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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 5032/2016 & CM 21014/2016

JBN IMPEX PVT. LTD ..... Petitioner
Through: Mr. Rajesh Jain with Mr. Virag Tiwari and Mr. K.J. Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr. Satyakam, Additional Standing counsel along with Mr. Vinod Kumar, AVATO Ward 8.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **01.06.2016**

1. The challenge in this writ petition is to the default notices of tax and interest dated 7th January 2016 issued by the Assistant Value Added Tax Officer ('AVATO'), Ward 8 under Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') determining the amount payable by way of tax and interest for all the four quarters of 2012-13. The challenge is also to the default notices of assessment of penalty of the same date under Section 33 of the DVAT Act determining the penalty under Section 86 (10) of the DVAT Act for the same period.

2. The case of the Petitioner is that the registration certificate of the Petitioner, JBN Impex Private Limited, was cancelled by two orders in Form

DVAT-11 on 10th September 2014. Prior thereto, the Petitioner had filed its quarterly returns for 2012-13. It is stated that on 12th November 2012 a default assessment of tax, interest and penalty under Sections 32 and 33 of the DVAT At had been issued regarding a mismatch in Annexures 2A & 2B. It was recorded that the Petitioner had claimed excess input tax credit in violation of Section 9 (2) (g) of the DVAT Act. Accordingly, a demand of Rs. 4,708 was made and a penalty of Rs. 10,000 was also imposed under Section 86 (10) of the DVAT Act. It is stated that on 15th February 2014 the aforementioned default notices of assessment of tax, interest and penalty were reviewed and the demand was reduced to nil. On 15th May 2014 another review order was passed but confirming the order dated 15th February 2014.

3. On 29th September 2015 again default notices of assessment of tax, interest and penalty under Section 9 of the Central Sales Tax Act 1956 ('CST Act') were issued for the four quarters of 2012-13. In terms of the said notice, additional demand of tax and interest of Rs. 1,16,54,076 was raised. It was alleged that the Petitioner had made inter-state purchases from the following entities:

(i) M/s. Active Suppliers

(ii) M/s. Classic Sales India

(iii) M/s. Mohan Enterprises and

(iv) M/s. Oswin Sales Corporation

4. According to the Petitioner the above notices were system-generated. Subsequently, on 7th January 2016 the aforementioned system-generated

default notices of tax, interest and penalty were purportedly withdrawn. However, it appears that on the same date the impugned notices of tax and interest for 2012-13 under Section 32 of the DVAT Act and notices of default assessment of penalty under Section 33 of the DVAT Act were issued. According to the Petitioner, these were also a system generated notices.

5. In support of the above submission, attention was drawn to the figure '0' appearing under the Columns titled 'Turnover assessed’ and ‘tax reported/paid’ is shown as zero. However, the tax assessed is shown as Rs. 79,67,293 together with interest at Rs. 41,28,804.

6. It is obvious that the aforementioned notices are system generated notices. There is no question of the Petitioner being asked to pay tax of the above amount when the assessed turnover is zero. The explanation offered by Mr. Satyakam, learned Additional Standing counsel for the Respondent, on instructions, is that there is some glitch in the system. No fresh demand could have been generated under the DVAT Act unless the demand under the CST erroneously raised was reduced to "O".

7. This still does not explains how in the fresh demand, the turnover as far DVAT Act is concerned is shown as '0'. Clearly the impugned notices of assessment of tax, interest and penalty are system generated and signed mechanically by the AVAO without application of mind.

8. The Court has, therefore, no hesitation in setting aside the impugned default notices dated 7th January 2016 of assessment of tax, interest and

penalty issued under Sections 32 and 33 of the DVAT Act.

9. The case of the Department is that the above purchases made by the Petitioner from the four entities noted for all the four quarters of 2012-13 were from 'suspicious or cancelled dealers'. The case of the Petitioner on the other hand is that for the first two quarters of 2012-13 no purchases were made from any of the above four entities. It is stated that in the third and four quarters of 2102-13 purchases were made from one each of the above four entities. It is further submitted that there is no intimation to the Petitioner from the VATO as to when the registration of the said dealers/entities was cancelled and when they had ceased to be function. It is pointed out that unless those details are furnished to the Petitioner, requiring it to simply appear before the AVATO to furnish details would be a meaningless exercise.

10. In light of the above submissions, the Court directs that within a period of four weeks from today, the AVATO, Ward No. 8 will issue a notice to the Petitioner (which is not a system generated notice) setting out the information in the possession of the AVATO regarding the purchases made by the Petitioner from the aforementioned four entities, giving the date on which their registrations were cancelled or report received by the AVATO to the effect that the aforementioned entities are not functional. The AVATO shall also specify in the notice the date and time on which the Petitioner is supposed to appear pursuant to such notice.

11. Mr. Jain states that a copy of the notice could be served upon him and he will receive it on behalf of the Petitioner.

12. It is made clear that pursuant to such notice, the Petitioner shall appear on the date and time fixed by the AVATO. After hearing the Petitioner it will be open to the AVATO to pass a fresh order (which will again not be system generated) in accordance with law.

13. The petition and pending application are disposed of in the above terms.

14. Order be given *dasti* under the signature of the Court Master.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 01, 2016
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