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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ W.P.(C) 7770/2012

CAVINKARE P. LTD ..... Petitioner
Through: Mr. Vineet Bhatia, Mr. Ruchir Bhatia Advocates.

versus

COMMISSIONER, VALUE ADDED TAX AND ORS ..... Respondents
Through: Mr. Naushad Ahmed Khan, ASC (Civil) with Ms. Astha Nigam, Ms.Neelam Kholia,Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% 05.04.2016

1. This writ petition, filed by Cavinkare Pvt. Ltd., seeks to quash the orders dated 10th and 17th September 2012 passed by the Value Added Tax Officer (Enforcement) ('VATO'), Department of Trade and Taxes (DT&T), Government of NCT of Delhi.

2. The Petitioner is engaged in the business of manufacture of personal care products having its registered office in Chennai and branches in various other states all over India. Its Delhi office is registered with the DT&T since 1991. It is stated that the Delhi office of the Petitioner receives stocks for sale by way of transfer from the registered office as well as branches from

other states. In fact it does not make any purchase in Delhi and therefore also does not claim any input tax credit. It is stated that the Petitioner has been regularly filing returns and paying taxes. Para 6 in the petition gives a table of the value added tax (VAT) as well as central sales tax (CST) paid by the Petitioner since 2006-07.

3. It is stated that under stock transfer challan dated 30th August 2012 (concerning 447 cartons/cases) and another challan dated 31st August 2012 (concerning 48 cases), consignments of Raga Shampoo were sent by way of stock transfer from the Chennai branch and the Petitioner received the said consignment in its Delhi office on 10th September 2012. It is stated that the goods were being unloaded at the Petitioner's godown in Dilshad Garden. When 240 out of 447 cartons had already been unloaded, the VATO (Enforcement) arrived at the spot and asked for the requisite documents consisting of the stock transfer challan, GR and road permit. It is asserted that despite these documents being shown to the VATO (Enforcement), the driver was compelled to take the vehicle to the DT&T and forced to sign on a cyclostyled statement. The remaining consignment of 207 cartons was seized under '*Mal Roko Adesh*' dated 10th September 2012. The reasons for seizure of the goods were stated to be 'without bills'. The detention order was passed on the same day on the basis of the said statement and has been challenged in the present petition.

4. The Petitioner states that on 12th September 2012, it reported the matter to the Deputy Commissioner (Enforcement), DT&T ('Respondent No. 2'), but the Respondent No. 2 was not prepared to release the consignment unless

the tax and penalty was deposited by the Petitioner.

5. It is stated that the Petitioner made another representation to the Respondent No. 2 on 14th September 2012 in which the circumstances under which the consignment was received by way of stock transfer from Chennai was explained. The authorized representative of the Petitioner also appeared before the VATO on 17th September 2012 and produced all the original documents. However, on that date itself the VATO passed the impugned order creating a tax demand of Rs. 67,068 and the penalty of Rs. 2,14,618 as a condition for release of the detained goods. The said sums were calculated on the basis of inventory of 207 cases.

6. The Petitioner states that in order to get the goods vehicle and the goods released, the Petitioner was compelled to deposit the aforementioned tax and penalty amount on 21st September 2012 and got the possession of the vehicle and goods.

7. It is *inter alia* submitted that since the vehicle was already stationary when the goods were being unloaded there was no power in terms of Section 61 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') to detain the vehicle or the goods. Secondly, it is asserted that detention could have been ordered only if the consignment was not accompanied by proper documents, whereas in the present case the documents accompanying the consignments were produced before the VATO. Thirdly, it is submitted that for exercising the power of interception and detaining the goods, there had to be a specific delegation order issued by the Commissioner in Form-DVAT-50. Since no

such authorisation was shown to have been issued, the entire proceedings were vitiated. It is further submitted that since there was no sale of the goods in question, there was no occasion to raise a demand of value added tax. The further grounds urged are that the officer who detained the goods was himself the officer who assessed the tax and imposed penalty. It is stated that since the detention of the goods, passing of the detention order and imposition of penalty are entirely without the authority of law, the Court should exercise its powers under Article 226 to quash the impugned orders.

8. Pursuant to the notice issued in this petition on 14th December 2012, a counter affidavit as been filed by the Respondents, in which a preliminary submission has been made to the effect that the vehicle was plying on Shahdara Road when it was stopped. In other words, it is denied that at the time of interception, the vehicle was stationary. It is further stated that the driver of the vehicle was not carrying the requisite documents and therefore the vehicle was detained in exercise of powers under Section 61 of the DVAT Act. It is stated that the statement of the driver was recorded at the spot and '*Mal Roko Adesh'* was also filled up at the spot on the basis of his statement. It is not denied that the representations made by the Petitioner on 12th and 14th September 2012 were received by the DT&T. It is stated that the letter submitted on 13th September 2012 on behalf of the Petitioner to the Additional Commissioner was without any authority and therefore was not acted upon. It is then stated that GR which was produced was a 'delivery note' and did not indicate the form of transportation. It was in the above circumstances the contentions of the Petitioner were rejected and the impugned order creating demand of penalty was passed.

9. Interestingly, in the counter affidavit, no preliminary objection is raised as to the maintainability of the petition. However, in the course of arguments, learned counsel for the Respondents did submit that the Petitioner had an efficacious alternative remedy of filing objections against the impugned notices of default assessment of tax and interest as well as penalty under Section 74 of the DVAT Act and thereafter an appeal before the Appellate Tribunal under Section 76 of the DVAT Act. However, for the reasons indicated hereinbelow the Court finds that the Respondents have acted without jurisdiction and in gross abuse of the powers under the DVAT Act. Therefore the Court is constrained to invoke its power under Article 226 of the Constitution.

10. At the outset it requires to be noticed that the order of detention as well as the order creating the demand of tax and penalty have been issued in pre-printed forms. Even the statement of the Driver was in a pre-printed form with only the name, vehicle no. description of goods, place of interception and reasons being written by hand. The reason for the detention is that the consignment was 'without bills'. The order creating the demand of tax and imposing penalty is also in a pre-printed form. It only records the name of the driver, the name of the representative of the Petitioner who appeared before the VATO and the date on which they appeared. The pre-printed form simply states, after noting the above facts, that "The assessment of penalty and of tax is as under/as per Annexure". In other words, no reasons have been indicated as to why an assessment was being made of tax, interest and penalty. There is no noting or discussion of the submissions made

before the VATO.

11. In paras 13 and 14 of the writ petition, a specific reference is made to the representations made by the Petitioner on 12th and 14th September 2012. In reply to the above paragraphs, in the counter affidavit, there is no denial that such representations were in fact made. A copy of the representation dated 14th September 2012 reveals that the Petitioner has explained in detail the manner in which the above consignments were received by the Petitioner by way of stock transfer from its godown at Chennai and how when more than half of the consignments had been unloaded, the VATO reached the spot. The impugned order does not mention any of these facts.

12. In other words, there is nothing to indicate, from either the detention order or the impugned notice of assessment and penalty that the VATO had applied his mind to the facts and circumstances under which the vehicle and the goods in question were seized. To say the least, this is the most unsatisfactory manner of dealing with the interception of goods and the consequent assessment of tax and penalty. Earlier too, this Court has on several occasions expressed its displeasure of the use of the pre-printed forms by the DT&T while making assessment of tax and penalty. One such instance is an order dated 31st August 2015 passed by this Court in ST. APPL No. 28 of 2013 ***(Aero Club v. Commissioner Trade & Taxes, Delhi (2015) 85 VST 459 (Del.)***.

13. In this case, it was being asserted by the Petitioner that there was only a stock transfer from the company's branches and that there was no sale as

such of the stock. What is surprising is that the impugned order does not even note the said contention much less deal with it. While an effort has been made in the counter affidavit to summarize the statements that were made before the VATO, the impugned order itself does not note any of these contentions. In particular, the assertion now made that at the time when the vehicle was intercepted, it was moving on Shahdara road and not stationary, is not mentioned in the impugned order. In the facts and circumstances, the Petitioner is justified in stating that there was no occasion for the VATO to have seized the vehicle and the goods under Section 61(2) of the DVAT Act.

14. On the aspect of due authorisation of VATO for undertaking the exercise of interception of vehicles and detention of goods in question, the Petitioner has asserted in para 25 of the petition as under:

> "That it submitted that detention order dated 10.9.2012 is a nullity also for the reason that as per section 68 of the Act read with Rule 65 of the Delhi Value Aded Tax Rules, 2005, Respondent No.1 is required to appoint an officer for exercising powers in Chapter X by granting authority in Form DVAT-50. To the best of the knowledge of the Petitioner, no authorization in Form DVAT-50 was issued. Consequently, the entire proceedings conducted and carried out by Respondent No.3 being without jurisdiction is null and void."

15. The above assertion only meets with the bare denial in the counter affidavit and not a specific denial. It is simply stated "the contents of paras 24 to 26 are wrong and denied. Each and every averment made in these paras are specifically denied". No attempt has been made to deal with the issue of authorisation enabling the VATO concerned to undertake the exercise of interception of the vehicle in question and to detain the goods.

The impugned order of detention and the consequent order of assessment stands vitiated on this score as well.

16. If the Delhi office of the Petitioner was registered under the DVAT Act, and has been regularly filing its tax returns and depositing the VAT and CST since 2006-07, and has been following the same system of receiving goods by way of stock transfer from its Chennai and other branches, the VATO should have in the instant case taken note of the above facts and taken the trouble of discussing the circumstances under which the truck happened to be intercepted and the goods detained. What the Court has found in the present case is a complete non-application of mind by the VATO, not only to the facts and circumstances of the case but also to the requirement of the law.

17. Consequently, the Court sets aside the impugned detention order dated 10th September 2012 and the consequent order of assessment of tax and penalty dated 17th September 2012. The amount deposited by the Petitioner by way of tax and penalty shall be refunded to the Petitioner in accordance with law not later than a period of four weeks from today.

18. The petition is allowed in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 05, 2016/mg