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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 7434/2015 & CM No. 13724/2015**

PROGRESSIVE ALLOYS (INDIA) 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**

1. The challenge in this writ petition by Progressive Alloys (India) Pvt. Ltd., a dealer registered under the Delhi Value Added Tax, 2004 ('DVAT Act'), is to two orders dated 9th March, 2015 (one being the order of default assessment of tax, interest under Section 32 of the DVAT Act and the other an order levying penalty under Section 33 of the DVAT Act) for the third quarter of 2013-14 as well as two penalty notices—both dated 16th December, 2014 issued under Section 86 (14) of the DVAT Act.

2. At the outset, it requires to be noticed that the challenge in the writ petition was also to the notices dated 19th June, 2015 issued by the Value Added Tax Officer (VATO) under Section 59 (2) of the DVAT Act in respect of the purchases made by the Petitioner-Assessee from Global Sales Agency ('GSA') and Omega Sales Corp. ('OSC') for the third quarter of

2013 and from JBN Impex Private Ltd. (‘JBN Impex’) for the second quarter of 2013 and to the orders dated 19th June 2015 which were subsequently withdrawn by the order dated 17th July, 2015.

3. The reason for the subsequent order dated 17th July, 2015 was, as noted in that order itself, that the default assessment orders in respect of the notices dated 19th June, 2015 were computer/machine generated and issued on that date itself i.e. 19th June, 2015 ‘due to a technical error’. Inasmuch as the Department of Trade and Taxes (DT&T) itself has treated the said notices and the default assessment orders dated 19th June, 2015 as *non est*, what remains to be examined is the validity of the order dated 9th March, 2015 and the notices dated 16th December, 2014 proposing to levy a penalty on the Petitioner under Section 86(14) of the DVAT Act.

4. Another aspect is the cancellation of the Petitioner’s registration by an order dated 5th January, 2015. In what appears to be yet another error by the Respondent, both the show cause notice in respect of the said cancellation as well as the order of cancellation of registration were issued on the same date i.e. 5th January, 2015. The cancellation was proposed from the date of registration of the Petitioner as a dealer i.e. 15th December, 2011. Clearly, the Petitioner could not have been expected to answer the show cause notice on the very date in which it was issued and in any event the order cancelling registration could not have been effected on that date itself, without waiting for a reply to the notice. It is stated that the order dated 5th January, 2015 cancelling the registration of the Petitioner has since been revoked by the Objection Hearing Authority (OHA) by an order dated 31st August, 2015.

5. The order dated 9th March 2015 being the order of default assessment of tax, interest under Section 32 of the DVAT Act calls upon the Petitioner to pay an amount of Rs. 66,68,079 as the total tax due for the third quarter of 2013 in respect of two purchases made - one each from GSA and OSC. The said purchases were termed as purchases were made from 'suspicious/bogus' dealers. The said order sought to reverse the input tax credit claimed in respect of both the said purchases. The tax amount was assessed at Rs. 57,18,630/- and interest calculated at Rs. 9,49,449/- on the said tax amount. The said order appears to be a machine generated order which simply notes the presence of the authorized representative of the Petitioner and repeats the details regarding the alleged bogus purchases from GSA and OSC for the third quarter of 2013.

6. In the counter affidavit filed in response to the petition, the stand taken by the Respondent is that despite three notices issued to the Petitioner under Section 59(2) of the DVAT Act on 21st October 2014, 18th December 2014 and 29th December 2014, the Petitioner had failed to produce the books of accounts, records and registers and also failed to file any reply to the said notices. It is stated that registration certificate of both GSA and OSC have been cancelled by the DT&T and neither of these entities has sought a revival of their respective registration certificates. It is further stated that since the Petitioner had chosen not to respond to the notices or to produce the relevant records, there was no option left with the VATO but to proceed and pass the impugned order of default assessment of tax interest and

penalty dated 9th March, 2015.

7. In response to the query as to the subsequent notice dated 19th June, 2015 issued by the Respondent under Section 59(2) in respect of the very same period, i.e. third quarter of 2013, for the purchases made from GSA and OSC and the consequential order passed on that very date, which had to be subsequently withdrawn and treated as *non est* by the order dated 17th July 2015, the learned counsel for the Respondent states that there was a general problem as a result of system generated notices being issued and the mistake was realized subsequently and those notices stood withdrawn. It is further pointed out that similar system generated notices dated 19th June, 2015, which stood withdrawn by the letter dated 17th July, 2015, have been set aside by this Court in its judgment dated 28th August, 2015 in W.P. (C) 7379/2015 (***Bhumika Enterprises v. Commissioner Value Added Tax***).

8. It is finally submitted by learned counsel for the Respondent that if the Petitioner was aggrieved by the order dated 9th March 2015, the appropriate course was to file an appeal against the order before the OHA in accordance with law instead of filing the present writ petition.

9. Learned counsel for the Petitioner, on the other hand, states that the subsequent notices dated 19th June, 2015 being issued in respect of the very same period for which the order dated 9th March 2015 was passed, there was complete confusion as to whether the order dated 9th March 2015 survived at all. Further in the subsequent order dated 17th July, 2015, whereas the first part of the order purported to rectify the error in issuing the notice order dated 19th June 2015, the last portion again required the Petitioner to appear

before the VATO in terms of the earlier notice dated 19th June 2015 (already issued under Section 59(2) of the DVAT Act).

10. It is further pointed out by the learned counsel for the Petitioner that the reference in the penalty notices and the orders dated 9th March and 19th June 2015 levying penalty referred to Section 86 (9) and Section 86 (11) of the DVAT Act neither of which provision applied in the instant case. It is finally submitted that the order dated 9th March 2015 under Section 32 of the DVAT Act has been passed without indicating the reasons for concluding that the purchases in question for the third quarter of 2013 have been made from bogus dealers.

11. A perusal of the order dated 9th March, 2015 of the DVAT Act reveals that it is another machine generated order. The said order fails to note what transpired at the hearing before the VATO. The preamble of the said order which reads as under:

> "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"

The above order in Form DVAT-24 is in a pre-printed format and is unsigned. Therefore, it is not possible to make out which of the above alternatives provided in the captioned preamble paragraph applies to the case on hand. It fails to spell out the reasons for the VATO concluding that the purchases in question were made from suspicious/bogus dealers. In effect, it is a non-speaking order and it is impossible to discern what reasons weighed with the VATO while issuing such an order.

12. It is sought to be asserted by the counsel for the Petitioner that the Petitioner did appear before the VATO and produced the relevant records. However, in the writ petition there is nothing to indicate whether the Petitioner, in fact, produced the relevant records before the VATO. On the other hand, the order dated 9th March, 2015 also does not state that it is on account of the failure of the Petitioner to produce the records that the default assessment order under Section 32 of the DVAT Act has been passed.

13. There is yet another aspect of the matter which requires to be adverted to. 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. These were issued without application of mind by the VATO concerned. Therefore, although in the normal course, the Petitioner would be expected to challenge the order of default assessment by filing an appeal before the OHA in terms of the DVAT Act, given the fact that so many mistakes have been committed by the VATO concerned, with respect to just one period of the third quarter of 2013, this is an appropriate case for the Court to interfere in exercise of its powers under Article 226 of the Constitution of India to set aside the impugned orders dated 9th March, 2015 and the penalty notices dated 16th December, 2014 and direct the exercise to be undertaken afresh in accordance with law.

15. Accordingly, the Court sets aside the impugned orders dated 9th March, 2015 passed by the VATO in respect of the third quarter of 2013 under Sections 32 and 33 of the DVAT Act and the notices of penalty dated 16th December, 2014.

16. The proceedings emanating from the notice dated 29th December, 2014 issued under Section 59 (2) of the DVAT Act is revived before the VATO

concerned. The DT&T will furnish to the Petitioner all the materials it has gathered which led to the issuance of the above notice within a period of two weeks from today. The Petitioner will furnish a written reply to the notice within a further period of two weeks thereafter. The VATO will then give a hearing to the Petitioner and pass an order afresh in respect of the above notice in accordance with law, uninfluenced by any of the previous orders passed in the matter. If the VATO proposes to issue any notice for penalty, it will do so afresh in accordance with law. If any request is made by the Petitioner for cross-examining any of the persons whose statements may have been recorded by the DT&T leading to the issuance of the notice dated 29th December, 2014 the VATO will permit the Petitioner to do so within a time limit to be determined by the VATO himself. The fresh order be passed by the VATO within a period of eight weeks from the date of receipt of this order.

17. The petition is disposed of in the above terms. *Dasti.*

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 03, 2016
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