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

\+ **W.P. (C) 5021/2017 & CM No.21657/2017 (stay)**

BATHLA TELETECH PVT. LTD. ..... Petitioner

Through: Mr. Rajesh Jain and Mr. Virag Tiwari, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr. Anuj Aggarwal, ASC and Ms. Deboshree Mukherjee, Advocate with Mr. Manish Ranjan, VATO.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% **10.08.2017**

<u>Prathiba M. Singh, J.</u>

1. The Petitioner seeks quashing of notices of tax, interest and penalty for the 1st and 2nd quarters of the year 2015-16 dated 15th May, 2017 passed under Sections 32 & 33 of the Delhi Value Added Tax Act, 2004 (in short 'the DVAT Act') by the AVATO Ward-72.

2. The Petitioner is a company incorporated since 15th May, 2013 engaged in the business of sale-purchase of cellular phones, accessories etc. It changed its place of business to 210, 2nd Floor, Part-II, Gujranwala Town, Delhi-110009 which it notified to the authorities on 2nd March, 2015. On 22nd January, 2016, this premises of the Petitioner was surveyed by a team of officers from the VAT department under Sections 59 & 60 of the DVAT Act. The premises was sealed and upon deposit of Rs.70 lakhs the premises

was de-sealed by the department on 27th January, 2016. Thus, the address of the Petitioner at Gujrawala Town was well within the knowledge of the VAT authorities.

3. It is the Petitioner's case that it has been complying with all the statutory obligations and has been regularly filing its returns under Section 26 of the DVAT Act. The Returns for the 1st and 2nd quarters of 2015-16 were also filed.

4. On 31st March, 2016, default notices of tax, penalty and interest were issued by the AVATO Ward-72 in respect of the 3rd quarter of 2015-16. The Petitioner challenged the said default notices before this Court in W.P. (C) No.3381/2016. One of the main grounds raised in the said writ petition reads as under:

> *"....The AVATO Ward-72, who does not have the jurisdiction over the petitioner, has passed these default assessment orders without affording any opportunity of hearing to the petitioner....."*

5. Even in the said writ petition, one of the Petitioner's grievances was that the extant premises of the Petitioner fell within the jurisdiction of AVATO Ward-69 and the AVATO Ward-72 did not have the jurisdiction to issue the default notices. Initially in the said writ petition, an ad-interim order dated 25th April 2016, was granted against the Respondent, barring it from taking any coercive steps against the Petitioner. Thereafter, by order dated 15th March, 2017 the writ petition was disposed of in the following terms:

> *"After hearing learned counsel for the parties, this Court is of the opinion that the present case is not the*

one where exercise of discretion under Article 226 of the Constitution of India is warranted given that the petitioner has not exhausted its appellate remedies. At the same time, peculiar circumstances are such that the filing of an appeal would expose the petitioner to an immediate liability of fulfilling the pre-deposit condition. Consequently, in the event, the petitioner prefers appeal/objections to the Special Commissioner under Section 74 of the DVAT Act, within three weeks from today, the same shall be deemed to have been in compliance with the limitation period and shall be heard and dealt with on the merits. However, OHA shall not decide the objections before ruling by the concerned VATO who shall first pass an order on the first and second quarters of 2015-16 within two months from today. It is reiterated that the petitioner shall not be required to fulfil any pre-deposit condition which shall be treated as vague. Likewise, the respondents are directed not to use coercive methods to recover the amounts outstanding on account of the impugned order.
The writ petition is disposed of in the above terms."

6. As per the above order, the Petitioner was directed to file its objections to the impugned notices dated 31st March, 2016, within a period of 3 weeks and thereafter the *concerned VATO* was asked to assess the Petitioner for the 1st and 2nd quarters of 2015-16. The Objection Hearing Authority ('OHA') was also directed to await the assessment orders for the 1st and 2nd quarters before ruling on the objections.

7. The Petitioner complied with the order and filed the objections within three weeks before the OHA against the default notices of the tax, interest and penalty, dated 31st March, 2016 passed by the AVATO Ward-72 for the

3rd quarter of 2015-16. On 9th May, 2017, the AVATO Ward-72 issued a notice under Section 59 (2) of the DVAT Act asking the Petitioner to attend the hearing on 15th May, 2017 and produce the various books of accounts and other evidences. The said notice gave the Petitioner merely five days to produce the entire record, out of which three days were holidays including the weekend. On 15th May, 2017, the Petitioner wrote a letter to the AVATO Ward-72 and raised its objections relating to the jurisdiction of the said AVATO Ward-72. The Petitioner stated that the issuance of the notices by the said AVATO of Ward-72, would be without jurisdiction. The Petitioner relied upon ***M/s Samsung India Electronic Pvt. Ltd. v. Govt. of NCT of Delhi & Ors., 2017 (97) VST 417 (Del.)*** *(hereinafter 'Samsung').* In this letter, the Petitioner requested that until the issue of jurisdiction is decided, the matter be kept in abeyance.

8. The AVATO Ward-72 took the position that the issue of its jurisdiction ought to be deemed to have been accepted by the High Court in W.P. (C) No.3381/2016 when the direction for adjudication to be done by the *concerned VATO* was passed by this Court. Thus, the AVATO Ward-72, presuming that this Court had confirmed his jurisdiction, proceeded to issue default notices of tax, interest and penalty, for the 1st and 2nd quarters of 2015-16 on 15th May, 2017. The AVATO Ward-72 also issued order for the 3rd quarter of 2015-16 in which the demand was reduced to NIL.

9. The Petitioner has impugned the default notices of the tax, interest and penalty issued by the AVATO Ward-72 dated 15th May, 2017 for the 1st and 2nd quarters of 2015-16.

Petitioner's Submissions

10. Mr. Rajesh Jain, learned counsel appearing for the Petitioner, submits that the VAT department is well aware of the premises of the Petitioner which is 210, 2nd Floor, Part-II, Gujrawala Town, Delhi-110009, inasmuch as the search and survey by the department in January, 2016 and subsequent de-sealing, was conducted at the same premises. Mr. Jain relies upon the notification and circular issued under the DVAT Act and Rules to submit that though Mukherjee Nagar and Gujrawala Town fall in Zone-7, the jurisdictional office for Gujrawala Town is Ward-69 and not Ward-72. Mr. Jain further submits that the Petitioner has a reasonable explanation in respect of its transactions with Magna Marketing Sales and M/s. Oasis International to the effect that the purchases made from these entities and credit availed thereon was reversed in the 4^{th} quarter of 2015-16 and there was no default by the Petitioner on that count.

11. According to Mr. Jain, since no notice was issued by the competent jurisdictional VATO of Ward-69, the Petitioner did not have an opportunity to explain its stand on merits. The issuance of notices by the AVATO Ward-72 being without jurisdiction, the subsequent action of the said AVATO Ward-72 of issuing notices of tax, interest and penalty, are contrary to law. Mr. Jain relies on Section 86 (11) of the Act to submit that the imposition of penalty under Section 86 (11) of the Act, without the issuance of a notice under Section 86 (10), is contrary to law. He relies on ***Bansal Dychem v. CIT (2016) 87 VST 58 (Del)***. Mr. Jain further submits that since the initial notice of tax itself is without jurisdiction, the consequential notices of interest and penalty are also without jurisdiction. Mr. Jain relies upon

Samsung (supra) to state that the specific clause under Section 32 of the Act has not been referred to by the AVATO Ward-72 while invoking his powers. Such a reference being mandatory as per ***Samsung (supra)***, the notices are liable to be quashed.

Respondents' Submissions

12. Mr. Anuj Aggarwal, learned Additional Standing Counsel for the GNCTD, relies upon the short affidavit filed by the Additional Commissioner, Department of Trade and Taxes, GNCTD, to submit that the Petitioner has not participated in the proceedings and has not availed of the opportunity provided to it to submit the documents. Mr. Aggarwal submits that despite the notice dated 9th May, 2017, except merely praying for keeping the matter in abeyance till the issue of jurisdiction is resolved, the Petitioner failed to make any further submissions on merits. According to Mr. Aggarwal, the physical location of the dealer is not the method to determine the jurisdiction of the dealer or the concerned VATO for the purpose of DVAT Act. Since the dealer's principal place of business was earlier registered under the jurisdiction of the AVATO Ward-72, the VATO in the said ward has complete jurisdiction over the firm. According to Mr. Aggarwal, this Court had remanded the matter for consideration and the VATO was obliged to decide both the issues. Mr. Aggarwal, thus submits, that the Court ought to remand back the assessment orders for the 1st and 2nd quarters of 2015-16 to the OHA for its consideration, as per order dated 15th March, 2017.

__Analysis and Findings__

13. The question that arose in the present writ petition is as to whether notices of default assessment of the tax and interest under Section 32 of the Act dated 15th May, 2017 have been issued by the *concerned VATO* exercising jurisdiction on the Petitioner. Sections 2(1)(h), 32 and 66 of the DVAT Act, 2004 read as under:

> *"__Section 2__ - (1) In this Act, unless the context otherwise requires, -*
> *(h) "Commissioner" means the Commissioner of Value Added Tax appointed under sub-section (1) of section 66 of this Act.*
>
> *"__Section 32__ - (1) If any person –*
> *(a) has not furnished returns required under this Act by the prescribed date; or*
> *(b) has furnished incomplete or incorrect returns; or*
> *(c) has furnished a return which does not comply with the requirements of this Act; or*
> *(d) for any other reason the Commissioner is not satisfied with the return furnished by a person;*
> *the Commissioner may for reasons to be recorded in writing assess or reassess to the best of his judgment the amount of net tax due for a tax period or more than one tax period by a single order so long as all such tax periods are comprised in one year.*
> *(1A) If, upon the information which has come into his possession, the Commissioner is satisfied that any person who has been liable to pay tax under this Act in respect of any period or periods, has failed to get himself registered, the Commissioner may for reasons to be recorded in writing, assess to the best of his judgment the amount of net tax due for such tax period or tax periods and all subsequent tax periods.*

(2) Where the Commissioner has made an assessment under this section, the Commissioner shall forthwith serve on that person a notice of assessment of the amount of any additional tax due for that tax period.
(3) Where the Commissioner has made an assessment under this section and further tax is assessed as owed, the amount of further tax assessed is due and payable on the same date as the date on which the net tax for the tax period was due.
Explanation.- A person may, if he disagrees with the notice of assessment, file an objection under section 74 of this Act.

Section 66 **-** *(1) For carrying out the purposes of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.*
(2) To assist the Commissioner in the administration of this Act –
(a) the Government may appoint as many Special Commissioners of Value Added Tax, Value Added Tax Officers and such other persons with such designations as the Government thinks necessary; and
(b) the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of other persons to assist him in the performance of his duties;
in this Act referred to as "Value Added Tax Authorities".
(3) The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.
(4) The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the

computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be the administrative functions."

14. Under Section 66, the powers of the Commissioner have been delegated to the Special Commissioner, VATO and to such other person, as the Government thinks necessary. Thus, the notice under Section 32 of the Act can only be issued by the VATO who exercises jurisdiction on a party on the concerned date. This is the legal position as held in ***Anil Trading Corporation v. CIT*** in W.P.(C) No 5499 of 2015 decision dated 25th February, 2016, which reads as under:

"....During the course of the hearing today, Mr. Sanjay Ghose, learned counsel appearing for the Respondent, on instructions, states that the Respondent concedes to this Court setting aside the impugned orders dated 12th January 2015 subject to the Petitioner appearing before the jurisdictional VATO i.e. the VATO of Ward 62 with the accounts and records and agreeing to provide information as may be sought by the jurisdictional VATO......"

15. In the present case, the submission of the Respondent that this Court had, in its order dated 15th March, 2017, agreed with its stand as contained in the counter affidavit, is bereft of merit, inasmuch as, in the said order, there is no discussion as to whether the AVATO Ward-72 has jurisdiction or not. The Court merely directed that the OHA shall decide the objections of the Petitioner after "*the concerned VATO*" has passed the order in respect of the 1st and 2nd quarters of 2015-16 within a period of two months from 15th

March, 2017. The presumption by the Respondent that this direction should be deemed to be considered as acceptance by this Court that the AVATO Ward-72 had jurisdiction, is not borne out from the order. In any event, the question of jurisdiction goes to the root of the matter specifically when the imposition of tax and penalty thereupon are concerned, and hence the issue of jurisdiction ought to have been decided by the Respondent before proceeding further.

16. The stand of the Respondent that it could not have waited for a decision on jurisdiction first before passing the assessment orders, as the time period fixed as per the order dated 15th March 2017, also appears to be clearly an attempt to cover up its own delay, inasmuch as, after the said order which prescribed two months for the entire exercise to be completed, the Respondent waited till 9th May, 2017 to issue even the first notice under Section 59 of the Act. There is no reason, whatsoever, as to why the Section 59 (2) notice was issued so belatedly i.e. almost at the fag end of the expiry of two month period as directed by this Court. Thereafter, for the Respondent not to consider the objection to the jurisdiction of the AVATO Ward-72, and to pass the impugned order, by simply assuming that its stand of jurisdiction already stands confirmed by this Court, is completely unacceptable.

17. The jurisdiction of the two Wards is clearly captured in the circular relied upon by the Petitioner, the relevant clauses of which read as under:

> *"069 Vijay Nagar, Gurmandi, Rana Pratap Bagh, C.C. Colony,* ***Gujrawalan Town****, Derawal*

Nagar, Mahindra Enclave, G.T. Karnal Road, Indl. Area Azad Pur.

072 Timarpur, Kingsway Camp, Mukherjee Nagar, Tagore Park, Nirankari Colony, Parmanand Colony, Dhaka, Nehru Vihar, Gandhi Vihar. Burari, Salempur, Gharonda, Hakikat Nagar"

18. Ward No.69 being the correct Ward from where the Petitioner carries on its business, and this fact already being well within the knowledge of the authorities since 22nd January, 2016, the AVATO Ward-72 clearly lacked the jurisdiction to pass the impugned orders.

19. The present writ petition is allowed and the impugned orders dated 15th May, 2017 for the 1st and 2nd quarters of 2015-16 are, thus, set aside. This shall, however, not preclude the Respondent from issuing fresh notices by the `*concerned VATO'* who exercises jurisdiction over the Petitioner, within a period of four weeks, which if issued, shall be decided in accordance with law. It is clarified that this Court has not gone into the merits of the issues raised.

20. The pending application is also disposed of in the above terms.

PRATHIBA M. SINGH, J

S.MURALIDHAR, J

AUGUST 10, 2017
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