

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

Decided on: 16.01.2017

+ **W.P.(C) 732/2014**

GREEN GARDEN ASSOCIATION Petitioner
Through : Sh. Joydeep Bhattacharya and Sh.
Vishnu. P.S. Langawat, Advocates.

versus

GOVERNMENT OF NCT OF DELHI Respondent
Through : Sh. Anuj Aggarwal, ASC and Ms.
Deboshree Mukherjee, Advocate.

CORAM:

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

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner, an association, claims to be aggrieved by a Notification No. F.3(393)/Policy/VAT/2013/1086-1096 dated 19.12.2013 and Notification No.F.3(393)/Policy/VAT/2013/1137-1147 dated 27.12.2013 issued by Commissioner, Value Added Tax, Commercial Tax Department, Govt. of NCT of Delhi as illegal and void.

2. The petitioner claims to be an association, whose members are mainly farm house owners who allow others to organize social and religious functions in their premises whereby they only permit use of the space (in the farm houses) and the users are free to take services from other vendor/service providers for arranging light, decorations, catering etc as per their choice and such farm house owners do not have any control over such

vendor or service providers. Counsel submits that now, by the impugned notification the owners/lessees/custodians of farm houses, banquet halls, marriage/party halls, hotels, open ground etc, where food and/or liquor items are to be supplied/provided and cost of booking exceeds Rupee One Lakh per function, have been asked to get enrolled (registration) with the Respondent VAT department by submitting Form-BE1 and also submit a return in Form-BE2 at least 3 days before the start of the fortnight and also portend to impose penalty in case of failure to submit the information/return as desired.

3. It is submitted that the activity of the petitioners' members is plain and simpliciter, hiring out of their premises, without providing any service or sale of articles, that can attract DVAT levy. The hiring is not sale of goods, or transfer of the right to use the goods, in any manner whatsoever. It is only services by way of catering, licensing of other articles to the users, by other vendors for temporary periods that may fall within the extended definition of sale of right to use the goods, within the meaning of that term under Article 366 (29A) of the Constitution of India and the corresponding provisions of the Delhi Value Added Tax Act ("DVAT Act" for short).

4. Learned counsel highlighted that the revenue is not authorized to enlarge the meaning of the Act and ask for return/details from a person who is not a dealer under the DVAT Act. In this regard, it is stated that the revenue has failed to understand that farm houses are not in the supply of goods being food and drink thus, transaction not being sale, the petitioners members cannot be asked to file returns or questionnaires for the purpose of levy of tax and filing of returns.

5. It is submitted that the VAT returns and the power to require filing of such returns emanates from Section 27 of the DVAT Act. That cannot be said to authorize those not subjected to levy, to file returns without liability. Section 27 reads as follows:

"27. Power to require other returns

In addition to the returns specified in section 26 of this Act, the Commissioner may require any person, whether a registered dealer or not, to furnish (whether on that person's own behalf or as an agent or trustee) him with such other returns in the prescribed form as and when the Commissioner requires."

6. It is argued that the respondents are trying to create an artificial levy of tax on the person, who is not required to pay VAT on the booking of farm house by any person. Thus, such tax is beyond the authority of law and is in violation of Article 265 of the Constitution of India as there is no specific provision of law mandating imposition of such tax. Furthermore, there is no element of *quid pro quo* in enrolling/registering and furnishing return as said notifications did not spell out any special advantage/facilities being conferred on or provided to the farm houses.

7. The Commissioner VAT, in response to the claim in this writ petition, submits that the notifications cannot be invalidated. Defending them, it is submitted that there is sufficient power under the DVAT Act, in the form of Sections 59, 67, 70 and 100 to call individuals to fill forms in the manner prescribed by notifications, for collection of statistics, etc. The present notification is one endeavor to collect information as to which farm house owners also provide catering and other forms of right to use of goods. There is nothing objectionable or illegal for collection of such information.

8. The respondents also argue that the petitioners cannot maintain the present proceedings under Article 226 of the Constitution, by way of public interest litigation. It is submitted that in such matters, unless there is a grievance in respect of a specified person, the court cannot examine the validity of a notification, which deals with fiscal matters such as augmentation of tax collection.

9. In the opinion of the court, the respondents' arguments with respect to maintainability of the present petition is merited and sound. The petitioner has not disclosed how many individuals or farm house owners are its members; there is a vague reference to an amorphous group. More fundamentally, the petition seeks a wide relief on the broad pleading that all members of the petitioner association (a society) are farm house owners. Now, this averment is vague, in the opinion of the court. It is unclear as to which of the petitioner's members are aggrieved by what is essentially an information gathering exercise. There is no objection as to the content of the information sought. Nor can there be an assumption that all members of the petitioner association only hire out their farm houses, without providing any other service, or selling any article or goods that are subjected to VAT levy. The petition, styled as a public interest litigation, therefore, has to fail.

10. On the merits, it is apparent to the court that there is sufficient power with the DVAT in the course of one assessment, to elicit information; it can also issue a general notification in exercise of the verisimilitude of its powers (Sections 59, 67, 70 and 100) to call information for wider and more effective tax coverage and collection of VAT. That some of the petitioners' members are likely to be saddled with paper work is no reason for this court to hold the impugned notification void and unenforceable. It is well known

that in tax and fiscal matters, the courts give greater deference to Parliament and the executive with respect to policy formulation, as opposed to matters of personal liberties.

11. For the above reasons, it is held that this petition is devoid of merit; it is therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

JANUARY 16, 2017

