creating a demands of Rs.5,40,910/- and Rs 2,07,754/- respectively as the impugned orders are contrary to the provisions contained in DV AT Act.
>
> b) Set aside the notice U/s DVAT 59(2) dated 17.07.2015 as illegal, void and contrary to the provisions contained in the DVAT Act.
>
> c) Grant exemplary damages to the Petitioner as the respondents have acted malafide and in blatant violations of the provisions of DV AT Act as well as contrary to the judicial pronouncements by this Hon'ble Court as well as by the Hon'ble Tribunal VAT New Delhi.
>
> d) Grant any other relief as this Hon'ble Court may deem fit and appropriate in the circumstances of the present case:"

From the above, it is clear that there is a challenge to the order dated 15.06.2015 as also to the order dated 19.06.2015 and the notice dated 17.07.2015. Insofar as the orders dated 19.06.2015 and 17.07.2015 are concerned, the same are covered by several decisions of this Court as also a decision of this Court in the case of the petitioner itself, though for a different period. The leading case was Bhumika Enterprises v. Commissioner Value Added Tax & Another [WP(C) 7379/2015] and other connected matters decided on 28.08.2015. The result is that the notice under Section 59(2) of the Delhi Value Added Tax Act, 2004 issued on 19.06.2015, which is also a system generated notice, stands quashed. The consequent orders passed thereon had already been withdrawn by the letter dated 17.07.2015.

Insofar as the order dated 15.06.2015 is concerned, that purports to be a default assessment notice pertaining to the third quarter of 2013-14. We find that earlier a default assessment notice had been issued on 16.04.2014 for the very same quarter. Objections had been filed by the petitioner and the same was decided by the Objection Hearing Authority on 08.04.2015 raising nil demand. The penalty was also deleted.

On examining the order dated 15.06.2015, one finds that it purports to review the order dated 08.04.2015. This is not permissible because the order dated 08.04.2015 has been passed by the Objection Hearing Authority, whereas the order dated 15.06.2015 is by the VATO. The VATO cannot review the order of the Objection Hearing Authority. Consequently, the order dated 15.06.2015 is also quashed.

This order, in respect of the impugned orders/notices dated 19.06.2015 and 17.07.2015, would not come in the way of the Department to issue a fresh notice under

Section 59(2) after application of mind by the concerned VATO and in accordance with law and to take steps pursuant thereto which would also be in accordance with law and would not be a system generated notice or order without human interface.

The writ petition stands allowed to the aforesaid extent with no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

OCTOBER 16, 2015
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