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

\+ W.P.(C) 5656/2020

CORSAN CORVIAM CONSTRUCTION S.A. – SADBHAV ENGINEERING LTD. JV ..... Petitioner

Through: Mr.Rajesh Jain, Advocate.

versus

COMMISSIONER OF TRADE AND TAXES ..... Respondent

Through: Mr.Anuj Aggarwal, Advocate.

% Date of Decision: 22nd July, 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 challenging the order dated 14th August, 2020 to the extent that the interest has been denied on the refund of the principal amount, namely, Rs.1,25,60,785/-. Petitioner also prays for a direction to the respondents to release the interest amounting to Rs.37,39,329 accrued as of 26th August, 2020 in accordance with Section 42(1) of the Delhi Value Added Tax Act, 2004 [for short 'DVAT Act'].

3. Mr. Rajesh Jain, learned counsel for the petitioner states that the impugned order is contrary to the principle of judicial discipline in particular in petitioner's own case ***Corsan Corviam Construccion S.A.-Sadhbhav Engineering Ltd. JV Vs. Commissioner of Trade and Taxes (2019) 67 GSTR 490 (Del)***, wherein this Court, with respect to the part of the refund for the same tax period i.e. fourth quarter of 2014-15, had held the interest to accrue with effect from 11th September, 2015. He points out that this order was not considered while passing the impugned order.

4. He states that insofar as the quantum of interest is concerned, the petitioner had filed DVAT-21 on 16th March, 2020 quantifying the entire amount of Rs.1,59,88,331/- which included interest of Rs.34,27,546/- on the request of the Special Commissioner. According to him, the petitioner was not required to file the DVAT-21 and it was merely filed because of system glitches as told to the petitioner by the Special Commissioner.

5. Learned counsel for the petitioner submits that as per Section 39(2) of the DVAT Act, the interest would accrue from the period specified in Section 38(3)(a) of the DVAT Act, albeit the quantum of refund would depend upon the adjudication. Applying the same to the present case, he states that the objections were decided in petitioner's favour on 26th August, 2019 and consequently, the original revised return filed on 10th July, 2015 was confirmed and therefore, the interest would accrue from 11th September, 2015 i.e. when the two months time period for issuing refund expired. In support of his submission, he relies upon the judgment of this Court in ***IJM Corporation Berhad & Ors. Vs CTT. (2018) 48 GSTR 102 (Del)***.

6. *Per contra*, Mr. Anuj Aggarwal, learned counsel for the respondent states that the present writ petition is not maintainable as Petitioner has an

efficacious alternate remedy under Section 74(1) of DVAT Act i.e. preferring an objection before the Objection Hearing Authority. He points out that in similar facts in ***ITD-ITD CEM JV vs. Commissioner of Trade and Taxes WP(C) 12018/2019***, a coordinate bench of this Court had refused to exercise Article 226 jurisdiction.

7. He also states that the petitioner had been asked to file DVAT-21 in accordance with the procedure under Rule 34(4) of the DVAT Rules, 2005 and it was not due to any technical glitch as alleged by the petitioner.

8. In rejoinder, Mr. Rajesh Jain, learned counsel for the petitioner, states that it will be a travesty of justice, if the petitioner, in the facts and circumstances of the case, is relegated to the appellate remedy. He contends that there will be a bar on appeal/objection against the impugned order as the same has been passed 'giving effect to' the order of this Court. In support of his contention, he relies upon Section 79(1)(j) of the DVAT Act which reads as under:-

> *"79. **Bar on appeal or objection against certain orders***
>
> *(1) No objection or appeal shall lie against—*
>
> *xxx xxx xxx*
>
> *[(j)]an assessment issued by the Commissioner to give effect to an order of the [Appellate Tribunal or a court; or]"*

9. He emphasizes that the impugned order is infested with egregious legal and jurisdictional defects inasmuch as neither the judgments on the issue of interest were considered nor the provisions of Section 42 of the DVAT Act have been considered in proper perspective.

10. He also states that the impugned order has been passed by the Special Commissioner (Spl. Zone) and the Additional Commissioner has the jurisdiction to hear the objections against the impugned order as per order dated 23rd November, 2020 passed by the respondent. He emphasises that the Additional Commissioner is junior in rank to the Special Commissioner. He submits that the DVAT Act does not contemplate a situation where a junior officer can hear and decide objections against the orders of the senior officer.

11. Today, Mr. Anuj Aggarwal, learned counsel for the respondent has screen-shared a work allocation dated 02nd July, 2021, which stipulates that Sh.Sanjeev Ahuja, Special Commissioner, Trade and Taxes-II is the new Objection Hearing Authority. He contends that Mr. Sanjeev Ahuja is equivalent in rank to the Special Commissioner (Spl. Zone), who had passed the impugned order and has the authority/jurisdiction to decide the objections. In support of his submission, he relies upon Section 68(4) of the DVAT Act.

12. Having heard learned counsel for the parties, this Court is of the opinion that the present case does not call for any interference under Article 226 of the Constitution, as an efficacious alternative remedy is available with the petitioner under Section of 74 of DAVT Act. The petitioner has failed to demonstrate any patent illegality like violation of principle of natural justice or of fundamental rights in the impugned order.

13. Further, when the previous writ petition filed by the petitioner pertaining to the same refund amount for the fourth quarter of 2014-15 being WP(C) 11040/2019 was disposed of vide order dated 18th October, 2019, the

Court had merely directed the respondents to decide the claim of the petitioner in accordance with law. Since the Court has not decided the matter on merits, the impugned order cannot be said to be 'giving effect to' the order of this Court. Therefore, objections against the impugned order will not be barred by Section 79(1)(j) of DVAT Act.

14. Consequently, if the petitioner is aggrieved by dismissal of part of its claim, it has to exhaust the statutory remedy available under the DVAT Act by filing an appeal/objections, especially when it is the petitioner's case that it is covered by the previous judgments of this Court.

15. Accordingly, the present writ petition is dismissed with liberty to the petitioner to file an appeal/objection. In the event an appeal/objection is filed within two weeks, the same shall be disposed of on merits by way of reasoned order in accordance with law within eight weeks. It is made clear that this Court has not expressed any opinion on the merits of the controversy. The parties are at liberty to urge all their contentions before the appropriate forum.

16. 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

JULY 22, 2021
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