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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 06.05.2022

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W.P.(C) 2818/2021**SHREE KRIPA AGRO**

..... Petitioner

Through: Mr Rajesh Jain, Mr Virag Tiwari and
Mr Ramashish, Advs.*versus***COMMISSIONER OF DELHI GOODS AND
SERVICES TAX**

..... Respondent

Through: Mr Anuj Aggarwal, ASC, GNCTD
with Ms Ayushi Bansal, Mr Sanyam
Suri and Ms Aishwarya Sharma,
Advs.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MS. JUSTICE POONAM A. BAMBA****[Physical court hearing/ hybrid hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):-**

1. After hearing the matter at some length on 19.04.2022, we had recorded the contours of the case and the issue which arose for consideration in the instant matter :

"1. The substantive prayers made in the writ petition are as follows:

“(a) Set aside and quash the impugned orders dated 5.10.2019 issued u/s 32 & 33 of the Act as well as the re-assessment order dated 5.10.2019 passed u/s 32 read with Section 9(2) under the Central Act;

(b) direct the respondent to release the refund claimed in the return filed for 2nd quarter 2016-2017 along with interest;”

2. Mr Rajesh Jain, who appears for the petitioner, says that there is a fundamental flaw in the concerned officer passing the impugned order i.e. order dated 05.10.2019, pertaining to the Financial Year (FY) 2016-2017.



2.1. *Mr Jain says that for the aforementioned FY, the assessment orders have already been passed under the Central Sales Tax Act, 1956.*

2.2. *It is, therefore, Mr Jain's contention that the jurisdiction exercised by the respondent, via the impugned order, is contrary to Section 7 of the DVAT Act, 2004 and Article 286 of the Constitution.*

2.3. *In support of this plea, Mr Jain has drawn our attention to Annexure P-2 (Colly), which relates to assessment orders passed on 18.09.2018 with regard to all four quarters of Financial Year (FY) 2016-2017.*

2.4. *Furthermore, Mr Jain has drawn our attention to Annexure P-3, which is an adjustment order dated 16.11.2018. A perusal of the said order shows that insofar as the fourth quarter for FY 2016-2017 was concerned, the demand amounting to Rs.28,63,600/- was raised, which was, adjusted against the pending refund claim of Rs.21,94,646/-. Resultantly, the amount of tax, which was claimed, albeit after adjustment, was quantified at Rs.6,68,954/-.*

3. *It is Mr Jain's contention that a perusal of the order dated 18.09.2018, [which is, appended on page 86 of the case file] would show that the demand for the fourth quarter arose on account of cancellation of C-Form.*

3.1. *It is stated that on account of this circumstance, the sale to the extent of Rs.2,25,62,140/- made to an entity going by the name M/s. Pooja Traders in the fourth quarter of FY 2016-2017, came to be taxed. The tax demand for the said quarter, as noticed above, was crystallized at Rs.28,63,600/-. It is this demand that was adjusted, via the aforementioned adjustment order dated 16.11.2018.*

4. *Prima facie, we are of the view that the impugned order that has been passed in the petitioners case for the aforementioned period, is without jurisdiction.*

5. *Mr Aggarwal says that he will obtain instructions in the matter.*



5.1. Apart from anything else, Mr Aggarwal will also obtain instructions with regard to the refund that the petitioner claims in the instant writ petition.

6. List the matter on 06.05.2022."

2. Mr Anuj Aggarwal, who appears on behalf of the respondent, has returned with instructions.

2.1. He says that the respondents will withdraw the assessment orders dated 18.09.2018, passed qua the financial year [in short "FY"] 2016-17, which are marked as Annexure P-2 Colly.

3. It is not in dispute that the four assessment orders dated 18.09.2018 passed in respect of the four quarters of FY 2016-17 were passed by the concerned officer, in exercise of powers conferred under Section 9(2) of the Central Sales Tax Act, 1956 read with Section 32 of the Delhi Value Added Tax Act, 2004 [in short "DVAT Act"].

3.1. As noted hereinabove, tax adjustment against refund *vis-a-vis* the fourth quarter for FY 2016-17 was also made; an aspect which is not disputed.

4 Therefore, we are of the view that the impugned orders dated 05.10.2019, which concern all the four quarters of the FY 2016-17, issued under the DVAT Act, in exercise of power conferred under Section 32 of the said Act, could not have been passed.

4.1. The suggestion of Mr Agarwal that the respondents will withdraw the assessment orders dated 18.09.2018 passed qua the FY in issue [i.e., FY 2016-17], will not suffice.

5. Accordingly, the writ petition is allowed. The impugned orders dated



05.10.2019, appended on pages 43 to 78 of the case file, are quashed.

5.1. Consequentially, the respondents are directed to deal with the refund application filed by the petitioner concerning the second quarter of FY 2016-17, albeit within two weeks from the date of receipt of a copy of this judgement.

5.2. While dealing with the refund application, the aspect concerning the interest will also be dealt with.

5.3. We may note that, according to the petitioner, the following amounts are due towards the refund claimed and interest.

<i>S. No.</i>	<i>Refund claimed in the Return for the 2nd Qtr. 2016-17</i>	<i>No. of days from the expiry of two months from the date of claim i.e. 16.2.2017</i>	<i>Interest u/s 42(1)(a) upto 6.5.2022</i>	<i>Refund including interest</i>
<i>1.</i>	<i>1,75,09,654/-</i>	<i>1845</i>	<i>53,10,462/-</i>	<i>2,28,20,116/-</i>

Note (1) – *If the refund is delayed any further, then the interest burden would mount by ₹ 2878.30/- per day till the date of payment.*

5.4. Parties will act, based on the digitally signed copy of this order.

6. List the matter for compliance on 01.06.2022.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

MAY 6, 2022/g.joshi

[Click here to check corrigendum, if any](#)