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

\+ **<u>VAT APPEAL 3/2017, CM APPL.11696-11698/2017</u>**

M/S TARUNA AUTO PVT LTD ..... Appellant

versus

THE COMMISSIONER OF DELHI VALUE ADDED TAX ..... Respondent

<u>VAT APPEAL 4/2017, CM APPL.11699-11701/2017</u>

M/S TARUNA AUTO PVT LTD ..... Appellant

versus

THE COMMISSIONER OF DELHI VALUE ADDED TAX & ANR. ..... Respondents

Appearance: Mrs. Prem Lata Bansal, Sr. Advocate with Mr. Ashok Babbar, Mr. Ram Avtar Bansal, Advocates for appellants.
Mr. Gautam Narayan, ASC (Civil) with Mr. R.A. Iyer, Advocate for Revenue.

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

<u>O R D E R</u>

% **27.03.2017**

Issue notice. Mr. Gautam Narayan, Advocate accepts notice. With consent of counsel, both appeals were heard on merits.

The appellant/dealer is aggrieved by the common order of the Tribunal which upheld the demands of the DVAT Department with respect to two assessment periods, i.e., April, 2005 and May-June, 2005. The occasion in those assessments arose because of the survey conducted on 01.07.2005 in the assessee's premises which led to the stock valuation and seizure of books of accounts, invoices and various materials. The Assessing Officer determined that for the month of April, 2005, the assessee had not declared sales to the tune of ₹3,81,60,610/-. This resulted in tax liability of ₹47,70,076/-. In addition, penalty was levied. This is the subject matter of VAT Appeal No.4/2017. In regard to the other period, May-June, 2005, the VATO held that the value of suppressed sales was ₹3,41,35,881/-. This period is the subject matter of VAT Appeal No.3/2017. The assessee had sought to urge various questions of law including the question of VATO's jurisdiction, the levy of penalty (allegedly without notice) etc. This Court has heard learned counsel for the assessee who stated that the said grounds would not be pressed and that the appeals be considered on the merits.

Having heard the counsel for the parties, this Court is of the opinion that there is some merit in the appeals so far as the assessee's contentions with respect to sales declaration are concerned. For the first period, i.e., April, 2005 (VAT Appeal No.4/2017), the Court notices that the appellant/assessee had consistently argued that its declared sales were to the tune of ₹1,02,50,904/- and that the inclusion of ₹87,67,681/- was unwarranted. It is submitted that the latter figure is towards cash receipts allegedly not declared; the assessee argues that there was evidentiary material to suggest that the backup invoices and other supporting materials were placed before the VATO, which were not discussed and overlooked in the successive appeals.

Likewise in VAT Appeal No.3/2017, the assessee contends that as against the total suppressed sales figures found to be ₹3,41,35,881/-, the sales actually reflected and offered for assessment were to the tune of ₹2,85,30,282/-. In addition, it is submitted that the finding in respect of the sum of ₹75,55,195/- like for the previous period, shown to be cash receipts but not supported by any sales, is actually erroneous.

Having regard to the overall circumstances, the Court is of the opinion that the VATO should consider the assessee's contentions with respect to the two periods. The matter is accordingly remitted to the VATO on the following aspects: -

(1) For April, 2005, to consider the assessee's arguments with respect to the declaration/reflection of sales to the tune of Rs.1,02,50,904/- and also consider its contention that the sales attributed towards cash receipts of Rs.87,67,681/- too were reflected by supporting invoices.

(2) For May-June, 2005, consider the assessee's contentions with respect to the declared sales to the tune of Rs.2,85,30,282/- as against the amount of Rs.3,41,35,881/- and furthermore consider whether the cash receipts found as not having reflected in the books of accounts in fact are supported by invoices etc.

Both parties shall be heard and specific findings shall be returned by the VATO only on the aspects mentioned above. As regards other aspects, the findings of the VATO as confirmed by the

OHA and DVAT Tribunal, are hereby confirmed. No findings are required on the other aspects which are to be regarded as final in view of Section 76 (5).

The Court further clarifies that the petitioner shall be heard on the issue of penalty afresh, having regard to the final findings that are to be arrived at in the light of the remand and having regard to the aspects which have now been rendered final in accordance with law.

The appeals partly succeed and are allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 27, 2017
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