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

\+ **W.P. (C) No. 7625/2017 & C.M.No.31555/2017 (stay)**

PERNOD RICARD INDIA PRIVATE LIMITED ..... Petitioner
Through: Mr. Puneet Agrawal, Advocate with Mr. Deepak Anand, Mr. Abhishek Boob, Ms. Purvi Sinha, Advocates.

versus

GOVERMENT OF NCT OF DELHI & ORS. ..... Respondents
Through: Mr. Satyakam, ASC with Mr. Akshay Allagh, LA, DTT, GNCTD.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% **30.08.2017**

<u>C.M. No. 31556/2017 (exemption)</u>

1. Allowed, subject to all just exceptions

<u>W.P. (C) No.7625/2017</u>

2. Notice. Mr. Satyakam, the learned ASC, accepts notice for the Respondents. With the consent of the parties, the writ petition is taken up for final hearing.

3. The Value Added Tax Officer ('VATO') of Ward No. 208 has taken it upon himself to *suo motu* review the assessment orders passed nearly 8 years earlier by way of the impugned orders, all dated 1st July 2017, under

Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act'). These orders, which are 24 in number, are sought to be challenged in the present petition.

4. The assessment orders which were sought to be reviewed by the impugned orders were earlier challenged by the Petitioner-Assessee before the Objection Hearing Authority ('OHA') and thereafter, before the Appellate Tribunal, Value Added Tax ('AT') which has allowed the Petitioner's appeal by the order dated 16th June 2017. Unmindful of these developments, the VATO has chosen to exercise *suo motu* review power under Section 74B (5) of the DVAT Act to review non-existent orders, an exercise which is, on the face of it, impermissible in law.

5. The learned counsel for the Department is unable to defend these impugned orders of the VATO. However, he points out that some of the orders create no tax demand and, therefore, may not be interfered with. The Court is of the view that irrespective of whether the orders created a demand, considering that the original orders which were sought to be reviewed have already been set aside by the AT, there was absolutely no question of the VATO exercising *suo motu* review powers in respect of such orders.

6. The learned counsel for the Respondent then sought to explain that it is in order to give effect to the orders of the AT that the VATO exercised the power under Section 74B (5) of the DVAT Act. This, however, does not convince the Court at all. There was no occasion whatsoever for the exercise

of review powers *suo motu* and that too after nearly 8 years and without notice to the Petitioner. Also, with the AT having already set aside the earlier orders of the VATO by its judgment dated 16th June 2017, the VATO was on 1st July 2017 reviewing non-existent orders of assessment. Viewed from any angle, the Court is unable to sustain the validity of the 24 impugned orders passed by the VATO; 12 in regard to default assessment of tax and interest under Section 32 and 12 in relation to penalty under Section 33 of the DVAT Act.

7. The 24 impugned orders dated 1st July 2017 passed by the VATO are hereby set aside.

8. The learned counsel for the Department then submits that the rights of the Department to challenge the order dated 16th June 2017 of the AT should be kept preserved. It would be open to the Department to seek whatever remedies are available to it in accordance with law in relation to order dated 16th June 2017 of the AT.

9. The writ petition is allowed in the above terms. No order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 30, 2017/*'anb'*