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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 8489/2014 CM No. 19632/2014 (for stay)**

DELHI CAR RENTAL SERVICES ..... Petitioner
Through: Mr. Rajesh Jain with Mr. Virag Tiwari and Mr. K.J.Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr. Peeyoosh Kalra, Additional Standing Counsel for GNCTD with Ms. Mahua Kalra, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **22.02.2016**

1. The background to this petition by M/s. Delhi Car Rental Services through its proprietor Mr. Harvinder Singh is that the Petitioner is engaged in providing cars on rental basis to various companies. For the Assessment Year ('AY') 2004-05, a demand was raised against the Petitioner under the Delhi Value Added Tax Act, 2004 (DVAT Act) which was set aside by the Appellate Tribunal, Value Added Tax ('AT') and that was not further challenged by the Respondent.

2. As far as the present AY 2005-06 is concerned, the previous year's turnover was taken as a basis and a default notice of assessment of tax under

Section 32 of the DVAT Act was issued by the Value Added Tax Officer ('VATO'), Special Zone on 16th June 2009. On the same day a default notice of penalty under Section 86 (4) of the DVAT Act was issued levying a penalty of Rs. 1 lakh on the Petitioner for not being registered under the DVAT Act. The objections filed by the Petitioner to the above orders were sustained by the Special Commissioner i.e., the Objection Hearing Authority ('OHA') by an order dated 23rd October 2013 and the matter was remanded to the VATO for a fresh decision.

3. In the meanwhile, the AT allowed the Petitioner's appeal for AY 2004-05 which, as already noticed, was not further challenged by the Respondent. Admittedly, in the remanded proceedings for AY 2005-06, the Petitioner did not appear before the VATO. On 22nd October 2014 the VATO passed orders of default assessment of tax and penalty, which have been challenged in this petition.

4. A preliminary objection has been raised by Mr. Peeyoosh Kalra, learned Additional Standing Counsel for the Respondent, as regards the maintainability of the present petition. He submits that although in the first round the Petitioner challenged the order of the VATO successfully before the OHA, the Petitioner failed to appear before the VATO in the remand proceedings. In the circumstances, it is submitted that the Petitioner should not be permitted to bypass the remedy available in terms of the DVAT Act as far as the order passed on remand is concerned.

5. Having considered the above submissions, the Court is of the view that

the OHA having remanded the matter to the VATO in the first round, the Assessee ought to have appeared before the VATO and urged whatever points it wished to in accordance with law. Learned counsel for the Petitioner states that the Petitioner is prepared to now appear before the VATO and urge the points in its favour both on facts as well as on law.

6. In that view of the matter, the impugned orders dated 22nd October 2014 passed by the VATO of default assessment of tax and penalty are hereby set aside and the matter is restored to the file of the VATO for a fresh decision uninfluenced by his earlier decision which has been set aside.

7. It is made clear that all the contentions of both the parties on law and facts are reserved for being urged before the VATO. The Petitioner will appear before the VATO on 3rd March 2016 at 11 am.

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

9. Order *dasti*.

S. MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 22, 2016
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