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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ST.APPL. 9/2016

LAKRA OIL TRADING CO. ..... Petitioner
Through: Mr. Ruchir Bhatia, Advocate.

versus

COMMISSIONER,TRADE & TAXES,
DELHI ..... Respondent
Through: Mr. Satyakam, ASC.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **24.05.2016**

CM APPL No. 17165/2016 (for delay)

1. The delay of 582 days in filing the appeal has been explained by pointing out that against the impugned order dated 10th June 2014 of the learned Single Member of the Appellate Tribunal, Value Added Tax ('AT'), writ petitions were filed in this court which ultimately came to be decided on 18th February 2016 holding that an order passed by the Single Member of the AT was valid. The Court had in that judgement granted leave to the Petitioners to prefer statutory appeals along with applications for condonation of delay.

2. In that view of the matter, the delay in filing the present appeal is sufficiently explained and is, accordingly, condoned. The application is disposed of.

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3. Notice. Mr. Satyakam, learned counsel for the Respondent accepts notice.

4. This appeal is directed against the order dated 10th June 2014 passed by the Appellate Tribunal Value, Value Added Tax ('AT') in Appeal No. 79/AVAT/06-07 for the Assessment Year ('AY') 2005-06. With the consent of learned counsel for the parties, it is heard finally.

5. The brief facts are that the Appellant is an authorized dealer of Bharat Petroleum Corporation Limited ('BPCL') and is engaged in the re-sale of petroleum products and lubricants. The Appellant is a registered dealer with the Department of Trade & Taxes. It is stated that Superfine Kerosene Oil ('SKO') was liable to tax @ 4%. According to the Department, an audit was undertaken of the Appellant and certain irregularities were found which led to the notice of default assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act ('DVAT Act') and notice of default assessment of penalty under Section 33 of the DVAT Act being issued on 2nd September 2005.

6. According to the Appellant, it was not allowed credit of VAT paid on purchases of kerosene. It is stated that the Appellant had made sales of Rs. 13,82,000 taxable @ 12.5%. The sale figure was inadvertently shown at Rs. 1,38,82,000 in the return. However, the tax payable on sales of Rs. 13,82,000 which works out to Rs. 1,72,750 was correctly shown. The Value Added Tax Officer ('VATO') is stated to have levied tax on Rs. 1,38,82,000 without confronting the Appellant with the above error.

7. The second grievance is that VATO treated the entire inter-state sales

amounting to Rs. 1,45,74,396 as local sales on the ground that the Appellant had not produced copies of GRs. It is stated that out of 38 invoices in respect of the inter-state sales produced by the Appellant, GRs of 18 invoices could not be produced although names of transporters and numbers of GRs were recorded on all 38 invoices. The Appellant points out that the goods were accompanied by statutory forms such as Form-31/Form-38 issued by the respective State authorities of the purchasing dealers. However, no enquiries were made by the Department from such purchasers. The Appellant states that it had filed copies of accounts of purchasing dealers, end use certificates, confirmation from the buyers in other States, bank statement in proof of payment, copies of GRs obtained from the purchasing dealers, Form -31/Form-38 and other relevant documents.

8. It is submitted that the impugned order dated 10th June 2014 fails to deal with the issue concerning the error committed by the Appellant in showing the sales figure of SKO as Rs. 1,38,82,000 instead of Rs.13,82,000. Indeed the impugned order of the AT has not dealt with the above ground as rightly pointed out by learned counsel for the Appellant.

9. Further it is noticed that the examination by the AT of the issue concerning treatment of inter-State sales as local sales is perfunctory. There is no discussion of the numerous documents produced by the Appellant. Likewise, the issue concerning denial of input credit on the sales of SKO has also not been adequately dealt with by the AT.

10. For the aforementioned reasons, the impugned order dated 10th June 2014 passed by the learned Single Member of the AT is set aside. The Appeal No. 79/AVAT/06-07 for the AY 2005-06 is restored to the file of

the AT for being disposed of afresh in accordance with law.

11. Appeal No. 79/AVAT/06-07 is directed to be listed before the AT on 1st August 2016 for directions.

12. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 24, 2016
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