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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ST.APPL. 6/2016**

VIKAS PLASTICS ..... Petitioner
Through: Mr. Bhagwati P., Advocate.

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents
Through: Mr. Anuj Aggarwal, Additional Standing Counsel, GNCTD with Ms. Deboshree Mukherjee, Advocate.
Ms. Rajni Vashist, LA with Ms. Munesh Kumari, AVATO.

**CORAM: JUSTICE S. MURALIDHAR**
**JUSTICE CHANDER SHEKHAR**

**O R D E R**
% **15.05.2017**

**CM No. 15860/2016 (for condonation of delay of 544 days in filing the appeal)**

1. It is seen that against the impugned order dated 26th May, 2014 passed by the Appellate Tribunal (AT), Value Added Tax for the year 2000-01, the Petitioner initially filed writ petition in this Court where the question was whether a single Member of the AT could have dealt with the appeal. That writ petition came to be decided along with the batch of similar matters on 18th February, 2016. In para 34 of the said judgment, which held that a single Member of the AT could have considered and disposed of the appeals, the Court permitted the Petitioners, who had urged other grounds

challenging the merits of the impugned order to file "the respective statutory appeals, in accordance with law to challenge the orders of the AT on merits accompanied by application for condonation of delay, wherever applicable." It was further observed considering the question of condonation of delay that "the Court concerned will take into account the fact of pendency of the above writ petitions." In about a month thereafter, the present appeal has been filed by the Appellant. In the facts and circumstances, the delay in filing the appeal is condoned.

2. The application is disposed of.

**ST.APPL. 6/2016 & CM No. 15858/2016 (for stay)**

3. This appeal under Section 81 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') is directed against the order dated 26th May, 2014 passed by the AT for Assessment Year ('AY') 2000-01.

4. **Admit**.

5. The following question of law is framed for consideration:

> "Whether the AT was justified in declining to remand to the Assessing Officer the matter for the two earlier AYs 1998-99 and 1999-2000 which had been passed on the ground that the documents seized from the business premises of the Appellant were unable to be located and the seized record could not be examined by the Appellate Authority?"

6. In a survey conducted on 9th November, 2000, 6 challan books and 61

loose papers relating to three AYs i.e. 1998-99, 2000-01 and 2001-02 were seized from the business premises of the Appellant. The Sales Tax Officer ('STO'), Ward-32 in his order for these three AYs rejected the books of accounts of the Appellant and framed best judgment assessments which resulted in creation of demands of Rs.67,728, Rs.36,931 and Rs.81,634 for the three AYs 1998-99, 1999-2000 and 2000-01 respectively.

7. It is not in dispute that in relation to AYs 1998-99 and 1999-2000, the Appellate Authority remanded the assessment back to the STO who framed an assessment after affording the Appellant an opportunity. Only for AY 2000-01, the appeal was rejected by holding that sufficient opportunity had already been granted to the Appellant and that no useful purpose would be served in remanding the assessment.

8. During the appellate proceedings, Appellate Authority could not examine the seized record as the STO was unable to trace it. It is on this ground that for the two AYs, 1998-99 and 1999-2000, the Appellate Authority remanded the proceedings to the STO for a fresh determination.

9. One of the main contentions of the Appellant before the AT was that the interests of justice and fair play required the assessment for AY 2000-01 to also be set aside and remanded since the seized material which was unable to be located pertained to all the three AYs. Alternatively, it was urged that the AT should insist on the production of the seized records before it to examine whether in fact the Appellant had been given a sufficient opportunity.

10. A perusal of the impugned order of the AT shows that the reason for rejecting the above contention of the Appellant is not clear. Why the treatment for the AY 2000-01 in respect of the papers that could not be located was different from that adopted for AY 1998-99 and 1999-2000 is not attempted to be explained by the AT. How the AT came to the conclusion that the documents seized "were duly confronted to the Appellant at every level of litigation" is unclear. It is also not clear how a distinction could be drawn between the AYs in question particularly since the papers seized during the survey pertained to all the three AYs. In the facts and circumstances, the Court is of the view that the AT erred in rejecting the plea of the Appellant that consistent with the approach adopted for AYs 1998-99 and 1999-2000 the assessment proceedings qua the AY in question ought to have been remanded to the STO.

11. It is explained by learned counsel for the Appellant that pursuant to the orders of remand in respect of AYs 1998-99 and 1999-2000 the assessment were not revised since the seized documents could not be located.

12. The fact of the matter is that the documents seized during the course of the survey continued to be untraced. In the circumstance, no useful purpose would be served in remanding the matter to the STO.

13. Accordingly the question framed in this appeal is answered in the negative i.e. in favour of the Appellant and against the Department. The impugned order of the assessment in relation to AY 2000-01 passed by the STO and as affirmed by the Appellate Authority and the AT are hereby set

aside.

14. The appeal is allowed in the above terms but in the facts and circumstances with no order as to costs. The application is disposed of.

**S. MURALIDHAR, J**

**CHANDER SHEKHAR, J**

**MAY 15, 2017**
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