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

\+ W.P.(C) 10265/2019 & CM APPL.42338/2019

% <u>*Date of Decision: 10th December, 2019*</u>

M/S MITSUBISHI CORPORATION
INDIA PVT. LTD. ..... Petitioner

Through: Mr.Balbir Singh, Sr.Adv. with Mr.Rupender Sinhmar, Adv.

Versus

COMMISSIONER VALUE ADDED
TAX, DELHI AND ORS. ..... Respondents

Through: Mr.Ramesh Singh, Standing Counsel with Mr.Dhananjaya Misra, Mr.Chirayu Jain, Mr.Ishan Agrawal, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

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

: **<u>D. N. PATEL, Chief Justice</u>** <u>*(Oral)*</u>

1. This petition has been preferred with the following prayers:-

"(a) Issue writ of certiorari or any other writ, order or direction under Article 226 of the Constitution calling for papers and proceedings before the Respondent No. 2 and quash the order dated 16.08.2019 issued by Respondent No.2;

(b) Issue writ of mandamus or any other writ, order or direction under Article 226 of the Constitution directing Respondent No. 2 to hear the objection filed by the Petitioner without insisting on any pre-deposit under Section 74 of the DVAT Act;

(c) Alternatively, issue writ of certiorari or any other writ, order or direction under Article 226 of the Constitution

quashing the order dated 31.03.2019 issued by Respondent No.3 and directing Respondent No. 3 to conduct re-assessment after granting an opportunity to Petitioner to produce evidence in their support and a personal hearing;"

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the petitioner had challenged the Assessment Order passed by the respondents under the Delhi Value Added Tax Act, 2004 for the Assessment Year 2014-15. The default Assessment Order is at Annexure P-8 at page 108 of the memo of the writ petition.

3. Being aggrieved and feeling dis-satisfied with the aforesaid Assessment Order, an appeal had been preferred by the petitioner under Section 74 of the Delhi Value Added Tax Act, 2004. The Special Commissioner – II/OHA, New Delhi (at Annexure P-11 of the memo of the writ petition) passed an order dated 16th August, 2019 whereby **looking to the overall case and arguments of the petitioner**, who is the appellant before the aforesaid Appellate Authority, 95% of the amount had been waived and only 5% of the total demand has been ordered to be deposited in exercise of the discretion under proviso (iii) to Section 74(1)(b) of the Delhi Value Added Tax Act, 2004.

4. Learned counsel appearing for the petitioner submitted that still the petitioner has a far better case and 5% further reduction could have been granted.

5. We are not in agreement with the contention raised by the learned Senior counsel for the petitioner. Various contentions have been raised about the supply of form C and C-I. As the appeal is pending, we are not

going into the fine niceties of the facts and further dissection of the facts. Otherwise also, learned counsel for the respondent has also argued in detail that nothing was produced by the petitioner before the Assessing Authority despite several opportunities being granted to them.

6. We are not going into the arguments of both the sides on merits. However, suffice would it be to say that the discretion exercised by the Objection Hearing Authority under Section 74 of the Delhi Value Added Tax Act, 2004 while issuing direction for deposit of 5% of the amount can, by no stretch of imagination, be said to be illegal, unreasonable or excessive.

7. The petitioner is not pleading financial incapacity to pay the said amount, either.

8. Hence, there is no substance in this writ petition and the same is hereby dismissed along with the pending application.

9. However, time to deposit the amount as per the order of Special Commissioner – II/OHA, New Delhi dated 16th August, 2019 (Annexure P-11) is extended till 14th January, 2020, as prayed by learned counsel for the petitioner.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 10, 2019
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