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

\+ W.P.(C) 10020/2018 & CM Appl. Nos. 39029/2018

BLUE STAR LTD ..... Petitioner

Through: Mr. Rajesh Jain & Mr. Virag Tiwari, Advs.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr. Anuj Aggarwal, ASC for GNCTD with Mr.Preet Pal Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **26.02.2019**

CM Appl. 39030/2018 (*exemption*)

Exemption allowed, subject to all just exceptions.

The application is disposed of.

W.P.(C) 10020/2018 & CM Appl. Nos. 39029/2018

1. The petitioner's grievance is that the Delhi VAT Authorities, by the impugned order have sought to demand amounts for the two period in 2007-08 [in the 3rd quarter and for the month of July, 2007] without any underlying assessment order.

2. The facts are that accepting the petitioner's contention the Objection Hearing Authority ("OHA"), in the proceeding under Section 74 of the

DVAT Act remitted the matter for fresh consideration on 10.06.2013. In terms of the mandate under Section 34(2), assessment had to be completed within one year in such eventuality; but it was not so in the present case. However, the impugned demand was issued under Section 37 on 12.09.2018.

3. The petitioner relies upon the Division Bench ruling of this Court in *Shaila Enterprises vs. Commissioner of Value Added Tax* (2016) 94 VST 367 (Delhi) for the proposition that the limitation under Section 34, is not derogable. It cannot be circumvented towards recovery of alleged tax made after the period, which is void. That judgment was affirmed by the Supreme Court by its order dated 04.01.2017 when the Special Leave Petition filed by the Government of NCT of Delhi was rejected.

4. After hearing learned counsel for the parties, this Court is of the opinion that given the declaration of law in *Shaila Enterprises* and the phraseology of Section 34(2), the demand in this case is unenforceable, illegal and is consequentially quashed.

5. The writ petition is accordingly allowed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 26, 2019
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