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

\+ W.P.(C) 7905/2018

BALAJI ELECTRIC COMPANY ..... Petitioner
Through: Ms. Lipika Mahajan, Advocate.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr. Satyakam, Addl. Standing Counsel, GNCTD with Ms. Manpreet, Legal Assistant, Department of Trade & Taxes.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **31.07.2018**

CM APPL. 30309/2018 *(for exemption)*

Allowed, subject to all just exceptions.

W.P.(C) 7905/2018

Issue notice. Mr. Satyakam, Advocate accepts notice on behalf of the respondent-department.

The petitioner claims refund of amounts due to it alleging that the amounts were wrongly withheld by the respondent/DVAT Authorities.

The petitioner's grievance is with respect to the orders dated 27.03.2018, which even while reviewing the assessment for the Assessment Year 2013-14, proceeded to reject the claim made for

Input tax credit on the ground that no evidence to substantiate it, was produced.

We have heard learned counsel for the parties. The order dated 19.03.2018 should disclose, especially that notice was given to the dealer/assessee to appear on 20.03.2018. In these circumstances, the VATO could not have proceeded to post the case, so to say and pass the orders on a day when the assessee was not scheduled to appear before him. Realising this, that order was rectified on 27.03.2018. However, the VATO noticed that since the assessee was represented on that day, even while reviewing the previous order, he could, in fact did, proceed to reject the claim for local purchase (₹2,08,75,909/-) for the period 2013-14.

The relevant part of the order reads as follows:-

> *"The dealer has claimed total local purchase of Rs.2,08,75,909/- in the period 2013-14 and claimed Input tax credit of Rs.20,05,653/- but could not produce tax Invoices, bank statement and other documents sought vide above mentioned notice.*
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> *Hence the Input Tax Credit of Rs.20,05,653/- claimed by the dealer on local purchases is hereby disallowed under section 9(8) of DVAT Act, 2004. Accordingly the assessment order dated 19-03-2018 vide ID no.150082489174 is reviewed/rectified.*
>
> *stands modified accordingly*."

This Court is of the opinion that at the stage when the VATO realised that no meaningful opportunity was granted to the petitioner/

assessee to prove its claim for Input Tax Credit, VATO should have provided that reasonable opportunity instead of proceeding straightway to reject the claim. Therefore, the VATO had to adopt the same approach, which he did – by asking the dealer to produce relevant documents to substantiate its claim for refund, before proceeding to either grant or reject it, on 27.03.2018. Although the nature of opportunity may be minimal in the sense that the dealer may be expected to produce only the supporting documents, the minimum requirement that is prescribed in this regard, of notice had to be complied with. For these reasons, this Court is of the opinion that the impugned order dated 27.03.2018 cannot stand, it is hereby quashed. The VATO shall proceed to issue fresh notice to the petitioner/ assessee specifying the date and time when the relevant documents in respect of the Input Tax Credit claim are to be furnished by it.

Petition is allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 31, 2018
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