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

% *Date of Decision: 01.09.2022*

\+ **W.P.(C) 13336/2018**

\+ **W.P.(C) 13337/2018**

ARIEN SALES & MARKETING ..... Petitioner

Through: Mr Rajesh Jain with Mr Virag Tiwari and Mr Ramashish, Advs.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr Shadan Farasat, ASC with Mr Bharat Gupta, Adv.

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. These writ petitions have been directed against the orders dated 05.10.2018, passed by the respondent/revenue.

2. To be noted, notice in the instant petitions was issued on 11.12.2018.

2.1. On the said date, an interim order was passed in favour of the petitioner/assessee, to the effect that no coercive action will be initiated against it, till the next date of hearing.

3. The record shows that after a preliminary hearing, the coordinate bench passed the following order on 09.07.2019:

"***W.P.(C)13336 and 13337 of 2018***

1. Mr. Rajesh Jain, learned counsel for the Assessee, submits that the impugned orders seeking to revisit the assessment made under the Central Sales Tax Act, 1956 (GST Act) for the fourth quarter of 2014-15 and first quarter of 2015-16 are unsustainable in law, particularly since the earlier assessments made under Section 32 of the Delhi Value Added

Tax Act, 2004 in respect of the very same period under the Central Sales Tax Act, 1956 have remained undisturbed.

2. A further submission is that as regards the assessment order dated 24th August, 2015 for the fourth quarter of 2014-15, it created a 'Nil' demand. After passing the said order, the AVATO was functus officio and could not have exercised jurisdiction to re-assess the Assessee for the said period. As regards the assessment for the first quarter of 2015-16, a demand of Rs.6,14,401/- was created by the assessment by order dated 17th November, 2016. The objections thereto filed by the Assessee are pending before the Objection Hearing Authority (OHA). He submits that while an objection is pending before the OHA, the VATO could not have re-assessed the Assessee for the same period in terms of Rule 36 B (7) of the DVAT Rules, 2005.

3. On the above submissions, Mr. Shadan Farasat, learned counsel appearing for the Respondent, seeks time to address arguments.

4. List on 16th October, 2019.

CM APPL. 51911 & 51913/2018

5. The statement made by learned counsel for the Respondent as recorded in the order dated 11 December 2018 to the effect that no coercive action will be taken against the Petitioner will continue during the pendency of the writ petitions. The applications are disposed of."

4. As is evident from the aforementioned extract, on the said date i.e., 09.07.2019, the interim order dated 11.12.2018 was made absolute during the pendency of the writ petitions. Consequently, the interlocutory applications i.e., CM Appl Nos. 51911 & 51913/2018, were disposed of.

5. A perusal of the order dated 09.07.2019 would show that the periods in issue are the 4th Quarter of 2014-15 and the 1st Quarter of 2015-16.

5.1. It is not in dispute that the assessment proceedings were carried out *qua* the aforementioned periods under Section 9(2) of the Central Sales Tax Act, 1956 [in short "CST Act"] read with Section 32 of the DVAT Act, 2004

[in short “DVAT Act”.]

5.2. It is also not disputed that the assessment proceedings of the aforementioned periods have remained undisturbed.

6. What is also not disputed is that the assessment order dated 24.08.2015 passed *vis-a-vis* the 4th Quarter of 2014-15 created ‘nil’ demand.

7. Furthermore, there is no dispute that *via* the assessment order dated 17.11.2016, insofar as the 1st Quarter of 2015-16 is concerned, the VATO attempted a re-assessment of turnover and raised a demand amounting to Rs.6,14,401/-.

7.1. It is in this backdrop, that the petitioner/assessee was constrained to file its objections before the Objection Hearing Authority (‘OHA’), *vis-a-vis* the assessment order dated 17.11.2016.

7.2. The principal objection that the petitioner/assessee has raised in the instant petitions, is that the VATO could not have re-assessed the turnover for the 1st Quarter of 2015-16 *via* the order dated 05.10.2018, in view of Rule 36B(7) of the DVAT Rules, 2005, since an objection *qua* the same period was pending before the OHA.

8. We may note that the respondent/revenue has filed their counter-affidavit in the proceedings.

9. Mr Shadan Farasat, who appears on behalf of the respondent/revenue, informs us that VATO embarked on the journey of re-assessment on account of the fact that C-Forms issued by the selling dealer of the subject goods were cancelled by the concerned authority, located in the State of Rajasthan.

9.1. It is, however, not disputed by Mr Farasat that the VATO could not have carried out re-assessment, in view of the fact that both periods, referred to hereinabove, had undergone an assessment under the CST Act, which, admittedly, had not been disturbed up until now.

9.2. Mr Farasat says that he cannot but accept the position that if those proceedings had to be revisited, the route open to the respondent/revenue was, if at all, available under Section 74A of the DVAT Act.

9.3. Admittedly, the respondent/revenue has not taken recourse to the power of revision vested in it under Section 74A of the DVAT Act.

10. We may also note that Mr Rajesh Jain, who appears on behalf of the petitioner/assessee, says that Section 7 of the DVAT Act clearly bars re-assessment by the assessing officer under the local Act i.e., DVAT Act, once the assessment had been carried out under the CST Act.

10.1. In fact, Mr Jain, to buttress submission, has relied upon the decision rendered by a Bench, comprising one of us i.e., Rajiv Shakdher, J., on 06.05.2022 in W.P.(C) No. 2818/2021, titled ***Shree Kripa Agro vs. Commissioner of Delhi Goods and Services Tax***.

10.2. According to us, this submission of Mr Jain is correct. Once an assessment has taken place under the CST Act, it is almost axiomatic that the respondent/revenue has taken a position concerning the transactions in issue i.e., that they are inter-state sale transactions. Consequently, the concerned officer's jurisdiction to impose tax *qua* such transactions under DVAT Act stood ousted by virtue of Section 7 of the very same Act.

10.3. For the sake of convenience, Section 7 of the DVAT Act is extracted hereinbelow:

> "***7. Certain sales not liable to tax***
>
> *Nothing contained in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale of goods when such sale takes place –*
> *(a) in the course of inter-State trade or commerce; or*

(b) outside Delhi; or
(c) in the course of import of the goods into or export of the goods out of, the territory of India.
[(d) in accordance with the notification issued by the Central Government in exercise of its powers under section 3 of the Foreign Aircraft (Exemption from Taxes and Duties on Fuel) Act, 2002 (36 of 2002), no tax shall be levied on sales of the fuel and lubricants which are filled into receptacles forming part of any aircraft registered in a country other than India, if-
(i) the said country is a party to the Convention on International and Civil Aviation, 1944; and
(ii) the said country has entered into an Air Services agreement with India; and
(iii) the aircraft is operating on a scheduled or non-scheduled service to or from India.]
Explanation: Sections 3, 4 and 5 of the Central Sales Tax, 1956 (74 of 1956) shall apply for determining whether or not particular sale takes place in the manner indicated in clause (a), clause (b) or clause (c) of this section."

11. Thus, having regard to the aforesaid, we are of the view that the impugned orders cannot be sustained. The same are, accordingly, quashed.

12. The writ petitions are accordingly allowed. Case papers shall stand consigned to record.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

SEPTEMBER 1, 2022/pmc/r