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

\+ W.P. (C) 4411/2020 & CM APPL.15889/2020

SHRI UDAY JAIN PROP.
M/S DHOOMIMAL GALLERY ..... Petitioner
Through: Mr. Puneet Bhatnagar, Advocate and Ms. Richa S. Bhatnagar, Advocate.

versus

COMMISSIONER, TRADE AND TAXES & ORS. ..... Respondents
Through: Mr. Satyakam, Additional Standing Counsel for R-1.
Mr. Rahul Chitnis, Chief Standing Counsel with Mr. Raghav Sharma, Advocate for R-3.

% Date of Decision: 23rd July, 2020

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

JUDGMENT

MANMOHAN, J: (Oral)

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed seeking a direction to the respondent No.1 to allow the amendment sought by the petitioner in its return of second quarter for the financial year 2015-16 vide application dated 16th June, 2019 and to quash the notice dated 24th June, 2020 issued by a private party-respondent No.2 in pursuance to another notice dated 16th June, 2020 issued to it by respondent No.3 for recovery of alleged tax of Rs.29,79,163/-.

3. Mr. Puneet Bhatnagar, learned counsel for petitioner states that return of three unsold paintings by petitioner's Consignment Agent (respondent No.2) were inadvertently shown as Inter-State Purchase without Form in Form-16 in the second Quarter of financial year 2015-16 instead of being shown as Stock Transfer Inward against F-Form. He further states that after the mistake was detected, the petitioner filed for amendment of said Annexure-2A of Quarter 2 of financial year 2015-16 on 16th June, 2019, which though received by respondent No. 1 on 21st June, 2019, has not been decided till date.

4. He states that the petitioner along with its aforesaid application dated 16th June, 2019 had annexed various documents along with the request i.e. copy of the Stock Transfer Note Voucher number STL : DMG/2014-15/005 dated 03rd March, 2015, for Rs. 2,58,68,500/- (Two crore Fifty Eight Lakh Sixty Eight Thousand Five Hundred only) raised by the petitioner along with other relevant documents. According to him, these documents show that the aforesaid mistake inadvertently occurred while filing the Returns of Quarter-2 of Financial Year 2015-16 and no actual loss would accrue to the Department i.e. Respondent No. 1 if the said bonafide mistake is allowed to be amended and the records are corrected, so that no penalty is imposed upon the petitioner.

5. Learned counsel for the petitioner emphasises that in similar matters, this Court has already allowed the amendment applications of similar applicants on similar grounds. In support of his contention he relies upon the orders passed by this Court in ***Ingram Micro India Private Limited Vs. Commissioner, Department of Trade and Taxes & Anr.***, ***W.P.(C) No. 8272 of 2015*** and ***H.M. Sales Corporation Vs. Commissioner of Trade and Taxes, W.P. (C) No. 4816 of 2017***.

6. Learned counsel for petitioner submits that while respondent No.1 is neither allowing nor rejecting the petitioner's amendment application,

respondent No.2 has raised demand for payment of tax along with interest and penalty vide its notice dated 24th June, 2020 on the basis of notice dated 16th June, 2020 issued to it by respondent No.3. He contends that if the petitioner's application dated 16th June, 2019 for amendment is allowed, the demands raised under notices dated 24th June, 2020 and 16th June, 2020 would become infructuous.

7. On the other hand, Mr. Satyakam, learned Additional Standing counsel for respondent No. 1 submits that the decision of this Court in ***M/s. Ingram Micro India Pvt. Ltd. v. Commissioner DT&T & Anr., W.P. (C) No. 8272/2015*** is under challenge before the Supreme Court in Civil Appeal No. 4573/2017 and the Supreme Court has granted leave in the said matter vide order dated 27th March, 2017. He also points out that this Court rendered decisions in several similar cases, including ***W.P. (C) No. 2633/2017, M/s. Indian Oil Corporation Ltd. v. Commissioner, VAT*** decided on ***11th April, 2017***, which have been appealed against in the Supreme Court and the Supreme Court has stayed the operation of the judgment of this Court.

8. Mr. Satyakam points out that in the light of the interim orders passed by the Supreme Court, while deciding another writ petition i.e. ***Ingram Micro India Ltd. v. Commissioner, Department of Trade and Taxes and Anr., W.P. (C) No. 8435/2018***, decided on 04th December, 2018, this Court issued directions for issuance of segregated and separate 'C' Forms. However, the directions issued by this Court were suspended till the Civil Appeals before the Supreme Court were pending.

9. Same is the position in the decision of this Court in ***Allied Automation Engineering Services Pvt. Ltd. v. Commissioner of Trade and Taxes, W.P. (C) No. 9474/2018*** decided on 10th September, 2018, in ***M/s. Samsung C&T Pvt. Ltd. v. The Commissioner, Trade & Taxes, & Anr., W.P. (C) No.***

4092/2017 decided on 15th February, 2019, in ***E.I. Dupont India Private Limited v. Commissioner, VAT, Delhi & Anr, C.M. No. 47356/2018 in W.P. (C) No. 4952/2017*** decided on 27th February, 2019 and ***C G* Power And Industrial Solutions *Limited vs Department of Trade and Taxes & Ors., W.P. (C) No. 3024/2019*** decided on 15th January, 2020.

10. Mr. Satyakam contends that this Court has recently in similar matters been either adjourning matters or is allowing the petition but suspending the relief till the civil appeals pending in the Supreme Court are decided.

11. This Court is of the view that no useful purpose would be served by keeping the petition pending. Consequently, it directs respondent no. 1 to allow the amendment sought by the petitioner in its return of 2nd Quarter for the Financial Year 2015-16 vide application dated 16th June, 2019. However, this direction shall remain suspended till the Civil Appeals pending before the Supreme Court, taken note of hereinabove, are decided and this direction shall abide by the decision that the Supreme Court renders.

12. With the aforesaid direction, present writ petition and pending application stand disposed of.

13. 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 23, 2020
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