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

\+ EX.P. 267/2014

GAJENDER SINGH & ORS ..... Decree Holders

Through: Mr Davinder N. Grover, Advocate.

versus

M/S VLCC HEALTH CARE LTD ..... Judgement Debtor

Through: Mr Manish Shekheri, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% 06.03.2017

1. The Decree Holders have filed the present petition seeking to enforce the consent award dated 31.05.2011. Admittedly, in terms of the consent award, the Judgment Debtor was required to pay the admitted liability as well as the service tax thereon. The surviving controversy involved in the present case relates only to the payment of service tax. According to the Decree Holders, they have paid service tax amounting to ₹18,83,000/- on 30.12.2013.

2. The Decree Holders state that the said amount was paid pursuant to the amnesty scheme floated by the Govt. of India. There is no dispute that the Decree Holders had paid the aforesaid amount pursuant to the amnesty scheme. The only controversy sought to be raised by the Judgment Debtor is that the amount paid was in excess of the liability; it claims that it was exempted from payment of service tax by virtue of a Notification No.9/2003 issued in relation to Vocational Training Institute (VTI). According to the

Judgment Debtor, it was running a VTI and therefore, no service tax was payable. In addition, it is contended that the Decree Holders have paid the service tax at a higher rate of 12.36% instead of 10.36%.

3. It is seen that the question whether the Judgment Debtor was exempt from service tax on account of running a VTI was considered and rejected by this Court by the order dated 29.05.2015. This court had noted that the award sought to be executed was a consent award and the question of service tax liability was within the contemplation of the parties at the time when the consent award was made. Secondly, it was noted that the Decree Holders had already paid the service tax on 30.12.2013 and the said statutory liability could not be avoided. Thirdly, the court observed that the Judgment Debtor was always aware of its liability to pay service tax and had not raised any objection at the material time. Lastly, the Court noted that this court could not go behind the consent award and it was not permissible to consider the objections sought to be raised by the Judgment Debtor.

4. The order dated 29.05.2015 (passed in EA(OS) No.616/2015) was carried by the Judgment Debtor in an appeal (EFA(OS) No.26/2015), which was dismissed by the Division Bench by an order dated 18.02.2016. Paragraph 8 of the order dated 18.02.2016 passed by the Division Bench reads as under:-

> “8. During the course of hearing, the Decree Holder informed the Court that the amounts were paid under the amnesty Scheme framed by the service tax authorities. If so, the Decree Holder may communicate the account towards which the said payment deposited. It goes without saying that in case any amounts have been paid

> in excess by the Judgment Debtor, they would be refunded. The amounts deposited in the Court shall be permitted to be withdrawn by the Single Judge through appropriate orders.
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> In view of the above findings, the appeal is dismissed.”

5. It is apparent from the above that the Judgment Debtor was required to pay the amount of service tax deposited by the Decree Holders. However, if any amount was paid by the Judgment Debtor in excess of the amount paid by the Decree Holders to the service tax authorities, the same was required to be refunded to the Judgment Debtor. In the present case, there is no dispute that the Decree Holders have paid the amount of ₹18.83 lacs as service tax. Therefore, the dispute now sought to be raised - that is, whether the Decree holders have paid excess service tax - cannot be examined in these proceedings; the objections raised in this regard have already been considered and rejected.

6. In view of the above, the present petition is disposed of with a direction to the Registrar General to release the amounts deposited by the Judgment Debtor along with accrued interest to the Decree Holders.

7. The learned counsel for the Decree Holders fairly states that he would not press for further interest if the Judgement Debtor puts a quietus to the issue. He, however, reserves the right to press for further interest in the event the Judgment Debtor does not accept the present order.

VIBHU BAKHRU, J

MARCH 06, 2017/MK