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

\+ **W.P.(C) 13500/2018**

M/S DHANPATI PACKAGING ..... Petitioner

Through: Mr. Varun Nischal, Mr.Arif Ahmed Khan, Ms. Gauri Grover and Mr.Manoj Kumar Sharma, Advocates.

versus

COMMISSIONER TRADE & TAXES & ORS. . .... Respondents

Through: Mr.Shadan Farasat, ASC with Ms. Rudrakshi Dev and Ms. Hafsa Khan, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

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

% **09.07.2019**

<u>C.M.No.52626/2018 (exemption)</u>

1. Exemption allowed subject to all just exceptions.

<u>W.P.(C) 13500/2018 and C.M.No.52625/2018 (Stay)</u>

2. The challenge in the present petition is to an order dated 15th December, 2017 passed by the Assistant Value Added Tax Officer (AVATO) raising a demand of Rs.1,23,13,745/- as tax for the first, second, third and fourth quarters of 2016 against the Assessee/Petitioner, which is a registered dealer under the Delhi Value Added Tax Act, 2004 (DVAT Act) as well as the Central Sales Tax Act, 1956 (CST Act).

3. The background facts are that the Petitioner disclosed the inter-state sale made by it to a registered dealer in Haryana in the returns filed for the

aforementioned period and produced the relevant ‘C’ forms issued in its favour. A default assessment of tax and interest under the CST Act was made and orders were passed by the AVATO on 5th July, 2017 in which the tax assessment was nil. In the said order, it was noted that the Petitioner deals in mobile phones and accessories and that the representative of the Assessee appeared before the AVATO and submitted “sale/purchase summary of DVAT – 30/31 trading account”. It was specifically noted that there is “no ‘C’ form missing”. The Petitioner was assessed for ‘nil’ demand. It was also noted that the assessment had been done “due to refund case”.

4. When the Petitioner was not granted a refund despite the above order, the petitioner filed Writ Petition (C) 8290/2017 in this Court, in which the following orders were passed on 18th September, 2018:

> “W.P.(C) 8290/2017
> 2. Notice. D. Rajeshwar Rao, learned counsel, accepts notice on behalf of the Respondents.
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> 3. Learned counsel for the Petitioner states that C-Form will be produced within four weeks from today before the V ATO concerned.
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> 4. It is accordingly directed that subject to compliance with the above assurance, within four weeks thereafter, the refund order will be issued by the Respondent and within two weeks thereafter, the refund amount together with interest· due thereon shall be paid directly into the account of the Petitioner.
>
> 5. As regards the interest for the period during which the C-Forms were not available, the payment of the amount will be subject to the final outcome of the appeals preferred by the Respondent before the Supreme Court against the order dated

19th January 2017 passed by this Court n W.P.(C) No. 10701 of 2016 i.e. (Vizien Organics v. Commissioner, Trade & Taxes).

6. In the event that the Petitioner has any grievance regarding non-compliance with the above directions, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

7. The petition is disposed of in the above terms."

5. It appears that after passing the above order, instead of processing the Petitioner's case for refund, the AVATO undertook a fresh enquiry with the Haryana Authority. This is evident from the impugned order passed by the AVATO on 15th December, 2017 in which it is noted as under:

> "M/s DHANPATI PACKAGING, Tin No. 07037116322 has applied for the refund for the F. Y. 2016-17 in 1st Qtr for Rs. 20,55,088/-, 2nd QTR for Rs. 24,64,710/-, 3rd Qtr for Rs. 22,85,036/- and 4th Qtr for Rs. 24,29,324. For processing the refund the assessment has been carried out vide reference No.150082330699 dated 05.07.2017 after verifying the "C" form on the TINXYs site. However, the "C" form were subsequently got verified from the issuing authority i.e. Excise & Taxation Officer Panipat vide our letter No.AC/W-67/Misc./2016-17/1084 dated 12.10.2017. In response to our letter the Excise & Taxation Officer, Panipat sent a letter No.3242 dated 26.10.2017 vide which they had informed that" M/s Shree Sai Overseas, Panipat TIN No.06882629889 is not working in accordance to the provisions of Haryana Value Added Tax, 2003. The above mentioned firm has migrated in GST. Further they informed that M/s Shree Sai Overseas is a tax defaulter and the "C" form of issued to M/s Shree Sai Overseas have been cancelled". The "C" form bearing no. HR06WC4121709, HR06WC4121741, HR06WC4121755 and HR06WC4121806 dated 30-06-2017 against a purchase amount to Rs. 9,23,60,9971- is rejected. In view of the this the sale against the "C" forms at concessional rate is treated at full rate

of tax under CST Act against a purchase amount to Rs. 9,23,60,997/- is rejected and created the demand with interest of Rs.1,23,13,745/-."

6. After noting the above, the AVATO stated that he was "reviewing the assessment order dated 5th July, 2017 "suo motu an exercise of the powers conferred under 74B (5) of the Delhi Value Added Tax 2004". Accordingly the demand of Rs.1,23,13,745/- was created which is in challenge in the present petition.

7. Despite opportunities for the same, no counter affidavit has been filed by the Respondent to the present petition. It may be noticed that notice was issued in the present petition way back on 14th December 2018 and an interim order was passed that no coercive steps would be taken against the Petitioner.

8. The Court has heard the submissions of the learned counsel for the parties. It is significant that the only ground for passing the impugned order is a cancellation of the 'C' form issued to the dealer in Haryana in respect of the inter-state transaction. The impugned order makes no mention of the date of cancellation of the said 'C' form. It is obvious that it has been cancelled subsequent to the assessments under the CST Act being finalised by the AVATO in the present case. Also, the 'C' form has not been cancelled because the firm in Haryana does not exist. In fact it appears to have migrated to the GST regime. The said firm is said to be a tax defaulter. Whether that is a valid ground for cancelling the 'C' Forms issued to it is itself a moot point. In any event, why that should invalidate the earlier 'C'

Forms issued and acted upon is not clear. It is unreasonable to subject the Petitioner to a greater liability for no fault on its part. Once the ‘C’ form was validly issued and verified by the AVATO as indicated in the order dated 5th July 2017, then notwithstanding its subsequent cancellation, the assessment order finalised under the CST Act cannot be ‘reviewed’.

9. The second issue as far as the impugned order is concerned is that the AVATO exercised the powers under Section 74(B)(5) DVAT Act to review the earlier order dated 5th July, 2017. He is purported to have done so *suo moto* but without any show cause notice (‘SCN’) being issued to the Petitioner. A similar said exercise has already been declared to be unlawful by this Court in its judgment dated 11th December, 2012 in W.P. (C) 7225/2012 (***M/s S.L. Enterprises v. Commissioner of Value Added Tax)***.

10. For the aforementioned reasons the impugned order dated 15th December 2017 cannot be sustained in law and is hereby set aside. The refund due to the Petitioner together with the interest thereon be credited to the account of the Petitioner, if not already done, within a period of four weeks. The writ petition is allowed in the above terms. The pending application is also disposed of. No order as to costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 9, 2019/*mr*