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

\+ **ST.APPL. 31/2009**

COMMISSIONER OF VAT DELHI ..... Appellant
Through: Mr. Satyakam, Addl. Standing Counsel with Mr. R.P. Meena, Jt. Commissioner.

versus

M/S BANSI INTERNATIONAL .... Respondent
Through

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **05.08.2016**

CM No. 5615/2009 (Condonation of delay)

1. In view of the order dated 25th July, 2014 passed by the Court in ST. Appl. No. 24/2009 (***Commissioner of Value Added Tax v. Tek Chand***) the delay in filing the present appeal is condoned subject to the Appellant paying costs of Rs. 15,000/- within 15 days from today to the Delhi High Court Legal Services Committee, and if not, then additional costs of Rs. 5,000/- on or before the date of hearing fixed before the Appellate Tribunal, Value Added Tax ('Appellate Tribunal'). Proof of payment of costs be placed before the Appellate Tribunal.

2. The application is, accordingly, allowed.

ST.APPL. 31/2009

3. The short issue in this appeal by the Commissioner of Value Added Tax (VAT), Delhi, under Section 81 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') against the impugned order dated 17th October, 2008 passed by the Appellate Tribunal in Appeal Nos. 210 & 229/ATVAT/08-09 is, whether the Appellate Tribunal was in error in holding that there was a time limit of eight moths for the Objection Hearing Authority ('OHA') to decide the objections in terms of Section 74(7) of the DVAT Act?

4. It was contended by the Respondent-Assessee before the Appellate Tribunal that the order dated 31st October, 2007 passed by the OHA, dismissing the objections was, in fact, erroneous since the proceedings had become time-barred and the objections should be deemed to have been allowed by the OHA. The Appellate Tribunal in the impugned order appears to have accepted this plea of the Assessee. Therefore, it did examine the other issues in the appeals before it on merits.

5. The above question is no longer *res integra*. A Division Bench of this Court has in ***Commissioner of Sales Tax vs. M/s Behl Construction (2009) 21 VST 261 (Del)***, held that the objection pending before the OHA cannot be deemed to have been accepted simply because the time specified in Section 74(7) of the DVAT Act has expired and the OHA has not exercised the options set out in Section 74(7)(a) or 74(7)(b) of the DVAT Act. It has been held that the deeming provisions of Section 74(9) would get triggered only if the conditions precedent provided under Section 74(8) of the DVAT Act are satisfied. This Court held that the Appellate Tribunal erred in law in

fixing a mandatory period of eight months within which the OHA had to dispose of the objection pending before him under Section 74 (7) of the DVAT Act, particularly, when no such stipulation is provided by the statute.

6. In that view of the matter, the impugned order dated 17th October, 2008 passed by the Appellate Tribunal is hereby set aside. The appeals are now restored to file of the Appellate Tribunal for disposal on merits. The appeal nos. 210 and 229/AVAT/08-09 will now be listed for hearing before the Tribunal on 19th September, 2016.

7. A copy of this order be given *dasti* under the signatures of Court Master.

S.MURALIDHAR, J

NAJMI WAZIRI, J

AUGUST 05, 2016
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