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

\+ **W.P.(C) 7022/2015**

ECHO BUILDERS ..... Petitioner

Through: Mr.Mukul Sharma, Advocate.

Versus

COMMISSIONER, DEPT. OF TRADE & TAXES & ANR. .....Respondents

Through: Mr. Anuj Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 08.12.2016

1. The writ petitioner complains that a sum of Rs.12344989/- was illegally extracted from it; it therefore seeks refund of the amount together with 18% interest in these proceedings under Article 226 of the Constitution of India.

2. The petitioner had set up its Hot-mix Plant in District Jhajjar, Haryana in view of the Supreme Court's outlawing such business and commercial activities in the city of Delhi for environmental reasons. The hot mixtures needed for the construction of roads in Delhi was routinely transferred; the petitioner had amongst its clientele NCT departments and agencies to which it supplied the hot mix materials. These were treated as inter-State sales by the Haryana Sales Tax Department. Later, the Delhi Sales Tax Authorities – and their successors, the VAT Authorities, treated these transactions as

subject to Delhi Value Added Tax (DVAT). The petitioner's customers, therefore deducted tax at source while making payments to it. It is contended that the petitioner thus suffered taxation for the same transaction without any consequent sale twice over, all the while. It relies upon the ruling of this Court in *M/s Dhingra Constructions Co. Vs. Commissioner, Department of Trade and Taxes & Anr*., W.P.(C) No.517/2010, disposed off by judgment dated 07.12.2011. It is stated that this Court upheld the order of the Sales Tax Tribunal which ruled that the transactions were not covered by VAT levy and consequently directed refund. The judgment in *Dhingra's* case (*supra*) apparently was sought to be appealed against by a Special Leave Petition (SLP). Eventually, the SLP preferred to the Supreme Court too was rejected. Thus, the judgment of this Court attained finality. The petitioner relies upon Dhingra's case (*supra*) to say that after the judgment was delivered, there was clarity as to the power of the DVAT Department to levy and that consequently amounts collected all the while as DVAT were to be refunded as they were extracted without authority of law by virtue of Article 265 of the Constitution.

3. Learned counsel for the respondent points to the fact that earlier the writ petition was allowed upon a concession which, later it was discerned, was on the basis of the wrong instructions. The Court, therefore, restored the petition to its file to be heard on merits. It is pointed out that though *Dhingra's* case (*supra*) is final on the issue of the right of the DVAT Department, the absence of power of DVAT to levy and collect amounts on account of such transactions, the fact remains that the petitioner acquiesced and did not, at any point of time, claim refund. Learned counsel highlighted that even the present proceeding was initiated only in 2015. It is also

submitted that the refund claim would not be admissible as a whole having regard to the fact that not merely the hot mix product but even the services were reported to the DVAT Department as a part of the composite contracts. Learned counsel, however, stated that at the same time, the power of the DVAT Department to reopen reassessment extends only to four years by virtue of Section 34 of the Delhi Value Added Tax Act, 2004 (hereinafter to be referred as 'DVAT Act') and the power to refund any return or returns is confined to only one year by virtue of Section 28 of the DVAT Act.

4. It is evident from the previous discussion the respondents' DVAT Department's powers to extract and collect amounts as tax in respect of the kind of transaction that the petitioner is engaged in, is conclusive. The judgment in *Dhingra's* case (*supra*) was delivered on 07.12.2011; it confirmed the findings of the Central Sales Tax Appellate Tribunal rendered on 23.04.2009. Therefore, on the merits, the petitioner, in this Court's opinion is correct in contending that the collection of the amounts was not authorized by law. At the same time, this Court is also bound by the rule of convenience that claims, such as present one, are to be limited in point of time. Here the Court has to consider other facts: the material circumstances are that the petitioner is a registered dealer, both in Haryana as well as in Delhi and has consistently been filing periodic returns. These returns never contained a refund claim. The TDS amounts, towards VAT liability (alleged to have been illegally collected) were known to the petitioner; moreover they could, in all likelihood have been factored in while negotiating the terms of the contract, especially the consideration.

5. Furthermore, in the present case, the petitioner appears to have consistently filed its assessments returns, both before and after the decision

of *Dhingra's* case (*supra*). Having regard to the above circumstances, this Court is of the opinion that the refund of the entire amounts claimed by the petitioner would be inequitable. Considering the powers of the respondents to reassess the completed assessments, especially the limitation prescribed therefor, as well as the principle of laches, the Court hereby directs that if the petitioner files its refund claim for the period after 01.08.2011 alongwith all the requisite documents, within a month from today, the respondents DVAT Authorities shall process the refund application on merits and pass appropriate orders of refund in accordance with law within two months of receipt of all the requisite documents in connection with such refund claim but in any case on or before 28.02.2017.

6. The writ petition is allowed in the above terms.

7. A copy of this order be given *dasti* to learned counsel for the parties.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

DECEMBER 08, 2016
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