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

11-23

\+ **W.P.(C) 6510/2014 & CM APPL. 3898/2016**

DISH TV INDIA LIMITED ..... Petitioner

Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent

Through: Mr. Anuj Aggarwal, Additional Standing counsel.

With

\+ **W.P.(C) 12151/2015 & CM APPL. 32261/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner

Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr.Gautam Narayan, Additional Standing counsel, Mr. R.A. Iyer, Advocate.

With

\+ **W.P.(C) 12308/2015 & CM APPL. 32610/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner

Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent
Through

With

\+ **W.P.(C) 12319/2015 &CM APPL. 32721/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent
Through: Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.

With

\+ **W.P.(C) 12320/2015 & CM APPL. 32724/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent
Through: Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.

With

\+ **W.P.(C) 12321/2015 & CM APPL. 32727/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal,

Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent
Through: Mr. Vinod Kumar Bhati, Advocate for Mr. Devesh Singh, Additional Standing counsel.
Mr. Anuj Aggarwal, Additional Standing counsel.

With

+ **W.P.(C) 12322/2015 & CM APPL. 32730/2015**

M/S DISH TV INDIA LIMITED, ... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent
Through: Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.
Mr. Vinod Kumar Bhati, Advocate for
Mr. Devesh Singh, Additional Standing counsel.

With

+ **W.P.(C) 12323/2015 & CM APPL. 32733/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent

Through:Mr. Anuj Aggarwal, Additional Standing Counsel

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With

\+ **W.P.(C) 12329/2015 & CM APPL. 32746/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner

Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent

Through:Mr. Anuj Aggarwal, Additional Standing Counsel.

Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.

With

\+ **W.P.(C) 12330/2015 & CM APPL. 32749/2015**

M/S DISH TV INDIA LIMITED ..... Petitioner

Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr.Gautam Narayan, Additional Standing counsel, Mr. R.A. Iyer, Advocate.

With

\+ **W.P.(C) 231/2016 & CM APPL. 986/2016**

M/S DISH TV INDIA LIMITED, ... Petitioner
Through: Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent
Through: Mr. Satyakam Sharma & Mr. Vinay Singh Tanwar, Advocates.

\+ **W.P.(C) 297/2016 & CM APPL. 1220/2016**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI, & ORS. ..... Respondent
Through:Mr. Anuj Aggarwal, Additional Standing Counsel

And

\+ **W.P.(C) 298/2016 & CM APPL. 1223/2016**

M/S DISH TV INDIA LIMITED ..... Petitioner
Through: Mr. A.R. Madhav Rao, Mr. Rajat Mittal, Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ..... Respondent
Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr.Gautam Narayan, Additional Standing counsel, Mr. R.A. Iyer, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **04.04.2016**

Dr. S. Muralidhar, J.:

1. The main prayer in W.P. (C) No. 6510 of 2014 by Dish TV India Ltd. (hereafter the 'Assessee') is for a direction to the Department of Trade and Taxes (DT&T), Government of NCT of Delhi to disburse the amount claimed by the Assessee towards refund for the Assessment Year ('AY') 2009-10, along with the applicable interest.

2. The challenge in the remaining writ petitions by the same Assessee is to notices of default assessment of tax and interest issued by the Value Added Tax Officer (VATO) on 18th November 2015 under Section 32 of the Delhi Value Added Tax Act, 2004 (DVAT Act) for each of the months of the AY 2009-10.

3. The Assessee is engaged in the business of providing Direct-to-Home ('DTH') broadcasting services. The Assessee provides an enabling device known as antenna system and accessories which include a set top box, LNB cable and the dish antenna. The DTH services are provided by transmission of satellite programmes through the enabling device installed at the premises of the customers. It is stated that the goods stored in various warehouses are transferred on right to use basis to customers through distributors while the ownership thereof vests with the Assessee.

4. The Assessee had filed a refund claim for Rs.20,67,03,510 in the value added tax return on 28th April 2010 under the provisions of DVAT Act. On 8th July 2010 the Assessee was asked by the VATO to produce documents, which the Assessee complied with by letter dated 17th July 2010.

5. On 4th November 2010 the Assessee revised its VAT return by marginally reducing the refund claim to Rs.20,59, 55,250. On 26th November 2010, a notice of default assessment of tax and interest under Section 32 of the Act was issued by the VATO creating a demand of Rs. 6,68,627.

6. On 11th January 2011, the Assessee filed its objections before the Special Commissioner [Objection Hearing Authority ('OHA')] against the aforementioned notice of default assessment dated 26th November 2010. The OHA by order dated 5th August 2011 set aside the said notice of default assessment and the Assessing Authority ('AA'), i.e., the VATO was directed to consider the fresh claim filed by the Petitioner.

7. By order dated 12th September 2011, the VATO once again rejected the refund claim of the Assessee. Against this order, objections were filed by the Assessee on 20th October 2011 before the OHA. On 24th June 2013, the order dated 12th September 2011 was set aside by the OHA and again the matter was remanded to the VATO.

8. Meanwhile, a special audit was undertaken. The special auditor submitted a report on 12th June 2012, raising an objection that the Assessee was

capitalizing the cost of goods sold to the customers, that therefore such goods were in the nature of capital goods and that the input tax credit ('ITC') thereon should be availed in terms of Section 9(9) of the Act. The audit report concluded that the Assessee was entitled to only 1/3rd of the input tax credit claimed on capital goods purchased during the period 2009-10 and the balance 2/3rd input tax credit in equal proportions in the immediate successive financial years. Of the total claim of Rs. 20,59,55,250, a part thereof was disallowed. The credit of Rs.18,75,61,739 was allowed in three equal yearly instalments. Accordingly, Rs.6,25,20,580 was held eligible to be claimed for the AY 2009-10. The balance was permitted to be allowed as refund into equal instalments of the same amount during 2010-11 and 2011-12.

9. On 11th July 2012, a notice under Section 59 of the DVAT Act was issued by the VATO to the Assessee again calling for documentary evidence with respect to the discrepancy pointed out in the special audit report. The Assessee states that none of the queries raised by the VATO pertained to its refund claim. Nevertheless, the Assessee furnished the details as called for by the VATO.

10. The VATO (Vat Audit) issued a further notice on 10th December 2012 to the Assessee seeking information which was provided by the Assessee on 27th December 2012. On 28th December 2012, the Assessee revised its return for the AY 2009-10, claiming refund of Rs. 6,66,05,308 due to the Assessee for the said AY as required by the special audit report. The balance refund was claimed in two equal instalments in the subsequent AYs. On 9th January

2013, the VATO again issued a notice for personal hearing and the Assessee was called to furnish further documents. This was also complied with by the Assessee.

11. After the OHA had by its order dated 24th June 2013 allowed the Assessee's objections against the order of the VATO dated 12th September 2011 rejecting its refund claim, the VATO on 19th September 2013 again issued a notice of default assessment of tax and interest under Sections 32 of the DVAT Act. In the said notices, the VATO observed that the Assessee had filed revised returns claiming only 1/3rd of the ITC and remaining 2/3rd in the subsequent financial year. The revised return of the Assessee was, therefore, accepted to the above extent. Aggrieved by the default assessment notice dated 19th September 2013 as regards other issues, the Assessee filed objections before the OHA on 18th November 2013. These objections are stated to be pending.

12. A copy of the said objections filed on 18th November 2013 have been enclosed with the writ petition as Annexure A-27, and an averment to that effect has been made in para 20 of the writ petition. In the short affidavit filed by Special Commissioner, in response to the present petition, it is admitted that the order dated 19th September 2013 of the VATO is "subject matter of objections". It is contended that in view of the aforementioned order, no refund is due to the Assessee in response to the objections.

13. In the rejoinder it is pointed out by the Assessee that its revised returns claiming refund have been accepted by the VATO by order dated 19th

September 2013 and therefore there was no question of rejection of the refund claim of the Assessee. Moreover, the three previous orders passed by the VATO rejecting the refund claimed have been set aside by the OHA and those orders have become final.

14. In the above circumstances, it is urged b the Assessee that it is obligatory on the part of the Respondent to follow the mandate of Section 38 of the DVAT Act and issue the refund due to the Assessee. Reliance is placed in ***Swarn Darshan Impex (P) Ltd. v. Commissioner, Value Added Tax (201 0) 31 VST 475 (Del)***. It is clarified that the Assessee is not aggrieved by the assessment order dated 19th September 2013 to the extent it accepts the revised returns, thereby accepting the refund claim of the Assessee.

15. In the above background, when the present writ petition was listed for hearing on 24th November 2014, the Court required Respondent No. 2 to deposit a sum of Rs. 4,97,35,047 being the difference between the refund in the sum of Rs. 6,66,05,308 (the ITC claimed by the Petitioner) and Rs.1,68,60,261(the amount of tax and penalty computed in the impugned default assessment notice) for AY 2009-10. It was directed that on the deposit being made the amount will be placed in the fixed deposit which would be kept renewed. Pursuant to the above order, the Respondent had deposited a cheque in the sum of Rs.4,97,35,047. The said amount has been kept in a fixed deposit with automatic renewal.

16. Mr. Sudhir Nandrajog, learned Senior counsel appearing for Respondent No. 2, drew the attention of the Court to Rule 36-B (7) of the Delhi Value

Added Tax Rules, 2005 (DVAT Rules) which states that there cannot be any review or reassessment in terms of Section 74B of the DVAT Act, when an objection under Section 74 or an appeal under Section 76 against the original assessment or reassessment order is pending. He pointed out that inasmuch as the Assessee has asserted that its objections filed on 18th November 2013 were still pending consideration, the Respondents required some more time to verify from its record whether such objections were in fact pending. He fairly stated that if indeed those objections are pending then in terms of Section 74B of the DVAT Act read with Rule 36-B (7) of the DVAT Rules, no notice of default assessment could have been issued. He however sought some more time to verify if the objections were indeed pending.

17. The Court is not inclined to grant further time to the Respondents for the above purpose. Rule 36B (7) of the DVAT Rules read with Section 74B of the DVAT Act makes the position explicit that if there is any objection under Section 74 or appeal under Section 76 pending against the order of the assessment or re-assessment, then such order of assessment or reassessment cannot be sought to be reviewed. The short affidavit of the Special Commissioner acknowledges that the Assessee's objections against the order dated 19th September 2013 are indeed pending consideration before the OHA.

18. The undisputed fact is that during the pendency of the aforementioned objections, the VATO has again invoked the powers under Sections 32 of the DVAT Act and issued notices of default assessment on 18th November

2015 against the Assessee seeking to 'rectify' and in effect review the assessments for each of the months of AY 2009-10. The said default assessment notices are the subject matter of challenge in the writ petitions other than W.P. (C) 6510 of 2014. While Writ Petition (C) No. 12151 of 2015 challenges the notice of default assessment for the month of April 2009, the other eleven petitions deal with the notices for each of the remaining months of AY 2009-10.

19. In the above facts and circumstances, the Court finds no justification for the refund due to the Assessee being withheld by the DT&T any longer. The repeated attempts at re-opening the assessments for each of the months of AY 2009-10, notwithstanding the Assessee's claim for refund being accepted as noted above, appears to be an abuse of the process of law by the Respondents.

20. There is no justification for the VATO to have issued notices of default assessment for AY 2009-10 when the objections against the order dated 19th September 2013 are admittedly pending before the OHA and in view of the clear bar under Rule 36 B (7) of the DVAT Rules read with Section 74-B of the DVAT Act.

21. For the above reasons, the Court directs that the sum deposited by the Respondent in this Court along with interest accrued thereon should be released by the Registry to the Petitioner Assessee forthwith through an authorized representative.

22. Further each the notices of default assessment issued under Section 32 of the DVAT Act for each of the months of AY 2009-10 are hereby quashed.

23. The writ petitions are accordingly allowed with costs of Rs. 20,000, which shall be paid by the Respondents to the Petitioner Assessee within a period of four weeks.

S.MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 04, 2016
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