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

% Judgment delivered on: 01.11.2017

+ W.P.(C) 6218/2016 & C.M. 25431/2016 & 31639/2016

M/S DISH TV INDIA LIMITED, Petitioner

versus

GOVERNMENT OF NCT OF DELHI, & ORS. Respondents

+ W.P.(C) 6219/2016 & CM No. 25432/2016

M/S DISH TV INDIA LIMITED Petitioner

versus

GOVERNMENT OF NCT OF DELHI, & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner(s) : Mr. A.R. Madhav Rao, Mr. Rajat Mittal and Mr. Gaurav Singh, Advs.

For the Respondent(s) : Mr. S. Ganesh Sr. Adv. with Mr. Siddharth Dutta, Adv.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. This Court had heard the counsel for the parties. The petitioner's claim is that despite the directions of the Court, its refund claim on account of the default assessments, made for the assessment year 2010-11 and 2011-12 have not been paid.

2. In the relevant year, the assessee, which engages itself in the commercial activity of supply, installation, repair, replacement and maintenance of Set Top Boxes, had underwent a default assessment; a sum of Rs. 21,02,76,085/- was claimed as credit for purchase on capital goods, after part utilization of the same, Rs. 20,59,55,250/- was claimed as a refund in the return in March, 2010.

3. Apparently, the respondent/VAT Department had taken the position that the entire refund amount would not be paid/adjusted in one go but rather in three instalments. Accordingly, it adjusted the liabilities and gave credit to the tune of one-third of the refund amount. It was this amount which was the subject matter of previous writ petition being W.P.(C) 6510/2014 which resulted in a direction to the respondents to discharge the obligation of refund of the amount.

4. In these circumstances, it is contended that despite the finality of the Court directions, the respondent/VAT Department is continuing to harass the petitioner with several queries and has, in fact, passed further orders rejecting the refund claims.

5. The respondent urged that after the default assessment, section 10(5) was inserted in the Delhi Value Added Tax Act, 2005, regulating the nature of credit that could be legitimately claimed by the assessee. It is submitted that the test check of the materials placed on record by the petitioner revealed that the selling price of the set top boxes was 20% of the original purchase price and that Section 10(5) granted proportionate credit to the extent of duty on the selling price.

6. This position was contested by the petitioner who stated that the provision could not have applied retrospectively in respect of concluded matters where purchases and procurements have been made.

7. The petitioner also relied upon Rule 6A which according to it, renders inapplicable Section 10(5), where goods are sold at a loss in ordinary course of business.

8. The petitioner /dealer has contested the denial of refund for 2010-11 and 2011-12. The appeal is pending before VAT Tribunal.

9. Having regard to this position and taking note of the interpretation of Section 10(5) and interpretation of Rule 6A, Court is of the opinion that direction to the respondent to refund the entire amount is not expedient in the circumstances. At the same time, the Court is of the opinion that so far as the exercise of verification of refund claim for the years 2009-10 are concerned, the assessing officer should conduct it fully and a direction is, therefore, issued to the assessing officer to verify the sales/purchases of the goods towards the credit which was claimed by the petitioner and after taking into account the selling price of the said goods, pass a speaking order. This exercise shall be carried and completed within a period of three months from today.

10. The petitioner also claims that a penalty order was issued. The petitioner contends that the individual penalty orders dated 09.02.2015

and 10.02.2015 were passed in respect of years 2010-11 and 2011-12, without following the prescribed procedure i.e. show cause notice, explaining the proper reason as to why such a quantum of penalty is required to be imposed.

11. Learned Senior Counsel for the respondent submitted that this grievance can be addressed afresh.

12. In these circumstances, the penalty orders dated 09.02.2015 and 10.02.2015 are hereby quashed. The respondent/VAT authorities are directed to pass penalty order after issuing notice and duly taken into account the reasons and submissions of the petitioner.

13. The writ petitions are disposed of in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

**NOVEMBER 01, 2017
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