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

\+ ST.APPL. 35/2015

KATARI ENGINEERS & CONSULTANTS PRIVATE LIMITED ..... Petitioner

Through: Mr Ashok K. Bhardwaj and Mr Manish Kumar Hirani, Advocates.

Versus

COMMISSIONER VAT, DELHI & ORS. ..... Respondents

Through: Mr R.A. Iyer, proxy counsel for Mr Gautam Narayan, ASC with Mr Dinesh Gandhi, Assistant Commissioner (Ward-93).

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **05.01.2016**

1. The Appellant (Assessee) has filed the present petition under Section 81 of the Delhi Value Added Tax Act, 2004 (hereafter 'DVAT Act') impugning an order dated 17th July, 2015 passed by the Appellate Tribunal Value Added Tax (hereafter 'the Tribunal') in Appeal No.1214/ATVAT/11-12. The said appeal was directed against an order dated 23rd November, 2011 passed by the Additional Commissioner (Appeals) Zone-I [hereafter 'AC(A)'] under Section 47 of the Delhi Sales Tax Act, 1975 (hereafter 'DST

Act') whereby an order dated 22nd March, 2004 passed by the Assessing Authority (hereafter 'AA') under Section 24 of the DST Act for the AY 1994-95 was upheld.

2. The Assessee assailed the order dated 22nd March, 2004 passed by the AA principally on the ground that it was beyond the period of limitation as specified under Section 24(1) of the DST Act. According to the Assessee, the reassessment beyond the period of four years from the date of final order of assessment was impermissible. This is disputed by the Revenue as according to them, the Assessee had failed to disclose fully the particulars of its turnover and, therefore, the order of reassessment could be passed within the extended period of six years from the date of the final order of assessment.

3. The brief facts relevant to address the aforesaid controversy are as under:-

3.1 The Appellant/Assessee is a company engaged in the business of sale of furniture. The Assessee filed its returns for the assessment year 1994-95 reflecting a total turnover as Rs.51,21,538/-. The returns filed by the Assessee were assessed under Section 23 of the DST Act and an assessment order dated 31st August, 1998 was passed resulting in a Nil demand.

3.2 Subsequently, a notice dated 9th January, 2004 issued under Section 24 of the DST Act (in Form ST-15) was served on the Assessee. The said notice indicated that the concerned STO believed that the turnover of the Assessee *"had escaped assessment to tax/has been under assessed/has been assessed at a rate lower than the rate at which it was assessable/ deduction has been wrongly made"*. The Assessee was further called upon to produce account registers, cash memos and other evidence for determining the current amount of tax payable for the relevant assessment year.

3.3 Thereafter, on 22nd March, 2004, AA passed a reassessment order under Section 24 of the Act. The AA noticed that the Assessee had made purchase of Rs.37,37,716/- against ST-1 and ST-35 forms during the relevant period. The Assessee had declared inter-state sales of Rs.8,33,366/- and local sales of Rs. 2,10,375/- (thus, a total taxable sales of Rs. 10,43,741/- had been reported). The AA found that the closing stock as per the Assessee's trading account was reflected as Rs. 3,30,701/-. On the aforesaid basis, the AA concluded that the Assessee had misused forms of value of Rs.26,46,209/-. Accordingly, the gross taxable turnover of the AA was enhanced by the aforesaid amount on which tax at the rate of 12% was demanded. In addition, the AA also taxed the sale of two cars for Rs.64,410/-. The AA raised a total demand of Rs.8,32,450/-.

3.4 Aggrieved by the aforesaid order dated 22nd March, 2004, the Assessee preferred an appeal under Section 47 of the DST Act before the AC (A). The AC (A) held that it was clear from the reassessment order that the Assessee had concealed full particulars of its turnover for the year 1994-95 and, accordingly, rejected the Assessee's contention that the assessment order was passed beyond the period of limitation. Thereafter, the Assessee filed a second appeal before the Tribunal. It was contended by the Assessee that ST-1 and ST-35 forms which were alleged to have been misused by the Assessee had been issued by the Department and, therefore, it could not be concluded that the purchases were concealed or not disclosed by the Assessee. The Assessee argued that in the circumstances the extended period of limitation for reassessment was not available to the Revenue. The Tribunal rejected the aforesaid contention and held that the Assessee had failed to disclose whether the goods purchased against ST-1 and ST-35 forms were re-sold or used in manufacturing of goods. The Tribunal had further referred to Rule 23A of the Delhi Sales Tax Rules, 1975 and held that the return filed by the Assessee did not mention the purchase price of the goods as referred to in Rule 23A(2) of the said Rules and this showed that the Assessee had suppressed the true facts from the Assessing Authority.

4. The learned counsel appearing for the Assessee handed over copies of the Sales Tax Returns for the period 1st April, 1994 to 30th June, 1994 which indicated that the Assessee had declared that its turnover of sale of goods to registered dealers was Rs.8,49,985/-. The learned counsel contended that the returns had disclosed all facts that were necessary and, therefore, the Assessee could not be accused of concealing any material particulars.

5. Countering the aforesaid argument, the learned counsel for the Revenue produced the original file which included the copy of the return filed by the Assessee. The return for the period ending 30th June, 1994 available in the file indicated that the Assessee had reflected Rs. 8,49,985/- as “turnover on sale of goods declared tax free” and the column indicating “turnover on sale of goods to registered dealers” was left blank. The learned counsel also pointed out that the column indicating the purchase price of goods referred to in Rule 23A of the Delhi Sales Tax Rules, 1975 was also

left blank by the Assessee. He also referred to the notings in the file, which indicated that an audit had been conducted during which various discrepancies had been discovered. The learned counsel contended that since the Assessee had failed to disclose the purchase price of goods referred to in Rule 23A, the returns filed by the Assessee could not be stated to have disclosed full particulars and, therefore, the authorities were justified to reassess the turnover within the extended period of six years from the date of final assessment order.

6. We have heard the learned counsel for the parties and have also examined the original files produced by the learned counsel for the Revenue.

7. It appears that an audit was conducted by the internal audit cell of the Department and it was reported that substantial amount of purchases made against statutory forms had been mis-utilised by the Assessee. The Internal Audit Cell of the Department reported that the Assessee had declared sales of only Rs.10.43 lacs against the total purchases of Rs.41.30 lacs and had reflected a closing stock of Rs.3.56 lacs. Thus, even if it was presumed that the entire closing stock consisted of purchases made against statutory forms, the same would indicate that the Assessee had mis-utilised purchases to the

extent of Rs.26 lacs. In view of the internal audit report, the Assessee was called upon to furnish an explanation. Thereafter, on 9th January, 2004, the concerned officer concluded that a part of the turnover of the Assessee had escaped assessment to tax and, accordingly, notice in form ST-15 was issued to the Assessee.

8. At this stage, it is relevant to refer to Section 24 of the DST Act which reads as under:-

> "24 - Turnover escaping assessment
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> (1) where after a dealer has been assessed under section 23 for any year or part thereof, the Commissioner has reason to believe that the whole or any part of the turnover of a dealer in respect of any period has escaped assessment to tax or has been under assessed or has been assessed at a rate lower than the rate at which it is assessable, or any deduction has been wrongly made therefrom, the Commissioner may-
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> (a) within six years from the date of final order of assessment, in a case where the dealer has concealed, omitted, or failed to disclose fully the particulars of such turnover, and
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> (b) within four years from the date of final order of assessment, in any other case, serve a notice on the dealer and after giving the dealer an opportunity of being heard and making such inquiry as he considers necessary, proceed to determine to the

> best of his judgment, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall, so far as may be, apply accordingly.
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> Explanation :- For the purpose of this section, production before the Commissioner of account books or other evidence from which material evidence could with due diligence have been discovered by the Commissioner will not necessarily amount to disclosure within the meaning of this section."

9. A plain reading of Section 24(1)(a) of the DST Act indicates that an assessment made under Section 23 can be reopened within a period of six years from the date of the final order of assessment in a case where the dealer has concealed, omitted or failed to disclose fully the particulars of his turnover. Rule 23A of the Delhi Sales Tax Rules, 1975 (hereafter 'the Rules') also requires the purchasing dealer to include the purchase price of goods or any part thereof which are utilized by him for a purpose other than mentioned in Section 4(2)(a)(v) of the Act. Sub-rule (2) of Rule 23A also expressly provides that the provisions of Sub-rule (1) of Rule 23A would also apply to a dealer who purchases first point taxable goods free of tax on the strength of his registration certificate and who utilizes such goods not for reason of sale but for the specified purposes. Rule 23A of the Rules is reproduced below for ready reference:-

> "23-A. Payment of tax on goods utilized for purposes other than those specified in certificate of registration or the authorization. (1) A purchasing dealer referred to in the third proviso to clause (a) of sub-section (2) of section 4, shall include the purchase price of the goods or any part thereof which are utilized by him in any return period for a purpose other than that mentioned in sub-clause (v) of the said clause (a), in his taxable turnover of the return period following that in which the goods or any part thereof are so utilized by him, and shall pay the tax due in respect thereof in the manner prescribed in these rules. (2) The provisions of the preceding sub-rule shall, so far as may be, apply to a dealer who purchases (first point taxable) goods free of tax on the strength of his registration certificate issued under rule 16 and form as the case may be, and who utilizes such goods or any part thereof not for reasons of sale but for a purpose other than that mentioned in clause (XXXIV) and (1) and clause (XXXIV-A(1) of rule 11."

10. In view of the aforesaid, it cannot be disputed that the Assessee was required to disclose in its return the value of purchases made against statutory forms which had not been utilized for the specified purposes. However the Assessee had undisputedly failed to do so. In the circumstances, the Tribunal had concurred with the orders of the authorities below that the Assessee had failed to disclose fully the material particulars in his returns.

11. We find no infirmity with the aforesaid view and in the circumstances, the period for making a reassessment under Section 24 of the

DST Act was rightly held as six years from the date of the final assessment order passed under Section 23 of the DST Act. Thus, the contention that the assessment order has been passed beyond the period of limitation is without any merit. Consequently, no substantial question of law arises. The appeal is, accordingly, dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 05, 2016
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