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

\+ **W.P.(C) 4564/2017**

VIJAY SANGHI & COMPANY ..... Petitioner

Through: Mr. Vasdev Lalwani, Mr. Mukul Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in WP(C) Nos.4564/2017 & 4565/2017.
Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

With

\+ **W.P.(C) 4565/2017**

VIJAY SANGHI & COMPANY ..... Petitioner

Through: Mr. Vasdev Lalwani, Mr. Mukul Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in

WP(C) Nos.4564/2017 & 4565/2017.
Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

With

+ W.P.(C) 4926/2017

VIJAY SANGHI & COMPANY ..... Petitioner
Through: Mr. Vasdev Lalwani, Mr. Mukul Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents
Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in WP(C) Nos.4564/2017 & 4565/2017.
Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

With

+ W.P.(C) 5014/2017

VIJAY SANGHI & COMPANY ..... Petitioner
Through: Mr. Vasdev Lalwani, Mr. Mukul Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in WP(C) Nos.4564/2017 & 4565/2017. Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

With

\+ **W.P.(C) 5015/2017**

VIJAY SANGHI & COMPANY ..... Petitioner

Through: Mr. Vasdev Lalwani, Mr. Mukul Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in WP(C) Nos.4564/2017 & 4565/2017. Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

And

\+ **W.P.(C) 5096/2017**

VIJAY SANGHI & COMPANY ..... Petitioner

Through: Mr. Vasdev Lalwani, Mr. Mukul

Gautam & Mr. Mohit Gautam, Advocates.

versus

COMMISSIONER OF TRADE & TAXES & ORS. ..... Respondents

Through: Mr. Naushad Ahmed Khan, Additional Standing Counsel (Civil) for the GNCTD with Ms. Divyani Sehgal, Advocate for the Respondents in WP(C) Nos.4564/2017 & 4565/2017.
Mr. Gautam Narayan, Additional Standing Counsel, GNCTD with Mr. R.A. Iyer, Mr. Amit Sharma & Ms. Rajni Vashisht, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **22.08.2017**

Dr. S. Muralidhar, J.:

1. These are six writ petitions filed by M/s.Vijay Sanghi & Company, a firm of Chartered Accountants ('CAs') seeking directions to the Department of Trade and Taxes ('DT&T') to honour the bills raised by the Petitioner for the work of special audit done by it under Section 58A of the Delhi Value Added Tax Act, 2004 ('DVAT Act') pursuant to specific directions of the Commissioner of Trade & Taxes, Respondent No.1 herein.

2. The facts which are not in dispute are that the Petitioner was entrusted with the work of conducting the special audit of different

dealers registered under the DVAT Act. The special audit work was entrusted by the Commissioner under Section 58 A (1) of the DVAT Act. According to the Petitioner, the remuneration for the work was to be in terms of the norms fixed by the Institute of Chartered Accountants of India ('ICAI'). The Petitioner has drawn the attention of this Court to the order issued by the Commissioner on 14th May, 2010 directing the Petitioner to undertake the audit work. It states specifically that "the remuneration including expenses of the above name auditor shall be paid by the dealer as per the scales of fees prescribed by the Institute of Chartered Accountants of India."

3. The Petitioner states that the audit exercise was performed to the satisfaction of the Commissioner and bills were raised way back in 2010 itself. On account of the failure of the dealers, who were required to make payment of the above bills in terms of Section 58A (4) of the DVAT Act as it stood prior to the amendment on 28th March 2013 (with effect from 18th June 2012), the Petitioner approached this Court with a batch of six writ petitions in which on 5th May 2014, the following order was passed:

> "The common grievance in these petitions is that fees payable to the Chartered Accountant firm/writ petitioner, pursuant to special audit exercise carried out by it under provisions of Section 52(a) of the Delhi VAT Act have not been determined as realized.
>
> It is urged by the petitioner firm that pursuant to special audit orders made in various proceedings of the Commissioner of DVAT, in respect of six assessees for various assessment periods, the billed amount aggregating to over Rs. 22 lacs has not been paid.

The official respondents contended that the rates at which the fees are claimed do not accord with the applicable instructions which have prescribed limits for fees payable for a special audit. It is submitted that the amounts claimed are based upon the rates prescribed by the Institute of Chartered Accountants of India. Counsels for the assessees supported the submission of the Commissioner and further argued that in these cases the determination of the fees has not been made in any known manner.

Section 58(a)(iv) prescribes that the expenses incidental to the audit of records under Section 58(a)(i) including the remuneration of the Accountant etc. "shall be determined and paid by the dealer and that determination shall be final". Concededly, there has been no determination as one ordinarily understands whereby the Commissioner has taken into account and evaluated materials relied upon by the petitioner-firm to substantiate its claim.

In these circumstances, the Commissioner is hereby directed to carry out the exercise and after verifying the relevant details, fix the fee payable in respect of each of the six assessees with respect to whom the special audit was carried out by the petitioner under Section 58(a)(i). The commissioner shall carry out the said exercise within four weeks from today. The determination shall be directly communicated to the petitioner and the assessees, in terms of Section 58(a)(iii)in accordance with law.

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

4. As a result of the above order the Commissioner had to determine, within four weeks, the amount to be paid by the dealers towards the fees of the Petitioner for carrying out the exercise of special audit under Section 58A of the Act.

5. Pursuant to the above order on 5th May 2014, the Commissioner determined the fees payable by the respective registered dealers to the Petitioner for the special audit performed by it and conveyed it to the Petitioner by letter dated 3rd June, 2014. It is stated that pursuant to the above order dated 5th May, 2014 the fees as determined by the Commissioner, VAT has been paid to the Petitioner in four of the six matters. It is only in WP(C) Nos. 4565 and 4926 of 2017 that the Petitioner has not been paid the fees as determined by the Commissioner, VAT.

6. At the outset Mr. Lalwani sought to urge that even in the other four matters where the payment has been received by the Petitioner, it was not in terms of the norms fixed by the ICAI. This contention was raised even earlier by the Petitioner in the writ petitions which were disposed of by the order dated 5th May 2014. Clearly that submission did not find favour with this Court and the Commissioner was asked to determine the fees to be paid. Therefore, at this stage it is not open for the Petitioner to contend that it should be paid at the ICAI rates.

7. It was urged by Mr. Gautam Narayan, learned counsel appearing for the DT&T that these writ petitions are barred by laches and in any event, a suit should be preferred by the Petitioner to recover the dues even in respect of the claims in WP (C) Nos. 4565 and 4926 of 2017. The Court rejects the above objection for the reason that the present writ petitions have been filed on 24th May 2017, within a period of three years of the order of determination of the fees by the Commissioner being communicated to the Petitioner by the letter dated 3rd June, 2014.

Secondly, as far as maintainability aspect is concerned, the DT&T did not raise any such objection in the earlier round when the batch of six writ petitions filed by the Petitioner was not only entertained but disposed of by issuing a direction to the Commissioner by the order dated 5th May, 2014. That order attained finality and in compliance therewith the subsequent order dated 3rd June 2014 was passed by the Commissioner. The present batch of writ petitions is as a result of the said order. The objection to the maintainability of the petitions is accordingly rejected.

8. The question as far as the two writ petitions where no payment has been received by the Petitioner is what should happen if a registered dealer who is required to make payment for the fees of the special audit defaults in making payment? Does the liability get transferred to the DT&T?

9. Section 58A (4) of the DVAT Act as it stood prior to amendment with effect from 18th June, 2012 reads as under:

> "58A (4) The expenses of, and incidental to, the examination and audit of records under sub section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be paid by the dealer as determined by the Commissioner and that determination shall be final and default in such payment shall be recoverable from the dealer as tax and in the manner provided for the recovery of arrears of tax under this Act."

10. Section 58 A (4) after its amendment of 28th March 2013 with effect from 18th June 2012 reads as under:

> "58A (4) The expenses of, and incidental to, the examination and

> audit of records under sub section (1) (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be determined and paid by the Commissioner and that determination shall be final."

11. No doubt the provision as it stood prior to 18th June 2012, when the work of special audit was entrusted and performed by the Petitioner, is silent as to what should happen in the event of a default by the dealer in making the payment. Mr. Narayan, learned counsel for the DT&T, points out that as far as the Income Tax Act, 1961 is concerned, by virtue of a proviso to Section 142 (2D) of the Income Tax Act, 1961 inserted with effect from 1st June, 2007, in the event of a default by an Assessee in making the payment of fees to the CA for the special audit "the expenses so determined shall be paid by the Central Government." He submits that such an amendment was made in the DVAT Act only with effect from 18th June 2012. Consequently, a direction cannot be issued to the Commissioner to make the payment of the fees in the event of a default committed by the dealer in making the payment.

12. Mr. Narayan also referred to the counter affidavit filed on behalf of the DT&T in WP(C) No. 4926 of 2017 in which it is stated that notices were repeatedly issued to the dealers concerned to make the payment of the fees of the Petitioner. By the notice dated 10th November, 2016, the dealer was cautioned that if the fee determined was not deposited with the Petitioner within 15 days from the issue of notice, then a certificate of recovery under Rule 37 of the DVAT Rules, 2005 would be issued. It appears that thereafter on Value Added Tax Inspector gave a report to the Assistant Commissioner that the dealers in question had closed shop

and were not traceable. Mr. Narayan submits that the efforts to recover the fees from the dealers concerned will be continued and as and when the fees is recovered it will be paid to the Petitioner.

13. In the present case the determination of the fees payable was communicated by the Commissioner to the Petitioner on 3rd June, 2014, i.e., after the amendment came into effect. This was pursuant to the order passed by this Court on 5th May, 2014 in the earlier writ petitions. While the DT&T is right that at the time when the special audit took placed Section 58A (4) of the DVAT Act had not been amended, the fact remains that the fees payable to the Petitioner was determined after the amendment came into force.

14. The Petitioner is a firm of professional auditors and it would be unfair to expect it to remain unremunerated for the special audit work undertaken by it on orders of the Commissioner. They cannot be made to suffer only because of the default committed by the registered dealers. The Petitioner was not engaged by the registered dealers but by the Commissioner. The Petitioner performed the task of special audit in aid of the Commissioner's statutory functions.

15. It is precisely for dealing with a situation where a professional chartered accountant may be left high and dry by a defaulting dealer whose accounts have been specially audited, that Section 58A (4) of the DVAT Act was amended. The Court sees no reason why the benefit of this amendment should not be extended to the Petitioner considering that the fees payable to the Petitioner has been fixed by the

Commissioner only after the amendment came into effect. Nevertheless the Court is also of the view that the power of the Commissioner in these cases to recover from the defaulting dealer the amount paid to the Petitioner should be kept reserved. For the purposes of such recovery, the amount due from the defaulting dealers would be treated as being due in terms of Section 30 of the DVAT Act, particularly since Section 58A (4) of the DVAT Act as it stood prior to 18th June 2012 permitted such recovery.

16. Accordingly, it is directed that the DT&T will pay the Petitioner of the outstanding fees as determined in terms of the rates fixed by the Commissioner VAT by order dated 3rd June 2014, and which form the subject matter of W.P. (C) Nos. 4565 and 4926 of 2017, not later than four weeks from today. The power of the Commissioner to recover the said fees so paid from the defaulting dealers in accordance with law is reserved.

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

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 22, 2017
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