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

\+ **W.P.(C) 274/2010**

DHARAM PAL SATYA PAL LTD AND ANR ..... Petitioners

Versus

COMMISSIONER OF DEPARTMENT OF TRADE AND TAXES AND ANR ..... Respondents

\+ **W.P.(C) 878/2010, C.M. APPL.1848/2010**

SOM FLAVOURS PVT LTD AND ANR ..... Petitioners

Versus

COMISSIONER VALUE ADDED TAX AND ANR..... Respondents

Through : None for the petitioners, in Item No.2.
Sh. Balbir Singh, Sr. Advocate with Sh. Ruchir Bhatia and Ms. Rubal Maini, Advocates, for petitioners , in Item No.3.
Ms. Sona Babbar, Advocate, for GNCTD, in Item No.2.
Sh. Satyakam, ASC for VAT, in Item Nos. 2 and 3.
Sh. Rawat, Sh. Sharma and Sh. Amitabh Joshi, VATO, in Item No.3.

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

O R D E R

% 16.03.2017

None appeared on behalf of the petitioner in W.P.(C) 274/2010.

Heard Sh. Balbir Singh, learned senior counsel for the petitioner in W.P.(C) 878/2010.

The present writ petitions have been preferred against orders of the DVAT Tribunal which had directed pre-deposit to the tune of 50% upon challenge by the assessees/petitioners to the Commissioner's order invoking the revisional power under Section 74A of the Delhi VAT Act, 2004.

The petitioners have contended that such powers could not have been invoked in the peculiar circumstances of the case (with respect to past transactions) which had resulted in finalised assessments prior to enactment of the Act in force. The issue as urged was considered by the Full Bench of this Court which by its judgment reported as *Dharam Pal Satya Pal Ltd. and Anr. v. Commissioner, VAT and Anr.* 2011 (46) VST 138 [hereafter "the Full Bench ruling"] overruled the contentions with respect to lack of jurisdiction under the DVAT Act to deal with and revise orders made in the past. That judgment is pending appeal thorough special leave and is now in the file of the Supreme Court as Civil Appeal 2079/2012 – *M/s. Dharam Pal Satya Pal Limited and Anr. v. Commissioner Value Added Tax and Anr.* [hereafter "the appeal before the Supreme Court"].

It was argued that like in other cases, the present petition too should be adjourned to await the outcome of the appeal before the Supreme Court. It was alternatively urged that even otherwise if the Court were to follow its Full Bench ruling, the question as to whether the previous orders sought to be revised were erroneous and prejudicial to the Revenue has not been considered by the Tribunal and lastly that the pre-deposit directed, i.e. 50% is excessive in the circumstances.

This Court is of the opinion that since there is a definitive ruling by the Full Bench ruling in *Dharam Pal (supra)* with respect to the revisional power and that it can be exercised in respect of past transactions, it would not be in the larger interests of all to maintain the proceedings. Instead, the Court is of the opinion that the logic in the Full Bench ruling should be followed and in the event the Supreme Court makes a ruling, that would govern the parties and bind them. Without prejudice to that course of action, at the same time, the Tribunal should be left free to decide the appeal pending before it. Secondly, the impugned order does not disclose the *prima facie* consideration by the Tribunal of the assessees' contentions with respect to the invocation of the revisional powers, i.e. that the Assessing Officer's order was erroneous or prejudicial. This aspect, therefore, needs to be considered and findings returned by the Tribunal in the final order it makes. The Tribunal's directions and impugned order to the petitioners to deposit 50% of the differential amount is, however, modified. Instead, the petitioners are hereby allowed the relief in the sense that they are at liberty to deposit 25% of the demanded amount as a condition for pre-deposit. For this purpose, the petitioners are granted 8 weeks' time. The Tribunal shall, after verifying compliance with these directions, proceed to hear and dispose off the appeals. It is again clarified that the final outcome of the appeals and the Revenue's orders would be governed by the Supreme Court's judgment as to the threshold issue, i.e. the applicability of Section 74A.

The writ petitions are disposed off in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 16, 2017/ajk