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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 16th February, 2021

+ **W.P.(C) 2047/2021**

K. R. ANAND

..... Petitioner

Through: Mr. Rajesh Mahna, Mr. Ruchir Bhatia, Mr. Ramanand Roy, Mr. Mayank Kouts and Mr. Shiva Narang, Advocates.

versus

COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX & ANR.

..... Respondents

Through: Mr. Satyakam, ASC for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J (Oral):

CM APPL. 6001/2021 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(C) 2047/2021 & CM APPL. 6002/2021 (for ex-parte ad-interim stay)

3. Before we deal with the challenge made in the present petition, it would be apposite to note the brief factual background. Petitioner had earlier

approached this Court by way of a W.P.(C.) 4904/2015 under Article 226 and 227 of the Constitution of India challenging the vires of Section 9(2)(g) of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as 'DVAT Act'), the notice of default assessment of tax and interest dated 28th March, 2015 as well as notice of assessment of penalty dated 28th March, 2015 for the year 2010-11.

4. The said petition was allowed in favour of the Petitioner *vide* judgment dated 26th October 2017 along with other batch of matters, holding, *inter alia*, as under:

“The present petition has been disposed of by a common judgement passed today in W.P.(C) 6093/2017 and batch. Consequently, the notices for default assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') and default assessment of penalty under Section 33 of the DVAT Act, dated 28th March 2015, are set aside. A copy of the said judgment is placed below.”

5. Aggrieved with the order in the lead case (being W.P.(C.) 6093/2017) titled ***M/s On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi & Ors.***, the Respondents filed a Special Leave Petition before the Supreme Court bearing SLP (C.) No. 36750/2017 titled ***Commissioner of Trade and Taxes vs. Arise India Ltd.***, which was dismissed on 10th January, 2018, while granting liberty to the Respondents in the following terms:

“On hearing learned Additional Solicitor General appearing for the petitioner, we are not inclined to interfere with the impugned order. The special leave petition is dismissed.

Learned Additional Solicitor General, however, submits that a batch of petitions were decided by the impugned order and here are some of the cases where the purchase transactions are not bonafide like the

present case and those cases ought to have been remitted back to the competent authority.

Learned Additional solicitor General submits that the petitioner would move the High Court with necessary particulars for directions in this behalf for which liberty is granted, as prayed for.”

6. In terms of the aforesaid liberty granted to it, the Petitioner filed a civil miscellaneous application being CM Appl. 27370/2018 in W.P.(C.) 4904/2015 before this Court. Although initially notice was issued on the said application, however after hearing both the sides, the application was subsequently dismissed vide order dated 17th January, 2020, granting liberty to the Applicant to issue a show cause notice in accordance with law. The relevant portion of said order reads as under:

“1. Counsel for the Applicant seeks leave to withdraw this application with liberty to issue a further show cause notice in accordance with law and to pursue further proceedings consistent with the law laid down by this Court in its judgment dated 26th October, 2017 in W.P.(C) No. 6093/2017 (On Quest Merchandising India Pvt. Ltd. v. Govt. of NCT of Delhi) which has been affirmed by the Supreme Court in its order dated 10th January, 2018.

2. The application is dismissed as withdrawn with liberty as prayed/or.”

7. In terms of the aforesaid liberty, the Respondents have passed the order dated 15th January, 2021 which is titled as “*Notice of default assessment of tax and interest under Section 32*”, which has been impugned in the present writ petition.

8. The primary ground for impugning the said order is that the same is barred by limitation.

9. Mr. Satyakam, Additional Standing Counsel for GNCTD appearing on advance notice, defends the impugned order and submits that it is within limitation in terms of Sub-section (2) of Section 34 of the DVAT Act. He submits that in terms of the said provision, the impugned order has been passed pursuant to the liberty granted by this Court in order dated 17th January, 2020. He further submits that the Respondents had challenged the common decision dated 26th October, 2017 in the lead matter titled as *M/s On Quest Merchandising* (supra) before the Supreme Court in respect of one of the matters namely, *Commissioner of Trade and Taxes vs. Arise India Ltd.* (supra) and the Supreme Court vide order dated 10th January, 2018 granted liberty to approach this Court in cases where transactions are not *bona fide*. Accordingly, the CM Appl. 27370/2018 was filed by the Respondents before this Court which was disposed of vide order dated 17th January, 2020 granting liberty to the Respondents to issue further show cause notice in accordance with law. He submits that therefore the abovesaid order has to be read in two parts. The first one grants the liberty to the Respondents to issue a show cause notice, and the second part allows the Respondents to pursue further proceedings consistent with the law laid down by this Court in the judgment dated 26th October, 2017 extracted earlier.

10. Mr. Rajesh Mahna, learned counsel for the Petitioner submits that the aforesaid order was passed by ignoring the mandate of Section 34 of the DVAT Act which prescribes limitation for completion of assessment and provides period of four years.

11. We have heard the counsel for the parties and perused the record. The relevant provision reads as under:

“Limitation on assessment and re-assessment -

(1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from –

(a) the end of the year comprising of one or more tax periods for which the person furnished a return under section 26 or 28 of this Act; or

(b) the date on which the Commissioner made an assessment of tax for the tax period, whichever is the earlier:

PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years.

(2) Notwithstanding sub-section (1) of this section, the Commissioner may make an assessment of tax within one year after the date of any decision of the Appellate Tribunal or court where the assessment is required to be made in consequence of, or to give effect to, the decision of the Appellate Tribunal or court which requires the re-assessment of the person.”

12. In terms of the aforesaid provision, the assessment had to be completed within a period of four years. The impugned order relates to the year 2010-11 for which limitation expired on 31st March, 2015. The date of the impugned order is 15th January, 2021, which indicates that the same is ex-facie barred by limitation.

13. We are not impressed with the submission advanced by Mr. Satyakam that the impugned order is within limitation in terms of Sub-section (2) of Section 34. The said provision is entirely inapplicable in the present facts and circumstances. The impugned order has not been passed in consequence of, or to give effect to, any decision of this court which requires the re-assessment of the Assessee/Petitioner. Further, it may be noted that this

Court, while disposing of the miscellaneous application *vide* order dated 17th January, 2020, could not have extended the period of limitation contrary to the statute. On a plain reading of the same, it is evident that this Court only permitted the Respondents to take recourse to further proceedings consistent with the extant laws and the law laid down by this Court in the judgment noted therein. This liberty cannot be construed to mean that the limitation period was extended beyond statutory confines. The contention of the Respondents is untenable.

14. In the present case, the notice is clearly barred by limitation in terms of Section 34 of the DVAT Act and accordingly, we have no hesitancy in setting aside the same on the ground of limitation.

15. Accordingly, the present writ petition is allowed, and the impugned order dated 15th January, 2021, is hereby quashed.

SANJEEV NARULA, J

RAJIV SAHAI ENDLAW, J

FEBRUARY 16, 2021

nk/nd