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

\+ W.P.(C) 7459/2021

WOODPECKERS INDIA PVT.LTD. ..... Petitioner

Through: Mr. Dinesh Mohan Sinha, Advocate with Mr. Saroj Singh and Mr. Rajiv Deora, Advocate.

versus

THE COMMISSIONER, TRADE AND TAXES, DELHI & ANR. ..... Respondents

Through: Mr. Devesh Singh, ASC, GNCTD with Mr. Manas Bhatnagar, Advocate.

% Date of Decision: 02nd August, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J: (Oral)

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

2. Present writ petition has been filed seeking directions to the Respondent to rectify the Delhi Value Added Tax (DVAT) return for column 11 and issue the correct Form ‘F’ to the Petitioner.

3. Learned counsel for the Petitioner states that the Petitioner is registered under the Delhi Value Added Tax Act, 2004 and is in the business of trading in plywood.

4. He points out that the Petitioner transferred goods to Delhi from outside and the said transaction does not fall under the definition of 'sale' as per Section 6A of the Central Sales Tax Act, 1956 and hence no tax is liable to be paid on such a transaction.

5. He states that the Petitioner filed the DVAT return for the fourth quarter of 2015-16 and erroneously filed the return in the manner prescribed in Column 11 clause 13 instead of column 11 clause 3.

6. He states that the Petitioner has applied for issuance of 'F' Forms in the prescribed manner to the prescribed authority i.e. DAVT officer and representations in this regard have been sent to the concerned authority.

7. He emphasises that despite multiple requests, the Respondents have neither issued the Form 'F' to the Petitioner nor have responded to the Petitioner's representations.

8. Learned counsel for the Petitioner submits that the error in the present case is neither intentional nor deliberate and hence, there is no culpable liability. He emphasises that there is no attempt by the Petitioner to evade the tax liability or violate any of the provisions of the DVAT Act, 2004 and the Central Sales Tax Act, 1956. In support of his submission, he refers the judgment of this Court in ***H.M. Sales Corporation Vs. Commissioner of Trade and Taxes in WP(C) 4816/2017*** decided on 31st July, 2017.

9. Issue notice. Mr. Devesh Singh, ASC accepts notice on behalf of respondents.

10. Learned counsel for the respondents states that the mistake in the present instance is by the petitioner and not by the respondents. He states that instead of filing an application for rectification before the VATO, the petitioner ought to have revised the return under Section 28 of the said Act.

11. This Court is of the view that the issue raised in the present writ petition is no longer *res integra* as a Coordinate Bench of this Court in ***H.M. Sales Corporation Vs. Commissioner of Trade and Taxes*** **(supra)** had in similar facts permitted the petitioner to rectify its return. The relevant portion of the said judgment is reproduced hereinbelow:-

> "*2. The Petitioner states that for the interstate purchases made from M/s Aman Marketing, a registered dealer in Kanpur, the Petitoiner was charged 2% tax under Section 8(1) of Central Sales Tax Act, 1956 ('CST Act'). As a purchaser of goods in the course of interstate trade, the Petitioner was required to furnish C-Forms on the basis of which Aman Marketing could take the benefit of concessional rate of tax under Section 8(1) and 8(4) of the CST Act. Such C-Form could be obtained from the jurisdictional VATO under Rule 5 of the Central Sales Tax (Delhi) Rules, 2005.*
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> *3. While filing the return for the first quarter of 2013-14, in Form DVAT-16, although the Petitioner disclosed the details of the purchases made from Aman Marketing, Kanpur, the Petitioner appears to have inadvertently shown the aforesaid purchases of Rs.1,79,44,191/- not in the field relevant for C-Forms. Instead of indicating the above figure in coloumn R11.1 of the Form, the petitioner mistakenly showed the figure in coloum R11.3, i.e., against inward stock transfer against F-Form. The Petitoner, in all subsequent quarters, correctly showed the purchases made from Aman Marketing against C-Form. In support of this plea, the copy of the invoices issued by Aman Marketing in relation to the purchases made in the first quarter of 2013-14 have been enclosed by the Petitioner.*
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> *4. The stand of the Respondent-DTT, in its reply, is that this is a mistake by the Petitioner and not of the DTT. Instead of filing an application for rectification before the VATO, the Petitioner ought to have revised the return under Section 28 of the Act.*
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> *5. The Court is of the view that the mistake explained by the Petitioner appears to be bona fide. Although it was open to the*

Petitioner to have revised the return, admittedly, the period of revising the return has already expired. With the Petitoner not asking for any extraordinary benefit but only what it is entitled to in accordance with law, the Court is of the view, the Petitioner should be permitted to rectify its return, even at this stage and its clarification that aforementioned figures of purchases made from Aman Marketing for the first quarter of 2013-14 should be treated as purchases made against C-Forms should be accepted.

6. The return filed by the Petitioner for the first quarter of 2013-14 shall stand rectified accordingly. An appropriate order to this effect be passed by the VATO on the strength of this order, not later than two weks from today and the Petitioner shall not later than one week thereafter be permitted to download the C-Form pertaining to the above transactions."

12. Keeping in view the aforesaid, the petitioner is permitted to rectify its return even at this stage and its clarifications are directed to be accepted. Consequently, the return filed by the petitioner for the fourth quarter 2015-16 shall stand rectified accordingly. An appropriate order to this effect be passed by the VATO on the strength of this order, not later than two weeks from today and the petitioner shall not later than one week thereafter be permitted to download the form 'F' pertaining to the above transactions.

13. Accordingly, the 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

NAVIN CHAWLA, J

AUGUST 2, 2021
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