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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ W.P.(C) 5033/2016 & CM 21018/2016

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

O R D E R

% **01.06.2016**

1. The challenge in this petition is to the impugned default notices of tax, interest and penalty both dated 29th September 2015 under Section 32 and 33 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') read with Section 9 (2) of the Central Sales Tax Act, 1956 ('CST Act'), both for the first quarter of 2013-14.

2. The facts are that the registration certificate of the Petitioner, JBN Impex Private Limited, was cancelled by the 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 Act 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.

3. It is stated that on 15th February 2014 the aforementioned default notice 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 affirming the earlier order dated 15th February 2014.

4. On 29th September 2015 the impugned default notices of assessment of tax, interest and penalty under Section 9 of the CST Act were issued for the first 2013-14. In terms of the said notice, additional demand of tax and interest of Rs. 2,66,58,413 was raised. The penalty notice sought to levy penalty of Rs. 2,03,07,463. It was alleged that the Petitioner had made 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

5. However, a perusal of the said notice of tax and interest reveals that the columns titled 'Turnover reported by dealer', 'Turnover assessed', 'Tax reported/paid' and 'Tax assessed' are all filled with the figure '0'. Yet, a demand for a sum of Rs. 2,66,58,413 as additional tax and interest has been raised.

6. It was admitted by Mr. Satyakam, learned Additional Standing counsel for the Respondent, that the above impugned notices are erroneous and probably as a result of a glitch in the system. He volunteered that during the pendency of this petition on 31st May 2016 a fresh notice of default assessment of tax and interest under Section 32 of the DVAT Act has been passed by the AVATO wherein it has been *inter alia* stated: "The assessment order dated 29/09/2015 Ref. No. 150081840391 inadvertently framed under CST Act instead of DVAT Act. Hence rectified accordingly."

7. However, on closer scrutiny it is obvious that even this order dated 31st May 2016 has been passed without application of his mind as is evidenced from the fact that the columns 'turnover reported by the dealer', 'turnover assessed' and 'Tax reported/paid' are filled by the figure '0' and yet the tax has been assessed at Rs. 2,03,07,461.

8. Mr. Satyakam is unable to dispute that even this subsequent notice dated 31st May 2016 suffered from as serious an error as the previous ones and that this was system generated.

9. Consequently, the Court has no hesitation in declaring the impugned notices of assessment tax, interest and penalty both dated 29th September 2015 under Section 9 of the CST Act as well as the subsequent notice of default assessment of tax and interest under Section 32 of the DVAT Act dated 31st May 2016 to be invalid. They are accordingly quashed.

10. The question now is about the future course of action. As far as the first quarter of 2013 is concerned, Mr. Jain categorically states that the Petitioner

has neither made any purchase nor any sale and therefore there is no question of a demand of tax under the DVAT Act being raised. The case of the Department as is evident from the fresh default notice of assessment of tax and interest dated 31st May 2016 is that the Petitioner had made purchases from the above four entities which are termed as 'suspicious or cancelled dealers'.

11. Given the contradictory stands of the Department on the one hand and the Petitioner on the other , it is directed that within four weeks from today the AVATO/concerned Assessing Officer (AO) of Ward No. 8 will issue a notice to the Petitioner setting out the details of the dates on which purchases are supposed to be have been made during the first quarter of 2013-14 by the Petitioner from any of the above four entities and enclose the supporting documents if any. The AVATO/AO will also disclose in the said notice any other information in his possession leading to the conclusion that either any or all of the above four entities were either not functional during the first quarter of 2013 or where their registration was cancelled, the date(s) of such cancellation. The AVATO/AO will also communicate the date on which the Petitioner should appear before him. Mr. Rajesh Jain, learned counsel for the Petitioner states that the notice can be served on him and he will accept such notice on behalf of the Petitioner.

12. It is made clear that once such notice is served, the Petitioner shall appear through its authorized representative (AR) before the AVATO/AO on the date and time fixed and furnish the information/documents as are available with it. The AVATO/AO will comply with the principles of

natural justice and pass appropriate orders.

13. The petition is disposed of in the above terms.

14. Order be given *dasti* to learned counsel for the parties under the signature of the Court Master.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JUNE 01, 2016/*Rm*