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

% *Decision delivered on: 17.10.2022*

\+ **W.P.(C) 14633/2022 & CM Nos.44843-44/2022**

M/S MOON ENTERPRISES ..... Petitioner

Through: Mr Varun Nischal and Mr Arif Ahmed Khan, Advs.

versus

COMMISSIONER OF TRADE TAXES & ORS. .... Respondents

Through: Mr Satyakam, ASC with Mr Deepak Thakur, Adv. for R-1 to 3.

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):

CM No.44844/2022

1. Allowed, subject to just exceptions.

W.P.(C) 14633/2022 & CM No.44843/2022 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. Issue notice to the respondents.

2.1. Mr Satyakam accepts notice on behalf of respondent nos.1 to 3, i.e., revenue.

3. In view of the instructions that Mr Satyakam has obtained, the necessity of filing a counter-affidavit in the matter stands obviated.

4. The substantive prayers made in the writ petition read as follows:

"(a) Issue a Writ of certiorari any other Writ, Order or directions setting aside the impugned notice dated 07.10.2022

issued by the Respondent No.2 u/s 74A(2) of the DVAT Act initiating revisionary proceedings;

(b) Summon the entire records of the Respondent No.2 (Special Commissioner) along with that of Respondent No.3 (AVATO, Ward-61) in connection with revisionary proceedings initiated through impugned notice dated 07.10.2022;

(c) Issue a Writ of mandamus/declaration or any other Writ, Order or directions directing the respondents to issue the refunds of Rs. 2,14,70,300/- (total) for all the four quarters of 2016-2017 (Table-1);

(d) Grant interest @ 6% as per Section 42 of DVAT Act on Refund claimed amount from the expiry of 2 months from the filing of respective returns;

(e) Direct the respondents to pay exemplary costs in favour of the Petitioner and/or recover the same from the concerned officer(s) for delaying the refund and thereby causing loss to exchequers."

4.1. Mr Varun Nischal, who appears on behalf of the petitioner, says that he does not press the relief claimed in prayer clause (e), in view of the stand taken before the Court, by Mr Satyakam.

4.2. Mr Satyakam has, at the very outset, stated that he has instructions to the effect that respondent nos.1 to 3/revenue will withdraw the impugned notice dated 07.10.2022 issued by respondent no.2 under Section 74A(2) of the Delhi Value Added Tax Act, 2004 [in short "DVAT Act"], albeit, with liberty to issue fresh notice, in accordance with the law.

4.3. Given this position, the substantive prayers made in the writ petition stand satisfied.

5. As far as the remaining prayers are concerned, they stand covered by the petitioner's action preferred in W.P.(C)No.12933/2022.

5.1. Notice, in this writ petition, was issued on 07.09.2022, which was made returnable on 12.12.2022.

6. Furthermore, we make it clear that if a fresh notice is issued under Section 74A(2) of the DVAT Act, the petitioner will have the liberty to assail the same, as per law.

6.1. As and when such notice is issued and a challenge is raised, the same will be examined, by the appropriate forum.

7. Mr Satyakam, however, assures the Court that the refund applications filed by the petitioner, will be processed, in the meanwhile.

7.1. We intend to make it clear that respondent nos.1 to 3/revenue, while processing the refund applications, will keep in mind the dicta of the judgment of this Court dated 14.07.2022, passed in W.P.(C)No.120/2019, titled ***Apple India Pvt. Ltd. v. Commissioner of Delhi VAT***.

8. The writ petition is disposed of, in the aforesaid terms.

9. Consequently, pending application shall stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 17, 2022
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