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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ VAT APPEAL 29/2016 & C.M.Nos.38893/2016 & 38961/2016

HDFC BANK ..... Appellant

Through: Ms.Kavita Jha, Mr.Shammi Kapoor and Ms.Purva Juneja, Advts.

versus

COMMISSIONER OF VALUE ADDED TAX, DELHI ..... Respondent

Through: Mr.Satyakam, ASC, GNCTD

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **21.10.2016**

C.M.38961/2016 (for delay)

For the reasons mentioned in the application, the delay in re-filing the appeal is condoned.

Applications stands disposed of.

C.M.Nos.38893/2016 (for exemption)

Exemption is allowed subject to just exceptions.

Application stands disposed of.

VAT APPEAL 29/2016

Issue notice. Mr.Satyakam, ASC, GNCTD accepts notice on behalf of the respondent.

In this appeal for 2006-2007, the question of law urged is whether the assessee/bank's action in sale of repossessed cars by it is subject to VAT levy? The VAT Tribunal had ruled that such activity is subject to levy. In identical circumstances this court in its judgment reported as ***Citi Bank vs. Commissioner of Sales Tax*** **2016 (1) AD (Del) 581** had ruled against the assessee; that judgment was followed in ***HDFC Bank vs. Commissioner of Value Added Tax, Delhi*** (VAT APPEAL 26/2016 decided on 26.09.2016). At the same time, in ***HDFC Bank's*** case (supra) the court had held that levy of almost 200% penalty was not justified. In the present case, levy of penalty is above 150%.

The main question of law is answered against the assessee. However, the matter is remitted to the adjudicating authority as to the proportionality of the penalty to be imposed having regard to the fact that the issue is debatable.

The appeal is partly allowed to the above extent.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 21, 2016
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