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

\+ **W.P.(C) 4562/2017**

MOHAN MEAKINS LTD. ..... Petitioner
Through: Mr. Ruchir Bhatia, Advocate

versus

COMMISSIONER, TRADE & TAXES & ORS. ..... Respondents
Through: Mr. Varun Nischal, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

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

% **24.05.2017**

<u>CM No.19886/2017</u>

1. Allowed, subject to all just exceptions.

<u>WP(C) No.4562/2017</u>

2. Notice. Mr. Varun Nischal, Advocate accepts notice.

3. The short issue is whether the Value Added Tax ('VAT') charged from the wholesale dealers like the Petitioner who is governed by the Delhi Excise Act?

4. In WP(C) No. 6858/2014, a similar issue had arisen in which the following order was passed on 21st February, 2017:

> "1. This Court had while issuing notice recorded on 27.01.2017 as follows:
> "1. *xxx*
> 2. *xxx*
> *3. xxx*

4. *xxx*

5. Issue notice. Mr. Sanjay Ghose, Advocate accepts notice on behalf of the respondents.

6. The Court has been informed that in the previous case United Spirits Limited Vs.Government of NCT of Delhi &Ors., WP.(C)No.46985/2016, which involves an identical issue, on 20.12.2016 it was stated that an inter departmental meeting involving the VAT Commissioner and the Excise Commissioner under the Chairmanship of the Principal Secretary (Finance), Govt. of NCT of Delhi, would be held to resolve the issue. That petition is listed on 21.02.2017.

7. List the present petition too on that date i.e.21.02.2017.

8. The respondents are directed not to take any coercive measure to recover the amounts assessed by the impugned default assessment order, in the meanwhile. "

2. Today, the learned Standing Counsel on behalf of the revenue submitted that pursuant to a meeting held on 10.02.2017, under the aegis of the Principal Secretary (Finance), the Commissioner (VAT) and Excise Commissioner have resolved the differences and in fact reached an agreement that VAT would not be charged from the wholesale dealers. The decision recorded *inter alia* in the terms – as evident from the minutes of the meeting dated 10.02.2017 extracted vide compliance report dated 20.02.2017.

3. In view of the above, the grievances of the petitioners' do not survive.

4. The payments made by the VAT department shall therefore not be enforced against the petitioners.

5. The writ petitions are disposed off."

5. The Court has, in this case also, been shown the Minutes of the Meeting

held on 10th February, 2017 between the Commissioner, Trade & Taxes, Government of National Capital Territory of Delhi ('GNCTD') and the Excise Commissioner, GNCTD and the officials of the respective departments. The Minutes records the decision, *inter alia*, as under:

> "Keeping into considerations all these facts, including the statutory provisions and the statutory price structure approved by Excise Department, it is agreed unanimously that there has been no revenue loss to government exchequer, since the retailer has paid VAT on the duty and all other charges incidental to the transaction of goods. VAT should not be charged on the same from wholesale dealers for the said period as special duty, assessment fee and vend fee were not the part of the whole seller's sale price and charging the VAT on the same from whole seller will lead to double taxation."

6. In the present case, we are concerned with the period AY 2007-2008. Admittedly, the Petitioner, which is engaged in the business of manufacture and sale of Indian made foreign liquor is a wholesale dealer holding a license under the Department of Excise. There can be no manner of doubt that the Petitioner will be entitled to the benefit of aforementioned decision recorded in the Minutes of the meeting of the two Departments held on 10th February, 2017.The impugned demand raised against the Petitioner for this period under the Delhi Value Added Tax Act, 2004 ('DVAT') cannot be sustained.

7. Consequently, the orders of the default assessment tax and interest under Section 32 of the DVAT Act and penalty under Section 33 of the DVAT Act issued on 2nd February, 2010 also cannot be sustained and are herbey quashed.

8. Learned counsel for the Respondents points out that against the said

orders, the objections of the Petitioner are pending before the Objections Hearing Authority ('OHA') and, therefore, a time-bound direction should be issued for disposal of those objections in accordance with the Minutes of the Meeting between the two departments held on 10th February, 2017.

9. With there being no dispute as regards the legal position, relegating the Petitioner to the OHA, where its objections are pending, would only unnecessarily prolong the proceedings. This order be produced before the OHA for closing the proceedings before it.

10. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 24, 2017
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