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

+ **W.P.(C) 4597/2017 & C.M. No. 20095/2017 (Stay)**

AIMIL LTD. Petitioner

Versus

COMMISSIONER OF TRADE & TAXES Respondent

47.

+ **W.P.(C) 4599/2017 & C.M. No. 20099/2017 (Stay)**

AIMIL LTD. Petitioner

Versus

COMMISSIONER OF TRADE & TAXES Respondent

Through: Mr.Rajesh Jain, Advocate with Mr.Virag Tiwari,
Advocate for the Petitioner.
Mr.Manmeet Singh Arora, Advocate with Ms.Anita
Bharal, VATO, Ward No.203.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR**

ORDER
24.05.2017

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Dr. S. Muralidhar, J.:

C.M. No. 20096/2017(for exemption) in W.P.(C) No. 4597/2017

C.M. No. 20100/2017(for exemption) in W.P.(C) No. 4599/2017

1. Allowed, subject to all just exceptions

W.P.(C) No. 4597/2017 & W.P.(C) No. 4599/2017

2. These two petitions are filed by AIMIL Ltd. under Article 226 of the Constitution of India.

3. The prayers in the W.P.(C) No. 4597/2017 are as under:

“(a) set aside and quash the impugned order of Writ of demand dated 7.3.2017 as it is non-est.;

(b) set aside and quash the impugned order dated 12.4.2017 for the 2006-07 issued by the VATO/ Asstt. Commissioner (W-203) as being barred by limitation;

(c) issue a Writ of Certiorari or any other direction,

(d) issue a Writ of Mandamus or any other direction or pass any other order;

(e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

4. The prayers in W.P.(C) No. 4599/2017 reads as under:

“(a) set aside and quash the impugned order of Writ of demand dated 7.3.2017 as it is non-est;

(b) set aside and quash the impugned order dated 12.4.2017 for the 2007-08 issued by the VATO/ Asstt. Commissioner (W-203) as being barred by limitation;

(c) issue a Writ of Certiorari or any other direction,

(d) issue a Writ of Mandamus or any other direction or pass any other order;

(e) pass any other order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

5. The facts in brief are that the Petitioner, which is a registered dealer under

the Delhi Value Added Tax Act, 2004 ('DVAT Act'), is engaged in the business of manufacture and resale of scientific instruments. It was issued a notice of default assessment on 12th March, 2010 for the tax period 1st April, 2006 to 30th June, 2006 (1st Quarter of Assessment Year ('AY') 2006-07) with a demand of tax of Rs. 2,57,068/-. On 15th March, 2010 for the 2nd Quarter of AY 2006-07, another default assessment notice was issued demanding tax in the sum of Rs. 1,58,936/- for the tax period 1st July, 2006 to 30th September, 2006. On the same date, demands were raised for the 3rd and 4th Quarter of AY 2006-07 vide separate orders for the periods 1st October, 2006 to 31st December, 2006 and 1st January, 2007 to 31st March, 2007, this time including interest on account of denial of export benefits.

6. Aggrieved by the default assessment for the tax and interest under Section 9(2) of the Central Sales Tax Act, 1956 ('CST Act') four objections were filed by the Petitioner against the aforementioned demands under Section 74(1) of the DVAT Act. On 24th June, 2011, the Objection Hearing Authority ('OHA') disposed of all four objections. The operative portion of the said order reads as under:

"I have gone through the documents submitted by the dealer in support of the objection against default assessment and have also heard the arguments of the counsel on this point whereupon I am of the considered view that since the dealer is in possession of above said statutory forms, it would be fair to consider the said forms for the purpose of exemption. The VATO concerned is directed to consider the above mentioned forms pertaining to year 2006-07 subject to verification/genuineness of the said forms and transactions related thereto as per provisions of the CST Act & Rules there under read with DVAT Act, 2004 and the Rules framed there under. Short amount of forms for 2006-07 shall be taxed

accordingly. As regards export sale though Customs certificate is not there, they state that they have all documents in support of movement & export. The Assessing Authority shall examine relevant records in support of export sales, and in case the same is prima facie appears to have been done, interest may not be attracted.

Ordered accordingly.”

7. For six years thereafter, no steps have been taken by the VATO. Neither any hearing notice for the remanded assessment proceedings was issued nor any default assessment made in DVAT-24 in terms of Rule 36 of the DVAT Rules. It is only on 7th March, 2017 that the impugned writ of demand was issued by the Assistant Commissioner, Ward No. 203 calling upon the Petitioner to pay an amount of Rs. 59,41,468/- for the period of AY 2006-07, Rs. 89,33,886/- for the period of 2007-08 and other amounts due for the AYs 2008-09, 2009-10, 2010-11 and 2011-12. This was followed by an order dated 12th April 2017 whereby the VATO without giving any hearing passed an order imposing tax of Rs.15,48,353/- and interest of Rs.23,17,439 therein. In W.P.(C) No. 4597/2017, the Petitioner has challenged the said orders insofar as it raises the demand for AY 2006-07.

8. As far as the W.P.(C) No.4599/2017 is concerned, the facts are more or less similar. The petition challenges the four orders of default assessment of tax issued under Section 9(2) of the CST Act read with Section 32 of the DVAT Act dated 31st May, 2011 and 2nd June, 2011. Objections were filed before the OHA on 28th July, 2011 which was disposed of by it on 18th July, 2012.

9. The operative portion of the said order of the OHA in those objections of 2007-08 reads as under:

“After going through the facts and circumstances of the case as also the judgment of the Hon. Supreme Court in the case of *State of A.P. Vs. Hyderabad Asbestos Cement (1994) 94 STC 410* (wherein it was held that if there is sufficient cause for not producing the "prescribed declarations" at assessment stage, these may be admitted at the appellate stage) and also the judgment of the Hon. High Court in the case of *M/s Kirloskar Electric Co. Vs. CST, Delhi (83 STC 485)* wherein it was held that "the State was entitled only to the tax which was legitimately due to it. Even though the Forms were produced after the assessment has been completed, it would not be fair or just not to allow the legitimate deduction". I feel that in the interest of justice another opportunity may be afforded to the appellant to furnish the above mentioned statutory Form which is now available with him and allow the benefit of these statutory forms to the extent mentioned above.

In view of the observations made above, the AA/NA is directed to pass fresh order after affording appellant another opportunity to present the above mentioned statutory forms and other documents as per law and due verification for admissibility thereof.

The Objector is directed to appear before the AA/NA on 31.07.2012.”

10. Here again, nothing happened for nearly 5 years. The impugned writ of demand was issued on 7th March, 2017 which has been referred to hereinabove. This was followed by a writ of demand dated 12th April 2017 whereby the VATO without hearing the Petitioner passed an order imposing tax of Rs.28,99,519/- and interest of Rs.39,03,626.

11. This Court has, in similar circumstances, in its judgment in *Shaila*

Enterprises v. Commissioner of Value Added Tax (2016) 94 VST 367 (Del)

set aside the demands after observing that the failure of the VATO to comply with the time bound directions of the OHA would be fatal to the demands which are raised far beyond the time period envisaged for completion of the fresh assessment proceedings. It may be noted that the SLP filed by the Department against the aforementioned judgment was dismissed by the Supreme Court on 4th January, 2017.

12. In the present case, the relevant file has been produced by the VATO before the Court. There is absolutely no noting on the file to indicate what happened to the orders passed by the OHA. There appears to be complete failure on the part of the VATO to act in accordance with law and, in particular, to abide by the order of the superior authority, in this case, the OHA and to carry out the mandate of the OHA's orders.

13. It is pointed out by Mr Rajesh Jain, the learned counsel for the Petitioner, that under the DVAT Act the OHA does not have the power to remand matters to the VATO. Still, when the matters were remanded to the VATO, the fresh assessment orders in terms of Section 34(2) of the DVAT Act had to be passed within one year from the date of the order of the OHA. The demands raised on 12th April 2017 were far beyond the period envisaged under the DVAT Act.

14. It is further pointed out by Mr Jain that under Section 30 of the DVAT Act, no claim can be made by the Commissioner “for the payment by a person of an amount of tax, interest or penalty or other amount in the nature of tax, interest or penalty due under this Act except by the making of an

assessment for the amount.” In the present case, the assessment earlier made was set aside. In the present case, on 12th April 2017, the VATO further directed the Petitioner to pay the demanded amount of tax and interest for each of the AYs in question i.e., AY 2006-07 and AY 2007-08. These orders, too, could not have been passed without proper assessment being made pursuant to the OHA’s earlier orders dated 24th June, 2011 and 18th July, 2012.

15. Mr Manmeet Singh Arora, learned counsel for the Respondent DVAT Department submitted that the above issues could be examined by the OHA. With the impugned orders bristling with so many obvious illegalities, the question of the Petitioner now being relegated to the OHA, as suggested by the counsel for the Respondent, does not arise. It would interminably delay the proceedings which in any event stand legally vitiated.

16. The writ petitions are allowed. The writs of demand dated subsequent orders dated 7th March 2017 and the orders dated 12th April, 2017 issued by the VATO/ Assistant Commissioner, Ward No. 203 (KCS) for AYs 2006-07 and 2007-08 are hereby quashed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 24, 2017/‘anb’