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

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Date of Decision: 22.09.2022

+ **W.P.(C) 11831/2022**

CENTRAL TYRES THROUGH IS PROP. MR MANJEET SINGH
ANANDPetitioner

Through: Mr Ashok Kumar Babbar, Advocate

versus

COMMISSIONER VALUE ADDED TAX & ANR..... Respondents

Through: Mr Rajeev Aggarwal with Ms Shilpa
Singh and Ms Divyanshi Bansal,
Advs.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This writ petition is directed against the order dated 06.06.2022, passed by the Delhi Value Added Tax Appellate Tribunal [in short "Tribunal"], whereby twelve review applications preferred by the petitioner for various tax periods were dismissed.

1.1 These review applications i.e., Misc. Application Nos. 455-466/ATVAT/2022 were filed on 31.05.2022.

2. The petitioner had, *via* the aforesaid applications, sought *suo motu* review of the Tribunal's judgment dated 28.07.2014.

3. Being aggrieved by the dismissal of the review applications, the petitioner instituted the instant writ petition.



3.1 The instant writ petition came up for hearing before us, for the first time, on 08.08.2022.

3.2 On that date, after hearing the counsel for the parties i.e., Mr Ashok Kumar Babbar, who appears on behalf of the petitioner, and Mr Rajeev Aggarwal, who appears on behalf of the respondents/revenue, we had recorded, broadly, what ailed the petitioner. For the sake of convenience, the relevant part of the order dated 08.08.2022 is extracted hereafter:

“1. The record shows, that the Appellate Tribunal via order dated 06.08.2014 had upheld the levy of tax, interest and 50% of penalty imposed in a bunch of matters.

1.1 The petitioner says that he was a part of the appeals, which were disposed of by the Appellate Tribunal via order dated 06.08.2014.

2. The record also reveals, that the unsuccessful assesseees had approached this Court, by way of statutory appeals.

*2.1 The appeals (lead appeal being ST. Appl. No.76/2014, titled **Challenger Computers & Ltd. v. Commissioner Trade & Taxes, Delhi**) were disposed of via order dated 21.08.2015.*

3. This Court via judgment dated 21.08.2015 reversed the order of the Appellate Tribunal.

4. It is not in dispute, that the respondents/revenue preferred a Special Leave Petition i.e., SLP No. 18421/2016, which was dismissed on 21.11.2016, both on the grounds of delay, as well as on the ground that no merit was found in the SLP.

5. Concededly, the writ petitioner had not preferred an appeal to this Court, although, as indicated above, it was before the Appellate Tribunal, agitating its grievance.

6. The petitioner attempted to get over this difficulty, by filing miscellaneous applications for review in the “disposed-off” appeal.

6.1 The miscellaneous applications were dismissed by the Tribunal, on 06.06.2022.

7. We have asked Mr Rajeev Aggarwal, who appears on behalf of the respondents/revenue, as to whether any steps towards recovery of tax, interest and penalty had been taken against the petitioner, since the petitioner had not approached the Court along



with others, by way of a statutory appeal.

7.1 Mr Aggarwal says that he will have to take instructions in the matter.

8. Perhaps, one of the reasons would be that the order of the Appellate Tribunal did not subsist in the eyes of law...”

4. Mr Aggarwal says, that the respondents/revenue are unable to retract the steps taken towards recovery of the demand raised against the petitioner, in view of the fact that insofar as the petitioner is concerned, the demand stands, although his co-assessees had obtained relief from this Court.

5. Steps had been taken to initiate recovery proceedings against the petitioner, as is evident upon a perusal of the attachment order issued by the respondents/revenue under Section 139 of the Delhi Land Reform Act, 1954.

5.1 This order is dated 30.10.2021.

6. What is not in dispute, is that the petitioner, along with other similarly circumstanced assesseees had preferred appeals before the Tribunal.

6.1 The Tribunal, *via* a common order dated 06.08.2014 dismissed the appeals of the assesseees.

6.2 It is at this stage that the petitioner parted way with the other assesseees, and did not approach the High Court, by way of a statutory appeal.

7. The other assesseees assailed the common order of the Tribunal dated 06.08.2014 by preferring appeals.

7.1 These appeals were taken up together, and disposed of *via* a common judgment dated 21.08.2015 passed by this Court.

7.2 *Via* the said judgment, this court reversed the common order dated 06.08.2014 passed by the Tribunal.

8. As noted in the order dated 08.08.2022, the respondents/revenue had



preferred a Special Leave Petition (SLP) No.18421/2016, which was dismissed *in limine*, both on the ground of delay, as also on merits, on 21.11.2016.

9. A perusal of the judgment of this Court, which was sustained by the Supreme Court on merits, would show, that since the substantial questions of law raised on behalf of the assesseees were common, what was considered for the disposal of the appeals were the facts, *albeit* illustratively, obtaining in STA 76/2014 and STA 26/2015.

10. The petitioner, it appears, woke up rather late in the day, and having realized that the demand against it was outstanding on account of the recovery proceedings that had been initiated against it, decided to take corrective measures.

11. It is in this backdrop, that twelve miscellaneous applications were filed, to call upon the Tribunal to *suo motu* review its judgment dated 06.08.2014.

12. Mr Babbar says, that since the substantial question of law raised before this Court has been decided in favour of the assesseees, the respondents/revenue cannot pursue the demand against the petitioner.

12.1 It is Mr Babbar's contention, that no tax can be levied without the authority of law.

13. On the other hand, Mr Aggarwal says that since the petitioner did not approach the Court, insofar as the petitioner is concerned, the demand stands, and therefore the respondents/revenue are entitled to pursue the same, and collect monies against the assessment orders passed *vis-a-vis* the petitioner.

14. Having heard the counsel for the parties, it is evident that the facts of



the case are rather peculiar.

15. While on one hand, the legal issue stands decided in favor of the assesseees, generally, which includes the petitioner, the demand, which would have been formally set aside, had the petitioner preferred an appeal with this Court, remains undisturbed.

15.1 In our view, the assessment order [given the aforementioned peculiar circumstances], has to be seen in the backdrop of the decision of this Court, and the fact that the Supreme Court had dismissed the SLP of the respondents/revenue, both on the ground of delay, as well as on merits.

15.2 As noted above, it is not as if this Court had, while deciding the appeals, examined the facts of each assessee which had preferred an appeal before it.

15.3 Therefore, this Court examined the legal issue which arose before it in the appeals and referred to the facts only illustratively.

15.4 That being the position, it is not as if the facts obtaining in the petitioner's case could possibly lead to a different result.

16. On merits, the broad issue which arose for consideration of this Court was whether the respondents/revenue were right in contending that the assesseees were required to reverse input tax credits claimed by them on purchases made, on account of credit notes issued by selling dealers, despite the selling dealers having confirmed, that they had not reduced their output tax liabilities.

16.1 This issue, as indicated above, has been decided in favour of the assesseees.

17. Thus, having regard to the overall circumstances, we are of the view that the impugned order deserves to be set aside.



17.1 It is ordered accordingly.

18. The demand created against the petitioner/assessee shall stand quashed, as was the case in respect of other assessees.

19. We may also note, that Mr Aggarwal has vociferously argued that this writ petition should not be entertained, on account of delay and laches.

19.1 Having regard to the facts which obtain in this case however, we are inclined to hold, that this cannot be the only reason to deprive the petitioner of relief in this matter.

19.2 That being said, the petitioner should be, in our view, called upon to pay costs, on account of the procrastination displayed by it.

19.3 Therefore, the petitioner is directed to deposit costs of Rs.50,000/- with the Delhi State Legal Services Authority (DSLISA).

20. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

SEPTEMBER 22, 2022/pmc