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

% ***Date of Decision: 19th April, 2023***

\+ **W.P.(C) 7179/2019**

THERMOKING ..... Petitioner

Through: Mr. Rajesh Mahna, Mr. Dev Raj Sharma & Mr. Mayank Kouts, Advs.

versus

COMMISSIONER OF STATE GOODS AND SERVICE TAX & ANR. ..... Respondents

Through: Mr. Satyakam, ASC

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J. *(Oral)*

1. The petitioner has filed the present petition, impugning notice of default assessment dated 22.05.2019 as well as notice of assessment of penalty dated 02.08.2018, under Section 9(2) of the Central Sales Tax Act, 1956.

2. The Assistant Commissioner (adjudicating authority) had issued notice of default assessment of tax and interest dated 02.08.2018, calling upon the petitioner to pay an amount of ₹6,51,132/-. The said demand was raised on the ground that the petitioner had failed to prove that certain transactions were covered under Section 3 of the Central Sales Tax Act, 1956, and, therefore, was directed to pay additional amount of tax.

3. The additional levy was computed on the basis that the turnover in respect of certain transactions which were claimed as

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inter State transactions were not accepted. The adjudicating authority had found that the petitioner had failed to prove that the subject turnover was covered under Section 3 of the Central Sales Tax Act, 1956, and, therefore, held that the petitioner was liable to pay the tax @12.5% and not at the concessional rate of tax @2%. The petitioner, is, therefore, aggrieved by the said notices (3 nos.), relating to the second, third and fourth quarters of the financial year 2016-17.

4. The said notices were followed by notices for levy of penalty under Section 86(10) of the Delhi Value Added Tax Act, 2004 ("**DVAT Act**"), read with Section 9(2) of the Central Sales Tax Act, 1956.

5. The petitioner filed objections under Section 74 of the DVAT Act, challenging the six notices (three assessment notices and corresponding three penalty notices) for the three quarters of the financial year 2016-17.

6. The petitioner produced the C-Forms issued by the tax authorities of Haryana in respect of the inter State sales turnover for the three quarters of the financial year 2016-17 (₹48,93,960/- for the second quarter; ₹1,13,14,248/- for the third quarter; and ₹1,92,76,470/- for the fourth quarter).

7. The objections filed by the petitioner were transferred to the Special Objection Hearing Authority ("**SOHA**") and the matters pending before the OHA, were adjourned *sine die.*

8. The SOHA passed the impugned orders dated 22.05.2019 (separate orders for the three quarters), rejecting the petitioner's claim for concessional rate of duty on inter State turnover. A reading of the said impugned orders indicate that the notice under Section 59(2) of the DVAT Act had been issued to the petitioner to produce documents regarding transactions with Paras

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Enterprises, Panipat, Haryana, for the relevant period. However, the petitioner had neither appeared before SOHA nor had produced the relevant documents.

9. According to the petitioner, it did not receive any notice under Section 59(2) of the DVAT Act.

10. It is averred in the present petition that the petitioner had the relevant documents to establish the inter State sales, however, it could not produce the same because of non-receipt of any notice.

11. It appears from the said orders that the concessional rate of duty had been denied to the petitioner on the ground that the C-Forms, relied upon by the petitioner, had been cancelled by the concerned tax authorities in Haryana with retrospective effect.

12. Mr. Rajesh Mahna submits that the said issue stands covered by a decision of a coordinate Bench of this Court in ***Surinder Pal and Sons-HUF v. Value Added Tax Officer (Ward 57) Department of Trade & Taxes, Government of NCT of Delhi & Ors.: W.P.(C) 12142/2018,*** decided on ***14.11.2018*** as well as the decision of this Court in ***Indo Silicon Electronics Pvt. Ltd. v. Commissioner Trade & Taxes & Ors. (Neutral Citation Number 2023:DHC:2605-DB).***

13. Although the said controversy is covered by the aforesaid decisions, Mr. Satyakam, learned Counsel appearing for the respondent, submits that since the petitioner contends that it has documents to establish the inter State sales and there is no dispute that the adjudicating authorities have the jurisdiction to examine the relevant documents, the matter should be remanded to the concerned authority for deciding afresh, after affording the petitioner, an opportunity to be heard.

14. In the aforesaid view, the present petition is allowed. The

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impugned notices of penalty and assessment dated 22.05.2019 and 02.08.2018 are set aside.

15. The matter is remanded to the assessing authority to determine the petitioner's claim afresh and in the light of the decision of this Court in ***Indo Silicon Electronics Pvt. Ltd.*** *(supra)* and ***Surinder Pal and Sons-HUF*** *(supra).*

16. The assessing authority is requested to complete the proceedings within a period of three months, after giving due opportunity to the petitioner.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 19, 2023
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