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

Date of Decision: <u>24.09.2021</u>

\+ **<u>W.P.(C) 5626/2019</u>**

OTIS ELEVATOR COMPANY (INDIA) LTD ..... Petitioner

Through Mr.Kumar Visalaksh, Mr.Udit Jain, Mr.Archit Gupta, Advs.

versus

COMMISSIONER OF VALUE ADDED TAX & ORS. ..... Respondents

Through Mr. Satyakam, Additional Standing Counsel, Govt of NCT.

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

<u>NAVIN CHAWLA, J. (Oral)</u>

<u>CM 33409/2021</u>

This is an application seeking early hearing of the petition.

For the reasons stated in the application and with the consent of the learned counsels for the parties, the application is allowed and the petition is taken up for final hearing today itself.

<u>W.P.(C) 5626/2019</u>

1. This petition has been filed by the petitioner praying for a writ of mandamus directing the respondents to enable the issuance of Form 'F' by unblocking the online Form 'F' facility of the petitioner.

2. The petitioner further prays for a declaration that the re-assessments for the Financial Year (hereinafter referred to as 'FY') 2007-08 and 2008-09 are barred by limitation under Section 34(2) of the Delhi Value Added Tax Act, 2004.

3. As far as the prayer (b) of the petition regarding the re-assessments for FY 2007-08 and 2008-09 is concerned, the respondents in the short reply have stated that the demand for the said assessment years has been since removed. The said prayer, therefore, need not detain us any further.

4. As far as prayer (a) is concerned, it is the case of the petitioner that the petitioner was orally informed that its online facility on the portal of the Department of Trade and Taxes, Delhi for generation of Form 'F' has been blocked by the respondents as demands for Value Added Tax (hereinafter referred to as 'VAT') and penalty for Assessment Years 2007-08, 2008-09, 2009-10, 2012-13 and 2013-14 is due from the petitioner.

5. The petitioner asserts that the petitioner immediately made the payments with respect to tax and penalty demands for FY 2009-10, 2012-13 and 2013-14. The petitioner claimed that the demand for FY 2007-08 and 2008-09 has been set aside by the Tribunal and re-assessment proceedings are barred by limitation. The petitioner claimed that therefore, the online facility for issuance of Form 'F' for the petitioner could not have been blocked by the respondents.

6. The respondents, in its short affidavit has stated that the demand for FY 2007-08 and 2008-09 has since been withdrawn. The respondent, however, asserts that the facility for issuance of Form 'F' has been barred for the petitioner on account of pending demands for the period 2014-15 and 2015-16.

7. The petitioner, in its rejoinder filed before us, asserts that the petitioner has discharged its liability of VAT for the second quarter of 2014-15 and the first quarter of 2015-16. It has further asserted that the demand of Central Sales Tax for FY 2014-15 was raised on account of non-submission of the declaration in Form 'F' from the State of Maharashtra, which the petitioner later submitted to the VAT authorities and therefore, the said demand no longer subsists.

8. The learned counsel for the petitioner submits that in any case, the respondents have failed to issue any notice or grant an opportunity of hearing to the petitioner before blocking its facility of issuance of Form 'F'. Placing reliance on the judgment of this Court in ***Infiniti Retail Limited vs. Government of NCT of Delhi & Anr.*** 2020 (7) TMI 181, the learned counsel for the petitioner submits that in terms of Rule 5(4) (ii) of the Central Sales Tax (Delhi) Rules, 2005 (hereinafter referred to as 'CST (Delhi) Rules'), the facility for issuance of Form 'F' cannot be withheld without granting an opportunity of being heard to the petitioner and without passing an order containing reasons therefor.

9. On the other hand, the learned counsel for the respondents submits that there is a tax demand pending against the petitioner for which the facility was rightly blocked.

10. We have considered the submissions made by the learned counsels for the parties.

11. Admittedly, in the present case, the respondents have not issued any Show Cause Notice and/or granted an opportunity of hearing to the petitioner before debarring it from issuing Form 'F' from the online portal.

12. In ***Infiniti Retail Limited*** (*supra*), this Court had considered the effect of Rule 5(4)(ii) of the CST (Delhi) Rules and held that the Commissioner cannot withhold issuance of declaration Form 'C' to an assessee/applicant without passing a reasoned order, after affording an opportunity of hearing to the assessee/applicant.

13. In terms of Rule 8(2) of the CST (Delhi) Rules, the provisions of sub-Rule 4 of Rule 5 in relation to the declaration Form 'C' applies also to certificate in Form 'F'. Rule 8(2) of the CST (Delhi) Rules is reproduced herein below:

> *"(2) The provision of sub-rules (2) to (4) of Rule 5 in relation to Declaration Form 'C' referred to therein shall also apply to certificate in Form 'F', with such change, as circumstances required."*

14. A conjoint reading of Rule 5(4)(ii) and Rule 8(2) of the CST (Delhi) Rules would make it clear that issuance of Form 'F' can be withheld by the Commissioner only after granting an opportunity of hearing to the assessee and passing a reasoned order for the same.

15. In the present case, both the above pre-conditions have admittedly not been complied with by the respondents. Therefore, the Commissioner could not have debarred the petitioner from issuing Form 'F' from its online portal.

16. Consequently, the present petition is allowed and the respondents are directed to enable the issuance of Form 'F' facility on its online portal for the petitioner forthwith.

17. We, however, make it clear that we have not expressed any opinion on the alleged claim of the respondents for FY 2014-15 and 2015-16 against the petitioner.

18. The present petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

SEPTEMBER 24, 2021
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