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

+ W.P.(C) 5340/2018 & CM Nos.20689-20690/2018

SUBWAY SYSTEMS INDIA PRIVATE LIMITED..... Petitioner

Through: Ms. Vanita Bhargava, Mr. Rony John
and Mr. Aseem Chaturvedi,
Advocates.

versus

GOVERNMENT OF NCT OF DELHI & ORS. Respondents

Through Mr. Satyakam, ASC, GNCTD with
Mr. Shashwat Parihar, Advocate.
Mr. Sanjeev Narula, CGSC with
Mr. Kavindra Gill, Advocate for
R-2/UOI.
Mr. Amit Bansal and Mr. Akhil
Kulshrestha, Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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21.08.2018

This Court had in a batch of writ petition, including W.P.(C) 3404/2015 '*Sagar Ratna Restaurants Pvt. Ltd. vs. Value added Tax Officer (Ward 205) & Others*' by the judgment dated 17.05.2007 allowed the assessee's claim in regard to the question as to whether the consideration received under franchise agreement was for transfer of right to use goods and the trademark under the Delhi Sales Tax Right to Use Goods Act, 2002 and under the Delhi Value Added Tax Act, 2004. The petitions were allowed. The respondent/Government of NCT

of Delhi apparently carried these judgments in appeals. The subject writ petitions were heard and stay was granted by the judgment.

In these circumstances, in subsequent proceedings '*G.D. Goenka (P) Ltd. vs. Union of India & Ors*', W.P. (C) No.4138/2017 this Court had on 20.09.2017 directed the proceedings to be adjourned *sine die* to await the final outcome of the proceedings before the Supreme Court.

This Court is of the opinion that it would be appropriate to follow the judgment of 17.05.2017 because the issues are identical, however, in the event the final judgment is in any way set aside, modified or clarified by the Supreme Court in the pending proceedings before it, that decision will be binding upon the parties. In other words, if it becomes necessary, in some manner, to give effect to the final order of the Supreme Court by an appropriate modification (to give tax effect) by the Revenue, it shall be at liberty to do so. It is pointed out on behalf of the petitioner that similar judgment was delivered by the Bombay High Court [*Subway Systems India Private Limited vs. State of Maharashtra*, W.P. (C) No.497/2015 decided] on 11.08.2016.

Writ petition is accordingly disposed of in terms of the judgment dated 17.05.2017 in Writ Petition (C) No.4453/2013 and Writ Petition (C) No.3404/2015. Pending applications stand disposed of.

S. RAVINDRA BHAT, J

ANU MALHOTRA, J

AUGUST 21, 2018

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