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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2314/2015 & CM No. 4147/2015 (for stay)

JAYCON INFRASTRUCTURE LTD.

..... Petitioner

Through: Mr. S. Ganesh, Senior Advocate with
Mr. Ruchir Bhatia, Advocate.

versus

COMMISSIONER OF TRADE & TAXES, DELHI
& ORS.

..... Respondents

Through: Mr. Peeyoosh Kalra, Additional
Standing counsel with Ms. Sona Babbar,
Advocate.

WITH

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W.P.(C) 2398/2015 & CM No. 4301/2015 (for stay)

TIRATH RAM AHUJA PVT. LTD.

..... Petitioner

Through: Mr. S.K. Sarwal and Mr. Sumit Batra,
Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ANR. Respondents

Through: Mr. Peeyoosh Kalra, Additional
Standing counsel with Ms. Sona Babbar,
Advocate.

WITH

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W.P.(C) 2536/2015 & CM No. 4530/2015 (for stay)

AHLUWALIA CONTRACTS (INDIA) LTD.

..... Petitioner

Through: Mr. S.K. Sarwal and Mr. Sumit Batra,

Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ANR. Respondents
Through: Mr. Peeyoosh Kalra, Additional
Standing counsel with Ms. Sona Babbar,
Advocate.

AND

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W.P.(C) 3909/2015

AHLUWALIA CONTRACTS (INDIA) LTD. Petitioner
Through: Mr. S.K. Sarwal and Mr. Sumit Batra,
Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. Respondents
Through: Mr. Peeyoosh Kalra, Additional
Standing counsel with Ms. Sona Babbar,
Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

28.04.2016

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Dr. S. Muralidhar, J.:

1. The common question that arises in all these writ petitions concerns the validity of orders passed by the 'Designated Authority' rejecting the Petitioners' applications under the Delhi Tax Compliance Achievement Scheme, 2013 (hereafter 'Amnesty Scheme').

2. Under Section 107 of the Delhi Value Added Tax Act, 2004 ('DVAT Act'), the Government of the National Capital Territory of Delhi ('GNCTD') is empowered to notify, in the official gazette, amnesty scheme(s) covering payment of tax, interest, penalty or any other dues under the DVAT Act relating to any period ending before 1st April 2013 subject to such conditions and restrictions as may be specified therein.

3. Pursuant thereto the Amnesty Scheme was notified by the GNCTD on 20th September 2013. Under clause 2(c) of the Amnesty Scheme, the 'Designated Authority' is defined to mean an officer not below the rank of Joint Commissioner as notified by the Commissioner, Value Added Tax (VAT) for the purposes of the Amnesty Scheme.

4. The Court has been shown an 'order-instruction' issued by the Department of Trade and Taxes ('DT&T') through the Special Commissioner (HR) dated 30th April 2014 naming 7 Additional Commissioner s(T&T) of various zones as 'Designated Authority' for the disposal of applications received under the Amnesty Scheme for their respective zones/branches with immediate effect. The order states that it has been issued with prior approval of the Commissioner (T&T).

5. Each of the Petitioners in these writ petitions availed of the Amnesty Scheme by submitting applications. In the case of the Petitioner in Writ Petition (C) Nos. 2536/2015 and 3909/2015, the applications were filed for the years 2006-07, 2007-08 and 2008-09 on 28th February 2014 and for the years 2009-10, 2010-11, 2011-12 and 2012-13 on 18th February 2014.

Likewise, the Petitioner in Writ Petition (C) No. 2314/2015 filed applications for the years 2009-10, 2010-11, 2011-12 and 2012-13 on 18th February 2014 and in Writ Petition (C) No. 2398/2015, the applications were filed for the years 2010-11, 2011-12 and 2012-13 on 5th February 2014.

6. It is stated that as far as the Petitioner in Writ Petition (C) Nos. 2536/2015 and 3909/2015 is concerned, the applications filed were processed by the DT&T and a discharge certificate in DSC-3 was issued on 20th June 2014 for all the years for which the applications were filed providing immunity as per Clause 5 of the Amnesty Scheme. Similarly, a discharge certificate in DSC-3 was issued to the Petitioner in Writ Petition (C) No. 2398/2015 on 19th August 2014. However it is stated in Writ Petition (C) No. 2314/2015 that the Petitioner was not issued a discharge certificate in DSC-3 as stipulated in Clause 4 of the Amnesty Scheme.

7. At this stage it must be noted that Clause 4 of the Amnesty Scheme sets out in detail the procedure for making of the declaration and payment of tax dues. Under Clause 4(1), the declaration is expected to be made to the Designated Authority before the time specified therein. Under Clause 4(2), the Designated Authority issues an acknowledgment of the receipt of the declaration in Form DSC-2. Under Clause 4(6), the declarant shall furnish to the Designated Authority details of all payments made from time to time under the Amnesty Scheme. Under Clause 4(7), the acknowledgment of discharge of dues is issued to the declarant by the Designated Authority within 15 days in Form DSC-3 provided that the declarant had furnished the

details of full payment of the declared tax dues payable under Clause 4(4).

8. Clause 5(2) of the Amnesty Scheme states that the declaration made under Clause 4(1) shall be conclusive upon issuance of acknowledgment of discharge under Clause 4(7) and no matter shall be reopened or reassessed or reviewed thereafter in any proceedings under the Amnesty Scheme or under the DVAT Act before any authority or Court. However, this is made subject to the provisions of Clause 8 which deals with the failure to make true declaration.

9. Clause 8 of the Amnesty Scheme reads as under:

“8. Failure to make true declaration

(1) Notwithstanding anything contained in clause 5 of the Scheme, where the Commissioner has, for a period beginning from 1st April, 2009, reasons to believe that the declaration was false in material particulars, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause as to why he should not be required to pay the tax dues unpaid or short-paid as per the provisions of the Scheme.

(2) If the Commissioner is satisfied, for reasons to be recorded in writing, that the declaration made by the dealer was substantially false,

(i) he shall within three months of service of notice under sub-clause (1) make assessment of tax and penalty under section 32 and 33 of the Act, as if that dealer had never made declaration under this Scheme. However, the dealer shall be entitled to the credit of tax paid by him under this Scheme; and

(ii) such dealer may be proceeded under sub-section (2) of section 89 of the Act for furnishing of false

declaration.

(3) No notice shall be issued under sub-clause (1) of this clause after the expiry of one year from the date of declaration.”

10. In the present writ petitions, each of the Petitioners, including the Petitioners in Writ Petition (C) Nos. 2398/2015, 2536/2015 and 3909/2015 who had initially been issued the discharge in From DSC-3, received a show cause notice (‘SCN’) referring to their having made claims which were not admissible and which were liable to be rejected by the DT&T. Each of the SCNs was issued by the respective Additional Commissioners acting as Designated Authority but purportedly in exercise of the powers under Clause 8(1) of the Amnesty Scheme.

11. The Petitioners responded to the said SCNs and appeared before the respective Designated Authorities. Subsequently, orders were passed by the Designated Authorities rejecting the applications of each of the Petitioners under the Amnesty Scheme.

12. In case of the Petitioner in Writ Petition (C) No. 2536/2015 and 3909/2015, the impugned order was passed by the Additional Commissioner on 11th February 2015. The Additional Commissioner directed the assessing authority to carry out rectification of assessments for all the relevant years for which the said Petitioner has applied under the Amnesty Scheme. This led the said Petitioner to approach this court through Writ Petition (C) No. 2536/2015 seeking to quash the order dated 11th February 2015.

13. Meanwhile, orders for assessment and penalty under Section 32 and 33 of the DVAT Act were for passed for the years 2006-07 to 2008-09. By and order dated 13th March 2015 in Writ Petition (C) No. 2536/2015, this court directed the Respondents to not give effect to the abovementioned assessment orders. Subsequently, the Petitioner filed Writ Petition (C) No. 3909/2015 challenging the orders passed under Section 32 and 33 of the DVAT Act.

14. The impugned orders passed in the other writ petitions were likewise issued by the concerned Additional Commissioner in similar fashion.

15. The short question that arises for consideration of the Court is whether the rejection of the applications of the Petitioners by the Additional Commissioners acting as 'Designated Authority' was without jurisdiction inasmuch as Clause 8 of the Amnesty Scheme envisages only the Commissioner VAT passing such orders.

16. In response to the notice issued in these writ petitions, a reply has been filed by the Respondents where, inter alia, on this specific aspect, the stand taken is that the power in terms of Clause 8 of the Amnesty Scheme has been exercised by Additional Commissioners who are officers authorised to act on behalf of the Commissioner in terms of Sections 66 and 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules').

17. Section 66(1) of the DVAT Act states that for the purposes of the DVAT

Act, the Government shall appoint a person to be the Commissioner, VAT. Under Section 66(2)(a) of the DVAT Act, the Government may appoint Special Commissioners, Value Added Tax Officers ('VATOs') and such other persons with such designation as the Government thinks appropriate, to assist the Commissioner in the administration of the DVAT Act.

18. Under Section 66(2)(b) of the DVAT Act, the Commissioner may with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties.

19. Section 68 of the DVAT Act deals with delegation of the Commissioner's powers. Under Section 68(1), the Commissioner may delegate any of his powers under the DVAT Act to any of the VAT authority subject to such restrictions and conditions as may be prescribed.

20. In exercise of the powers under Section 66(2) and 68(1) of the DVAT Act, orders have been issued by the Commissioner from time to time delegating the powers of the Commissioner to various other officers subordinate to the Commissioner. One such recent order is an order dated 12th November 2013 issued under Section 68 of the DVAT Act by the Commissioner. The order contains four columns where Column 1 gives the serial number, Column 2 gives the Section of the DVAT Act, Column 3 gives the description of powers and Column 4 gives the description of the officer to whom the power is delegated. In other words, section-wise there is a specific delegation of powers to various officers by designation. What is significant, as far as this order is concerned, is that in the column which

gives the section of the DVAT Act, Section 107 is not included. The Respondents have not placed before the Court any other order issued either earlier or later to the above order by which the Commissioner, VAT has delegated any of his powers under the Amnesty Scheme including, most importantly, the powers under Clause 8 thereof to any other subordinate officer or to even a Designated Authority.

21. As already noticed earlier, the order-instruction issued on 30th April 2014 merely declares several Additional Commissioners as Designated Authority for the purposes of disposal of applications received under the Amnesty Scheme. Such Designated Authorities would exercise powers as mentioned in Clauses 4 and 5 of the Amnesty Scheme. Clause 8 of the Amnesty Scheme does not envisage the power therein to be exercised by a Designated Authority but only by the Commissioner. Unless there is a specific order issued by the Commissioner under Section 68(1) of the DVAT Act delegating his powers under Clause 8 of the Amnesty Scheme to any other subordinate officer, it cannot be presumed that an Additional Commissioner, who has been declared as a Designated Authority, can ipso facto exercise the powers of the Commissioner under Clause 8 of the Amnesty Scheme.

22. The Court's attention has been drawn to a judgment dated 15th December 2015 passed by this Court in Writ Petition (C) No. 6340/2013 (*Yongnam Engineering & Construction (Private) Limited v. Commissioner, Delhi Value Added Tax*) where the question arose whether the power under Section 36A(8) of the DVAT Act could be exercised by an officer other than

the Commissioner, particularly when that provision envisages the powers being exercised only by the Commissioner. Just as in the present case, there the Respondents were unable to produce before the Court an order issued by the Commissioner delegating his powers under Section 36A(8) of the DVAT Act to any other subordinate officer. In the circumstances, the Court negated the plea that the Commissioner could have authorised a VATO to exercise such powers without issuing a specific order of delegation of such power.

23. Consequently, as far as the present cases are concerned, the Court is satisfied that the impugned orders rejecting Petitioners' applications could not have been passed by an Additional Commissioner who has been declared as Designated Authority in exercise of the powers under Clause 8 of the Amnesty Scheme, which power only could have been exercised by the Commissioner, VAT and particularly in the absence of any order issued by the Commissioner under Section 68 (1) of the DVAT Act delegating such power to any other VAT officer.

24. Mr. S. Ganesh, learned Senior counsel for the Petitioners was candid that in response to the SCNs none of the Petitioners raised a specific objection to the power and jurisdiction of the Additional Commissioner to either issue the SCN or to adjudicate it. However, as rightly pointed out by him, since this goes to the very root of the matter and involves a pure question of law, the Petitioners cannot be precluded from urging it before this Court.

25. The Court also notes that under Clause 8(3) of the Amnesty Scheme, the

SCN under Clause 8(1) would have to be issued within one year from the date of filing of the declarations by the applicants. Admittedly, that period of one year in all these cases has elapsed. Therefore, it is not possible for the Court to place the said applications before the Commissioner for a fresh decision.

26. For the aforementioned reasons, the impugned orders issued by the Additional Commissioners rejecting the applications of each of the Petitioners in exercise of the power under Clause 8 of the Amnesty Scheme are hereby quashed. All other actions taken or orders passed by the Respondents pursuant to the said impugned orders are also accordingly declared to be invalid.

27. The writ petitions and the applications are accordingly disposed of in the above terms.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 28, 2016

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