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

\+ W.P.(C) 3984/2020

INFINITI RETAIL LIMITED ...... Petitioner
Through: Mr. Bharat Raichandani, Advocate.

versus

GOVERTMENT OF NCT OF DELHI & ANR. ..... Respondents
Through: Mr. Satyakam, Advocate.

% Date of Decision: 07th July, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

2. Present writ petition has been filed seeking a direction to the respondent No.2 to unblock the portal to enable the petitioner to access and procure Forms C and Forms F provided under Sections 6 and 6A of the Central Sales Tax Act, 1956 (for short "CST Act").

3. Learned counsel for the petitioner submits that neither CST Act nor the rules framed therein provide for blocking of a portal due to pendency of assessment orders.

4. He further submits that to read this condition in the CST Act or the rules would be arbitrary and erroneous and would amount to prescribing an additional mode for recovery of the tax amount, which is not otherwise recognised under the CST Act. In support of his submission, he relies upon Section 43 of the Delhi Value Added Tax Act, 2004 (for short "DVAT Act").

5. Issue notice.

6. Mr. Satyakam, learned counsel accepts notice on behalf of the respondents.

7. Mr. Satyakam submits that under Rule 5(4)(ii) of the Central Sales Tax (Delhi) Rules, the Commissioner has the power to withhold the issuance of declaration Form C to an assessee/applicant after giving him an opportunity of hearing.

8. He states that in the present case a notice has been issued by the VAT Officer (Ward-96), Delhi dated 03rd July, 2020 under Section 59(2) of DVAT Act fixing a date of hearing on 10th July, 2020. The notice handed over by Mr. Satyakam is taken on record.

9. Since considerable emphasis has been laid by learned counsel for the respondent on Rule 5(4)(ii) of the Central Sales Tax (Delhi) Rules, the same is reproduced hereinbelow:-

> *"5. Authority from which Declaration Form 'C' may be obtained, use, custody and maintenance of records of such forms and matters incidental thereto.*
>
> *xxx xxx xxx*
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> *(4) If the applicant for Declaration Form 'C' has, at the time of making the application-*

xxx xxx xxx

(ii) defaulted in making the payment of the amount of tax assessed, re-assessed or the penalty imposed by the Commissioner under the Delhi Value Added Tax Act, 2004 or under the various Acts repealed as per section 106 of the Delhi Value Added Tax Act, 2004 or the Central Sales Tax Act, 1956 and in respect of which no orders for installment / stay have been obtained from the competent authority under the provision of law;

xxx xxx xxx

the Commissioner shall, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, issue of Declaration Form 'C' to him".

10. This Court is of the opinion that by virtue of power conferred under Rule 5(4)(ii) of the Central Sales Tax (Delhi) Rules, the Commissioner can withhold issuance of declaration Form C to an assessee/applicant provided he passes a reasoned order after affording an opportunity of hearing to the assessee/applicant.

11. However, in the present case, despite the petitioner highlighting its grievances vide letters dated 25th March, 2019 and 17th May, 2019, the notice under Section 59(2) has been issued on 03rd July, 2020 and that too after receipt of an advanced copy of the present writ petition.

12. In any event, as admittedly no order has been passed under Rule 5(4)(ii) of the Central Sales Tax (Delhi) Rules till date, this Court is of the opinion that the Commissioner cannot withhold issuance of declaration Form C to the petitioner in the present case.

13. Consequently, the present writ petition is allowed and the Commissioner, Delhi Valued Added Tax, is directed to unblock the

portal forthwith so as to enable the petitioner to access and procure the requisite statutory Forms (Form C and Form F) provided under Sections 6 and 6A of the CST Act. Accordingly, present writ petition stands disposed of.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JULY 07, 2020
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