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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 6656/2015 & CM 12140/2015, 13505/2015**

BRILLIANT METALS PVT. LTD. ..... Petitioner
Through: Mr. Rajesh Jain, Mr. Virag Tiwari and Mr. K.J. Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr. Avtar Singh, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **03.02.2016**

Dr. S. Muralidhar, J. :

Introduction

1. This writ petition by Brilliant Metals Private Limited seeks to challenge the impugned default assessment notices of tax and interest and penalty dated 13th January, 2015 and 19th June, 2015 respectively issued/uploaded on the website of the Department of Trade & Taxes (DT&T), Government of National Capital Territory of Delhi (GNCTD) as well as notice dated 19th June, 2015 issued under Section 59 (2) of the Delhi Value Added Tax Act, 2004 (DVAT Act). The petition points to the perils of an imperfectly configured computerised system of demand and assessment of value added taxes by the DT&T.

2. On 24th July, 2015, this Court passed an interim order restraining the

Respondent from taking steps pursuant to the impugned notice dated 19th June, 2015 under Section 59(2) of the DVAT Act and pursuant to the default assessment order of the same date. The Court further directed "Insofar as the order dated 13.01.2015, the petitioner is at liberty to seek appropriate remedies under the Act."

Background Facts

3. The background facts are that the Petitioner, which is a registered dealer under the DVAT Act, filed statutory returns for all four quarters of financial year 2013-2014 in Form DVAT-16. Against the output tax liability arising from the sales made by it, the Petitioner claimed the benefit on input tax benefit in terms of Section 2(1)(r) read with Section 9 of the DVAT Act. According to the Petitioner, these transactions of sales matched with the corresponding purchase transactions as per the verification report of Annexures 2A and 2B for the aforementioned period as available on the website of the DT&T.

4. It is stated that on 26th March, 2014, the Petitioner was constrained to deposit Rs.10 lakhs as advance tax for the period 1st January 2014 to 31st March 2015. On 13th August 2014, the enforcement team of the DT&T visited the Petitioner's premises. The Petitioner states that the details of the sales and purchases made till then were provided. The Petitioner states that on being pressurised by the enforcement team, a further sum of Rs.12 lakhs as tax was deposited on 14th August, 2014.

5. The Petitioner states that on 26th August 2014, an unsigned machine

generated notice under Section 59(2) of the DVAT Act was uploaded on the website of the DT&T requiring the Petitioner to produce the records on 1st September, 2014 concerning the purchases made during 1st April, 2013 to 31st March, 2014.

6. According to the Petitioner, it submitted a detailed reply on 1st September, 2014 enclosing certified copies of the following documents:

i. Monthly VAT & CST account specifying total output/input tax and net payable or excess tax credit due to carry forward.

ii. Record of inter-state sale (C Form) and transfer (F form) of goods.

iii. Purchase register in Form DVAT-30.

iv. Sales Register in Form DVAT-31.

v. Stock Register

vi. Bank Statements

vii. Copy of purchase invoice along with GR.

viii. Proof of delivery of goods

The impugned order dated 13th January 2015

7. It is stated that without adverting to the reply filed by the Petitioner, the Value Added Tax Officer (VATO) proceeded to pass a default assessment order on 13th January, 2015 for the 4th quarter of 2013-2014 creating a demand of Rs.3,73,90,663/-. The said order, generated by the computer system, contained the name of the VATO but no signature. The first portion of the said order read: "Whereas I am satisfied that the dealer has not

furnished returns/ furnished incomplete returns or incorrect returns/ furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004/any other reason”. None of these alternatives were tick marked or selected. So it is not possible to discern which of these reasons apply.

8. The next paragraph referred to the fact that the Authorised Representative (AR) of the Petitioner was present on 1st September, 2014 in response to the notice issued under Section 59(2) of the DVAT Act and on the subsequent dates, i.e., 8th & 9th September, 2014. It noted that M/s. Classic Sales India (CSI) was a registered dealer of Ward 101 and when the premises of the said dealer were visited it was found that “the firm was not found functioning.” Subsequently the registration of CSI was cancelled by the concerned VATO and the returns of the said entity were also rejected. The VATO of the Petitioner was intimated by the VATO of Ward 101 by an order dated 25th August, 2014 that no goods had changed hands.

9. The order dated 13th January, 2015 proceeded to state: “On scrutiny of the purchases of M/s. Brilliant Metals P. Ltd. it found that 8 firms are also cancelled due to adverse report of the VATI of the concerned Ward VATI/E-1 VATI. All these firms found non-functional......These firms seem bogus as in spite of very high GTO they did not try for revival.” Barring the mention of CSI the names of the other seven 'bogus' dealers were not mentioned. The order dated 13th January, 2015 stated: “the purchase from these dealers is rejected and ITC claimed is rejected for the year 2013-14.” The purchases rejected worked out to Rs.21,00,24,892 @ 5 per cent and

Rs.18,35,57,092/- @ 12.5 per cent with interest and penalty. The Petitioner was directed to pay an amount of Rs.3,73,90,663/- and furnish details of such payment in Form DVAT-27A along with proof of payment on or before 14th March 2015. The tax period for which the above sum was demanded was "the fourth quarter of 2013". On the same date, i.e., 13th January, 2015, the VATO issued notice of assessment of penalty under Section 33 and called upon the Petitioner to pay a penalty of Rs.3,34,45,882/- on or before 14th March, 2015.

Appeal before the OHA

10. Aggrieved by the above order dated 13th January, 2015, the Petitioner filed an appeal before the Objection Hearing Authority (OHA). By an order dated 24th March, 2015, the OHA passed an order for pre-deposit directing the Petitioner to deposit a sum of Rs.70 lakhs as a pre-condition to entertaining the objections. The Petitioner then remitted a sum of Rs.10 lakhs on 31st March, 2015 and Rs.28 lakhs on 6th April, 2015. On 31st March, 2015, when the appeal was listed for hearing before the OHA, it was noted that none had appeared for the appellant and no compliance in respect of the pre-deposit order was furnished. The appeal was accordingly dismissed for non-compliance with the condition of pre-deposit.

Further system generated orders and notices

11. The Petitioner states that on 15th June 2015, another default notice under Section 32 of the DVAT Act was uploaded on the website of DT&T. This default notice stated that being satisfied that the Petitioner was liable to pay tax and interest “on the basis of mismatch between the data filed online in

Annexure-2A with the Annexure-2B filed by the selling dealers", the VATO had issued a notice of default assessment dated 1st March 2014 for the tax period of the first quarter 2013-2014. The order stated that he was *suo moto* reviewing the said assessment order dated 1st March 2014, in exercise of the power under Section 74B(5) of the DVAT Act since it was noted that the buyers/sellers had revised their 2A/2B data in view of the changed position. Therefore, the assessment for the said period i.e. "the first quarter 2013-2014" was modified and "hence the demand stands as nil." Likewise the penalty amount was revised by a separate order of the same date, i.e., 15th June, 2015 to nil.

12. On 19th June, 2015, a fresh notice of default assessment was issued under Section 59(2) "on account of purchases made from suspicious dealer(s)" for "the fourth quarter of 2013-2014". The transaction noted in the said notice and the name of the dealer was as under:

S.No.	Party TIN	Name	Tax Period	Turnover	Rate of Tax under DVAT	ITC	Interest	Total amount due
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	07680428741	OMEGA SALES CORPORATION	Fourth Quarter -2013	1,00,20,084	5.00	5,01,004	87,298	5,88,302
			Total	1,00,20,084		5,01,004	87,298	5,88,302

13. The Petitioner was directed to produce records regarding the above purchase in the office of the VATO on 26th June, 2015 and produce books of accounts and all evidence. The list of documents to be produced was also set

out therein.

14. Strangely, without waiting for any reply, on the same date, i.e., 19th June, 2015, an order of notice of default assessment of tax and interest in Form DVAT-24 was issued by the VATO stating that no reply had been filed till then. The Petitioner was directed to pay a sum of Rs.1,19,67,436/-. This was again an unsigned order. At the foot of the order was appended the endorsement: "This order has been framed on the basis of 2A & 2B data as on 10th June, 2015." On the same date, i.e., 19th June, 2015, the notice of assessment of penalty under Section 33 was passed levying a penalty of Rs.5,01,004/- for the fourth quarter of 2013. Another separate order of penalty was passed on the same date levying a penalty of Rs.95,81,299/- under Section 86(11) of the DVAT Act for the second quarter of 2013. This again was an unsigned order.

15. The first anomaly in the above orders was that the notices under Section 59(2) of the DVAT Act and the corresponding notice of default assessments under Section 32 as well as penalty order under Section 33 were all passed on the same date, i.e., 19th June, 2015. The second anomaly was that whereas the default assessment order passed on 13th January, 2015 was purportedly for the fourth quarter of 2013 and involved the purchases made from Omega Sales Corporation (OSC), the subsequent notice dated 19th June, 2015 included the very same transactions of purchases from OSC for the fourth quarter of 2013, which resulted in the order of the same date, i.e., 19th June, 2015.

16. Another notice under Section 59(2) dated 19th June, 2015 was issued in respect of two other purchases made from JBN Impex Private Limited (JBN) by the Petitioner in the second quarter of 2013. Apparently JBN was also part of the eight allegedly bogus firms in respect of which the order dated 13th January, 2015 was passed although the names of seven of the eight bogus firms were not mentioned in that order. Again on the same day the above notice was issued i.e. 19th June 2015, the orders of default assessment of tax under Section 32 and penalty under Section 33 in respect of the above notices were also passed.

17. A common thread running through the above orders was that they were system generated and uploaded on the website of the DT&T. They gave no reasons and were mechanically issued without the orders even being signed. Also there was a confusion with the system, on the one hand, generating verification reports matching the Annexures 2A and 2B for the purchases made and, on the other hand, those very purchases being termed as suspicious/bogus purchases in the default notices. Thirdly, there was an overlap of the period for which notices were issued. The notice dated 26th August 2014, related to the alleged 'suspicious' transactions for the entire period 1st April 2013 to 31st March 2014, whereas the order dated 13th January 2015, was only for the fourth quarter of 2013. The subsequent notice dated 19th June 2015 was for the same period, i.e., fourth quarter of 2013 relating to purchases from OSC and the second quarter of 2013 insofar as purchases from JBN Impex were concerned. It is as a result of the above confusion that the Petitioner approached this Court with the present petition and on 24th July, 2015, the Court passed an interim order as noted

hereinbefore.

Response of the Department

18. In response to the writ petition, a short affidavit dated 22nd July, 2015 was filed by the DT&T. It was acknowledged that the Petitioner had filed online/revised returns for the period 1st April, 2013 to 31st March, 2014 comprising the four quarters. In this short affidavit, for the first time, a table was set out detailing the purchases made from "these eight bogus firms" for the period 1st April, 2013 to 31st March, 2014. Significantly, the names of the eight bogus firms (apart from CSI) and the details of the transactions involving them were not mentioned in the order dated 13th January, 2015, much less in the notice dated 26th August, 2014 issued under Section 59(2) of the DVAT Act. The eight bogus firms included JBN Impex, CSI and OSC, apart from Global Sales Agency (GSA). It was stated that the Petitioner had not challenged the order passed by the OHA on 31st March, 2015 before the Appellate Tribunal (AT), and ought not to be permitted to bypass that remedy by filing the present writ petition. It was further stated that the notice dated 15th June 2015, pertaining to the first quarter of 2013 was issued *suo moto* by the VATO of Ward 77 but when the Petitioner filed its online return of first quarter on 6th November, 2014, the same got matched and in view of the changed position, the default assessment had been made nil.

19. It was then stated by the DT&T in the short affidavit dated 22nd July 2015 in paras 10, 11 & 12 as under:

"10. That for Second and Fourth Quarter of the period from 01-

> 04-13 to 31-03-14 after filing revised returns on 20-03-15 and 26-03-15 no mis-match of Annexure- 2A and 2B has been detected by the system of the department.
>
> 11. That no infirmity/mis-match has been detected in the Third Quarter return of the petitioner filed on 13-02-14 and the same was taken instantly by the system.
>
> 12. That the Verification Report of Annexure-2A and 2B of all four quarters (2013-14) has been filed online by the petitioner company."

20. It was stated by the DT&T in para 13 of its short affidavit dated 22nd July 2015 that the notice (order) of default assessment dated 13th January, 2015 under Section 32 of the Act "is a consolidated notice towards all four quarters (1st April, 2013 to 31st March, 2014) and the same has to be read exclusively as it pertains to purchases shown from bogus/non-functioning firms." It is acknowledged that the notices dated 19th June, 2015 "were system generated notices and the same were inadvertently issued. However, when the said infirmity was brought to the notice of the Department, it has been decided to withdraw the said notices of default assessment and penalty." In fact by an order dated 17th July 2015, the DT&T withdrew the default notice of interest and penalty uploaded on 19th June, 2015. This was done under Section 74B of the DVAT Act, 2004 observing that the same should be treated as *non est*. In the same order, the Petitioner was asked to produce books of accounts and other evidence for the second and fourth quarter of 2013-2014 before the VATO, Ward 77. That letter was also uploaded on the website of the DT&T and this again did not contain the signature of the VATO.

21. The position that emerges from the short affidavit filed by the respondent on 22nd July, 2015 is that the system generated notices and orders dated 19th June, 2015 uploaded by the DT&T were treated as withdrawn. However, according to DT&T, the impugned order dated 13th January, 2015 under Section 32 of the DVAT Act was to be read as pertaining to all the quarters of 2013 although the said order itself specifically states that it is only for the fourth quarter of 2013.

CM 13505 of 2015

22. The Petitioner filed CM No.13505/2015 in which it was pointed out that on 15th June 2015, a nil demand was framed pertaining to the first quarter of 2013-2014. The Petitioner further pointed out that the system generated notices issued under Section 59(2) of the DVAT Act, which were uploaded on 19th June 2015, were made the subject matter of a batch of writ petitions in this Court including W.P.(C) No.6788/2015 titled ***M/s. Hello Furniture v. Commissioner, Trade & Taxes***. In the circumstances, it was prayed in the application, i.e., CM No.13505/2015, that the Court should, *inter alia,* restrain Respondent from taking any coercive step to recover the disputed demand in terms of notices dated 13th January, 2015.

23. By this time, as already noted, the Respondent had in the short affidavit on 22nd July 2015 stated that the notices dated 19th June, 2015 should be treated as *non est*. Secondly, since in terms of the Petitioner's revised returns there were matches of the purchase and sales transactions, the demand for the first quarter was revised as nil. Further, there was no mismatch detected

in the second, third and fourth quarters of 2013.

24. In CM No. 13505 of 2015 an order was passed by the Court on 3rd August, 2015 issuing notice and directing that “in the mean while no coercive measures be taken.”

25. In reply to the said CM No.13505/2015, the DT&T more or less reiterated its earlier short affidavit and confirmed that the notice/order dated 15th June, 2015 was passed “as no mismatch was detected by the system of Annexure 2A and Annexure 2B, whereas, the notice dated 13th January, 2015 was passed on special circumstances when the Department came to know about eight non-operational firms from which the Petitioner had shown purchases……” It was submitted that the DT&T had to recover Rs.3,73,90,663/- towards tax and interest and Rs.3,34,45,882/- towards penalty “pertaining to fictitious purchases made by the Petitioner during the period of 2013-14.” It was reiterated that the notice dated 19th June, 2015 “was issued due to the system error” and the same stood withdrawn by the subsequent notice dated 17th July, 2015.

26. At this stage, it requires to be noticed that by an order dated 28th August, 2015 passed in W.P.(C) No. 7379/2015 (***Bhumika Enterprises v. Commissioner, Value Added Tax***) and a batch of writ petitions (including W.P.(C) No.6788/2015 by M/s. Hello Furniture), the Court quashed all the system generated notices issued on 19th June, 2015 under Section 59(2) of the Act and noted that “the consequent orders passed thereon already stood withdrawn by the letters dated 17th July, 2015.” The Court clarified that this

would not come in the way of the DT&T issuing fresh notices under Section 59(2) of the Act "after application of mind by the concerned VATO and in accordance with law and to take steps pursuant thereto which would also be in accordance with law and would not be system generated notices or orders without human interface."

Non-issuance of C Forms

27. On 26th October, 2015, the Petitioner wrote to the VATO, Ward 77, regarding issuance of C-Forms against purchases made during 2014-2015 and 2015-2016. The attention of the VATO was drawn to Rule 5(4) of the Central Sales Tax (Delhi) Rules, 2005 ('Delhi CST Rules'). The VATO was requested to give the necessary command at the website so as to enable the applicant to proceed with its application for downloading of the C-forms for the year 2014-15 and 2015-16, respectively. However, by order dated 8th December, 2015, the VATO declined to accede to the request since no stay was granted by the High Court of the order dated 13th January, 2015. This led to another application, being CM No. 2440 of 2016, being filed by the Petitioner praying for a direction to the VATO to issue C-Forms to the Petitioner and to set aside the order dated 8th December, 2015.

28. In CM No. 2440 of 2016, the Court passed the following order on 22nd January, 2016:

> "1. Notice. Mr Avtar Singh, Advocate for the Respondent accepts notice.
>
> 2. The prayer in this application is for setting aside an order dated 08th December, 2015 passed by the Value Added Tax

Officer (VATO) declining the prayer of the petitioner for issuance of C forms.

3. It would be noticed at this stage that earlier the Petitioner had filed a separate application being CM No.13505/2015 in which, inter alia, the prayer was that the respondent should not take any coercive steps against the Petitioner during the pendency of the petition. In the said application on 03rd August, 2015 this Court had passed an order to the effect that no coercive measures should be taken against the Petitioner in the meanwhile.

4. The petitioner addressed a letter to the VATO on 26th October, 2015 regarding issuance of C Forms against purchases made during the years 2014-15 and 2015-16. The attention of the VATO was drawn to Rule 5 (4) of the Central Sales Tax (Delhi) Rules, 2005 ('Rules'). It was further pointed out that an interim order had been passed by the High Court on 3rd August, 2015 directing the Department not to take coercive measures. The VATO was, therefore, requested to give the necessary command at the website so as to enable the Petitioner to download the C forms for 2014-15 and 2015-16 respectively. It is the above request that has been rejected by the order dated 8th December 2015 passed by the VATO on the ground that there was no stay granted by the High Court and therefore, the Department was unable to allow the issuance of C forms.

5. A perusal of the impugned order shows that a reference is made to the earlier default assessment notice dated 13th January 2015. It is noted that the High Court had by its order dated 24th July, 2015 granted the Petitioner liberty to seek appropriate remedies in respect of the said order.

6. The Court is unable to appreciate how the Department can possibly reject the prayer for issuance of C forms without following the procedure outlined under Rule 5 (4) of the CST Delhi Rules which specifically requires the VATO to afford the applicant an opportunity of being heard before deciding to

withhold the issuance of C forms "for reasons to be recorded in writing".

7. The order dated 8th December, 2015 has been passed without giving any hearing to the petitioner despite the Petitioner making a specific request in that behalf by the letter dated 26th October, 2015. On this short ground, the Court sets aside the order dated 8th December, 2015 passed by the VATO and directs that the VATO will afford an hearing to the Petitioner on 27th January 2016 and thereafter pass an order on or before 29th January 2016 on the Petitioner's request for issuance of C forms. A copy of the said order will be furnished to the Petitioner immediately thereafter.

8. This application is disposed of in the above terms."

29. Pursuant to the above order of this Court, an order was passed by the VATO on 29th January 2016, once again rejecting the request of the Petitioner for issuance of C-Forms. This was essentially on two grounds – (i) There was an outstanding demand of tax and penalty in terms of order dated 13th January, 2015 for which there was no order of stay from the competent authority and, therefore, the issuance of C-Forms could be refused under Rule 5 (4) of the Delhi CST Rules; and (ii) the Petitioner had not availed of the remedy of going before the AT under Section 76 of the DVAT Act against the order of the OHA dismissing the Petitioner's appeal and instead had filed a writ petition in this Court.

30. In the meanwhile on 5th November, 2015, yet another notice of default assessment was issued under Section 59 (2) on account of transactions entered into with third parties for the second and the fourth quarter of 2013-2014. The Petitioner was directed to produce the books of accounts and

other relevant documents in relation to purchases made from JBN for the second quarter and purchases made from OSC for the fourth quarter, at the office of the VATO on 9th November, 2015. The Petitioner replied on 9th November, 2015 stating that the said default notice of assessment was in contempt of the order dated 24th July 2015 passed by the Court.

Submissions of counsel

31. At the hearing today it was submitted by Mr. Avtar Singh, Advocate for the DT&T, that the Petitioner was trying to avoid availing the statutory remedy available to it to challenge the dismissal of its appeal by the OHA before the AT and, therefore, the Court should not entertain the present writ petition. It was submitted that although the subsequent notices and orders dated 19th June, 2015 may have been issued inadvertently by the Respondent, the order dated 13th January, 2015 was perfectly justified since the Petitioner had indeed made bogus/suspicious purchases. He pointed out that as far as the notice dated 5th November, 2015 was concerned, a letter had been written on 19th November, 2015, informing the Petitioner that the notice dated 5th November, 2015 should be treated as *non est* and should be ignored in view of the order dated 13th January, 2015 under Section 32 of the DVAT Act and the notice of default assessment and penalty under Section 33 of the DVAT Act of the same date being sub-judice before this Court.

32. Mr. Avtar Singh further placed on record the profiles of the eight bogus firms including GSA, OSC and JBN, which indicated that their registrations had been cancelled either with effect from the date when they were originally registered or from some other date. The essential ground for

cancellation was that the said firms were non-functional.

33. In response to the above submissions, it was pointed out by Mr. Rajesh Jain, the learned counsel for the Petitioner, that there was total confusion in the DT&T as to what was owed by the Petitioner as tax for the various quarters of 2013-2014. While on the other hand in the short affidavit and the subsequent affidavit it was acknowledged that as far as the first quarter was concerned, the purchases matched and the default assessment for tax and interest was revised to nil by the notice dated 15th June 2015, and for the second, third and fourth quarter, there was no mismatch of Annexures 2A and 2B as verified by the system and yet the DT&T was persisting with the order dated 13th January 2015 that these very purchases were bogus and suspicious. It was pointed out that neither in the notice of 26th August 2014 nor while framing the assessment was the Petitioner informed of the basis on which the transactions were termed as suspicious/bogus.

34. Mr. Jain submitted that the assessment framed on 13th January, 2015 was in violation of the principles of natural justice. The VATO while framing those assessments failed to advert to the reply filed by the Petitioner. Reliance was placed on ***Oryx Fisheries Pvt. Ltd. v. Union of India 2011 (266) ELT 422 (SC)*** and ***Paharpur Cooling Towers Ltd. v. Assistant Commissioner of Commercial Taxes (Audit) [2015] 86 VST 546 (Kar.)***.

35. Mr Jain further submitted that in the light of the orders passed on 15th June, 2015 in respect of the first quarter of 2015 and the admission by the DT&T in regard to the other quarters of 2013 that there was no mismatch,

the order dated 13th January, 2015 has no legs to stand. According to him once the DT&T had framed an order of re-assessment on 19th June 2015, the earlier order dated 13th January, 2015 would not survive. Reliance was placed on ***Kundan Lal Shri Kishan v. CST (1987) 1 SCC 684*** and ***Deputy CCT v. H.R. Sri Ramulu (1977) 1 SCC 703***. As regards the failure by the DT&T to furnish the Petitioner with the material on the basis of which it was terming the transactions suspicious/bogus, reliance was placed on the decision in ***Negolice India Ltd. v. Director of Enforcement 2014 (305) ELT 278 (Del.)***.

36. Mr. Jain further pointed out that while framing the assessment for the fourth quarter of 2013-2014 on 13th January, 2015, the VATO had arbitrarily assessed the turnover as Rs.39,35,81,984/- whereas the declared turnover was Rs.9,22,52,121/-. The tax assessed at Rs.3,34,45,882/- was neither 5 per cent nor 12.5 per cent but worked out to 8.5 per cent, which rate was outside the scope of Section 4 of the DVAT Act. Neither was any input tax allowed nor the tax already deposited by the Petitioner accounted or while framing the above assessment. Mr. Jain pointed out that as of date Rs. 60 lakhs deposited by the Petitioner was lying with the DT&T. As regards the penalty orders, he pointed out that no allegation in terms of clauses (a) or (b) of Section 86(10) had been levelled and the penalty order itself was passed without affording the Petitioner a hearing. Reliance was placed on the decision in ***Bansal Dye Chem Pvt. Ltd. v. Commissioner, Value Added Tax (2016) 87 VST 58 (Del.)***.

Discussion of reasons and decision of the Court

37. The above submissions have been considered. In the first place it requires to be noticed that there appears to be considerable confusion at the end of the DT&T as regards framing of assessment in the case of the Petitioner for the FY 2013-2014. Although the DT&T asserts that the order dated 13th January, 2015 should be treated as an order for the entire FY 2013-2014, a perusal of the order reveals that it is, in fact, issued only in respect of the fourth quarter of 2013. Even the notice of assessment of penalty under Section 33 of the DVAT Act issued on the same date pertains only to the fourth quarter of 2013. However, a reference is made in the order dated 13th January, 2015 to the response to the notice dated 26th August, 2014 issued under Section 59(2) of the DVAT Act. This notice refers to the entire FY 2013-2014, i.e., all its quarters. It is not known why, therefore, the order dated 13th January, 2015 was confined only to the fourth quarter of 2013. This has not been explained by the DT&T.

38. Secondly, the notice dated 26th August 2014, merely says that the VATO was examining the case of the Petitioner regarding "suspicious transactions (purchases) for the period 1st April, 2013 to 31st March, 2014". It calls upon the Petitioner to produce before the VATO on 1st September, 2014 its records, stock registers, bank records, etc. There is no mention in this notice of the names of the eight firms which were labelled as 'bogus/suspicious'. As far as the order dated 13th January, 2015 is concerned, the name of only one of the eight so-called bogus firms, i.e. CSI, finds mention. The names of the remaining seven firms were disclosed subsequently for the first time in the DT&T's short affidavit dated 22nd July, 2015.

39. It is a well-settled legal proposition that an order by a quasi judicial authority should set out, in the body of the order itself, the reasons therefor. In other words, the order should be self-explanatory. It should reflect the reasons that weighed with the decision maker. The reasons for an order cannot be supplied in a subsequent affidavit filed by the DT&T. On the face of it, therefore, the order dated 13th January, 2015, is a non-speaking one. It fails to advert to the material on the basis of which the VATO concluded that the eight firms in question, from whom the Petitioner made purchases, were suspicious or bogus. This is another fatal flaw that vitiates the order dated 13th January, 2015.

40. Thirdly, there is no discussion in the impugned order dated 13th January, 2015 of the reply filed by the Petitioner on 1st September, 2014 together with the documents. There is no denial by the DT&T that the Petitioner furnished such a reply. As explained in ***Oryx Fisheries Pvt. Ltd.*** (*supra*), the failure to consider the reply filed by the Petitioner renders the order dated 13th January 2015 vulnerable to invalidation. As noticed by the Karnataka High Court in ***Paharpur Cooling Towers Ltd.*** (*supra*) merely granting an opportunity to a submit a reply would not be sufficient "unless the same is considered and appreciated by the authority." In such an eventuality, "relegating the Appellant to avail of the alternate remedy cannot be justifiable."

41. The fourth aspect is the violation of the principles of natural justice. The Petitioner was not confronted with the documents collected and the

statements, if any, recorded during the course of investigation which enabled the VATO to come to the conclusion that the eight firms were bogus firms and that the purchases made from such firms were suspicious. Yet, the said material appears to have been relied upon for issuing the order dated 13th January, 2015. Further, as pointed out in ***Negolice India Ltd.*** *(supra)* it was essential for the Petitioner to be confronted with the evidence in the form of documents and statements if any recorded of persons which formed the basis of the order dated 13th January, 2015.

42. Fifthly, as held by the Supreme Court in ***Kundan Lal Shri Kishan*** *(supra)*, once an order of re-assessment is passed in respect of the same assessment period, the initial order of assessment obviously cannot survive. In other words, the order dated 13th January 2015 would not survive in view of the orders dated 15th June and 19th June 2015 in respect of the first and fourth quarters of the same assessment period.

43. Finally, there is an even more fundamental flaw in the entire exercise. This stems from the palpable failure of the computerised system devised by the DT&T for issuing notices and framing orders of default assessments. This case is perhaps an apt illustration of the aphorism that if a computer is fed erroneous data it cannot possibly produce accurate results. As observed by this Court in ***Bhumika Enterprises*** (*supra*), a lot of confusion has been generated on account of the system generated notices being issued by the DT&T. The Court there noticed with concern that these were not "human generated" and were on the face of it clearly unsustainable in law. There the Court emphasised the need for a 'human interface' while making orders of

assessment.

44. In the present case, the above narration of the facts portrays the avoidable confusion caused by the DT&T while issuing notices under Section 59(2) of the DVAT Act to the Petitioner on 19th June 2015 for various quarters of the same period, i.e., FY 2013-2014. This was followed by the DT&T having to withdraw those notices by issuing a subsequent order on 17th July, 2015 admitting to the inadvertent error committed by it. On 19th November, 2015 the DT&T issued yet another order retracting its notice dated 5th November, 2015, which again was erroneously issued. If the Petitioner was, in the circumstances, unclear about whether the order dated 13th January, 2015 survived in the light of the subsequent notices, it cannot be faulted.

45. Added to this confusion is the system generated matches of Annexures 2A and 2B in respect of the same purchases which the Department now terms as bogus. The affidavit filed by the Department on 22nd July, 2015 acknowledged that the order dated 15th June, 2015 came to be passed upon there being matches in Annexures 2A and 2B online in respect of the purchases made by the Petitioner in that period, consequent to which the demand for the first quarter of 2013-2014 was revised as nil. This was also reiterated in the subsequent affidavit filed by DT&T. Likewise, there were no mismatches for the second, third and fourth quarters. In the teeth of the above admissions of the DT&T, it is not understood how its case regarding bogus purchases could still be maintained. Nevertheless, if there is a problem in the system where despite the cancellation of registration of some

firms from whom such purchases had been made, the same was obviously reflected in the system. Once the registration of a firm is cancelled for whatever reason, the system ought not to verify matches of Annexures 2A and 2B in relation to the transactions involving such firms.

46. In another order passed today in W.P. (C) No. 7434 of 2015 (***Progressive Alloys India Pvt. Ltd. v. Commissioner of Commercial Taxes***), this Court noticed another instance of the avoidable confusion caused by system generated notices and the corresponding orders being issued on the same day. The relevant portions of the said order read thus:

> "13........The 'Verification Report ' of Annexures-2A and 2-B for the third quarter of the financial year 2013-14 produced before the Court shows that the very purchase transactions involving GSA and OSC had a corresponding match and this has been verified by the computerized system. In other words, in respect of the same purchase transaction, the Annexure-2A Form produced by the purchaser has matched the Annexure-2B Form produced by the seller and the system has verified the match. It is inconceivable that on the one hand the system verifies the match in respect of purchase transactions and, on the other hand, the DT&T treats those very transactions as having been made from 'bogus/suspicious' dealers whose registrations have been cancelled. Where the registration of a dealer has been cancelled for whatever reason, the system cannot possibly verify the matching of Annexures 2A and 2B in respect of the transactions involving such dealer. The system will have to suitably programmed by the DT&T to remove such anomaly.
>
> 14. Added to this is the fact that in respect of the very same period for which the order dated 9th March 2015 was passed, i.e. for the third quarter of 2013, and in respect of the very same purchases transactions involving GSR and OSC, notices were again issued and order passed on 19th June, 2015 which was sought to be rectified on

17th July, 2015. It is, therefore, plain that needless confusion has been created by the DT&T by resorting to machine generated orders which were unsigned."

47. Mr. Avtar Singh relied on the decision in ***CIT v. Chhabil Dass Agarwal 2013 (10) SCALE 326*** to urge that the High Court should not interfere in exercise of its writ jurisdiction if there is an adequate, efficacious, alternative remedy available to the Petitioner.

48. In the order dated 13th January, 2015 appears to suffer from serious legal infirmities which have been discussed hereinbefore. As far relegating the Petitioner to the statutory remedy, the issue concerning the issuance of C Forms the Court did set aside the order dated 8th December 2015 and send the matter back to the VATO for a fresh decision. Yet, it only resulted in another erroneous order dated 29th January 29016. In the circumstances, as far as the order dated 13th January 2015 is concerned, relegating the Petitioner to the alternative remedy would generate only more rounds of litigation.

49. At the same time, the Court is of the view that the question of bogus, suspicious purchases in the light of the material gathered by the DT&T requires to be fully enquired into after the Petitioner is given an adequate opportunity to meet the case against it.

Conclusion and directions

50. Consequently, the Court issues the following directions:

i. The impugned order of default assessment dated 13th January, 2015 under Section 32 of the DVAT Act in respect of the Petitioner for the tax period pertaining to the fourth quarter of 2013 is set aside.

ii. The notice of default assessment of penalty dated 13th January, 2015 under Section 33 of the DVAT Act for the fourth quarter of 2013 is hereby set aside.

iii. The order dated 29th January 2016 passed by the VATO declining to issue C Forms to the Petitioner is set aside.

iv. The matter is remanded to the VATO Ward 77 to begin *de novo* assessment proceedings pursuant to the notice dated 26th August, 2014 issued under Section 59(2) of the DVAT Act. The VATO will also consider afresh the request of the Petitioner for issuance of C Forms in terms of the application dated 26th October 2015.

v. Within a period of two weeks from today, the Respondent shall furnish to the Petitioner all the material gathered by it, which formed the basis of cancellation of the registration of the eight firms mentioned in the affidavit dated 22nd July, 2015 filed in this Court in the present writ petition.

vi Any other material that has been gathered by the DT&T, which forms the basis of the notice dated 26th August 2014 issued under Section 59 (2) of the DVAT Act, shall also be furnished to the Petitioner by the DT&T within the same period.

vii. The Petitioner shall file a comprehensive reply within a further period of two weeks of receiving the above materials. In the reply the Petitioner will indicate if it wishes to cross-examine any person(s) whose statements have been recorded during the course of inquiry by the DT&T and prior to issuance of the notice under Section 59(2) of the DVAT Act, the copies of which have been provided to the Petitioner.

viii. The VATO will afford a hearing to the Petitioner, and where a request in that behalf has been made by the Petitioner, afford it an opportunity of cross-examining person(s) whose statements are being relied upon by the DT&T.

ix. A fresh assessment order shall thereafter be passed by the VATO independent of any of the earlier orders that may have been passed by the VATO or the OHA or even this Court. In other words, the order dated 24th March 2015, passed by the OHA dismissing the Petitioner's appeal against the order dated 13th January, 2015 does not survive and is hereby set aside. The fresh assessment order will also be passed irrespective of the order dated 15th June 2015 revising the demand for the first quarter of 2013 to nil and irrespective of the fact that there are matches of Annexures 2A and 2B for the other three quarters of 2013-2014.

x. The VATO will pass necessary orders regarding the deposit of Rs.60 lakhs made by the Petitioner during the pendency of these proceedings and if the result of the said exercise warrants, issue the necessary order/certificate of refund together with interest as applicable.

xi. The final assessment order pursuant to the default notice dated 26th August 2014, in compliance with the above directions, be completed within a period of twelve weeks from the date of receipt of a copy of this order by the VATO, Ward 77. A fresh order regarding the Petitioner's request for issuance of C Forms also be passed within the same period.

51. The writ petition and the applications are disposed of in the above terms but in the circumstances, with no orders as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 3, 2016
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