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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 713/2016 & CM No.3038/2016**

ITD-ITD CEM JV ..... Petitioner
Through: Mr Rajesh Jain, Mr Virag Tiwari and Mr K. J. Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr Gautam Narayan, Additional Standing Counsel and Mr R. A. Iyer, Advocate for Respondent with Mr Praveen Verma, Assistant Commissioner (Audit)

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **01.02.2016**

1. Aggrieved by the issuance of an Audit Notice dated 7th January 2016 by the Commissioner of Trade and Taxes in Form DVAT-37 in exercise of the powers under Section 58 of the Delhi Value Added Tax Act, 2004 read with Rule 46 of the Delhi Value Added Tax Rules, 2005, the Petitioner ITD-ITD CEM JV has filed this writ petition.

2. Earlier, a notice of Audit dated 2nd August, 2013 had been issued to the Petitioner by the Commissioner, Department of Trade and Taxes, Government of NCT of Delhi (GNCTD) and pursuant thereto an Audit Report dated 4th July, 2014 was prepared after scrutinizing the books of account of the Petitioner. This led to a notice of default assessment of tax

being issued under Section 32 of the Act on 9th July, 2014. Additionally, a notice of penalty of the same date was issued under Section 33 of the Act. Both these were challenged by the Petitioner in this Court by filing W.P.(C) 5231/2014. The challenge was on the ground that given the relevant assessment period was 1st April, 2009 to 31st March, 2010, the default assessment and penalty notices under Sections 32 and 33 of the Act issued on 9th July, 2014 were time barred.

3. By a judgment dated 14th May, 2015, this Court quashed the default assessment notices as being time barred. Para 8 of the said order reads as under:

> "8. We, therefore, hold that the default assessment notice dated 09.07.2014 is time barred and is quashed. The revenue may, however, take recourse to such other action as may be permissible in law."

4. It is, thereafter, that the impugned Audit Notice dated 7th January, 2016 was issued stating that an audit is required to be undertaken for the very same period, i.e., 1st April, 2009 to 31st March, 2010.

5. On the previous date, i.e., 27th January, 2016, this Court had, while directing notice to be issued to the Respondent, ordered that the Value Added Tax Officer (VATO) would not pass any order in respect of the impugned notice. Learned counsel for the Respondent had stated that he would take instructions in the matter.

6. Today, Mr Gautam Narayan, learned Additional Standing Counsel for the Respondent, has produced before the Court a letter dated 30th January, 2016

addressed to him by the Assistant Commissioner, VAT Audit Branch of the Department of Trade and Taxes, GNCTD which, *inter alia,* states that in light of the observations of this Court on the previous date, the Department of Trade and Taxes, GNCTD "does not want to insist on fresh audit proceedings under Section 58 of the DVAT Act, 2004 and the Audit Notice issued for the same shall be withdrawn with the permission of the Hon'ble High Court". The letter proceeds to state that the Department intends to initiate fresh assessment proceedings under Sections 32 and 33 of the DVAT Act on the basis of the records available with it and other material facts/documents submitted by the dealer during the audit proceedings concluded earlier.

7. While, Mr Rajesh Jain, learned counsel appearing for the Petitioner, submits that no further proceedings are warranted, the contention of Mr Narayan is that the right of the Department to initiate further proceedings in accordance with law has already been reserved by this Court in para 8 of its order dated 14th May 2015 and, therefore, the Department is within its right to proceed further in accordance with law.

8. In light of the instructions given to Mr Narayan in the letter dated 30th January 2016 addressed to him, the prayer in the present petition does not survive. The said letter states that the Respondent does not wish to proceed with the Audit proceedings and is withdrawing the Audit Notice dated 7th January, 2016. The said statement is taken on record and the impugned notice dated 7th January 2016 is treated as having been withdrawn by the Respondent.

9. As far as further action that the Respondent states it intends to take is concerned, this Court does not consider it necessary to express any opinion whatsoever on the legality of such action as that would be a hypothetical exercise at this stage. The Court also does not consider it necessary to add anything to what has been already stated by it in the order dated 14^{th} May, 2015 as far as the permissible course of action for the Department to take is concerned.

10. The writ petition is disposed of in the above with no order as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 01, 2016
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