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

\+ W.P.(C) 14315/2023

INDO SPIRITS .....Petitioner

Through: Mr Srijan Sinha, Mr Himanshu Chaubey, Mr Siddharth Garg, Ms Linzu Shiney Konyak, Mr Srajan Yadav and Mr Nidhesh Gupta, Advocates.

versus

ASSISTANT COMMISSIONER, DEPARTMENT OF TRADE AND TAXES & ORS. .....Respondents

Through: Mr.Rajeev Aggarwal, ASC and Mr.Shubham Goel, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>O R D E R</u>

% **26.11.2024**

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "a) Issue a Writ of mandamus, or any other appropriate Writ, order, or direction, and direct the Respondents to forthwith issue necessary C-Forms in connection with the total purchases made by Petitioner amounting to ₹874,89,09,495/- for FYs 2021-22 and 2022-23;
> b) Issue appropriate writs, orders or directions to Respondents to clarify rate of VAT applicable to sale of liquor from bonded warehouse to bonded warehouse and to permit Petitioner to revise VAT returns already filed without imposing penalties

etc., in the circumstances and to process such returns in a time bound manner; and

c) For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case."

2. The petitioner is stated to be engaged in the business of wholesale/ distribution of Alcoholic & Non-alcoholic drinks. As per the learned counsel for the petitioner, the grievance of the petitioner pertains to the period from 17.11.2021 to 30.09.2022. During this period, the petitioner purchased the goods from M/s Pernod Ricard India Pvt. Ltd. by paying VAT at the rate of 12.5%. However, the petitioner could not file its returns online due to the portal of the respondent not allowing the petitioner to select a rate of 12.5%.

3. It is the case of the petitioner that the said difficulty arises on account of respondent no.3's notification dated 10.11.2021 (Annexure P-2), in which only two categories of rates being 1% and 25% were prescribed. However, according to the petitioner the residual rate of 12.5% is applicable with respect to the transactions done by the petitioner as the same fall within the category of bonded warehouse to bonded warehouse.

4. This court is informed that M/s Pernod Ricard India Pvt. Ltd. had also preferred a petition bearing WP(C) No. 9103/2022, calling for amending the Delhi Value Added Tax (DVAT) Portal and to take on record the manual DVAT return. It is submitted that the said petition was disposed of by an order directing an interim arrangement whereby M/s Pernod Ricard India Pvt. Ltd. was permitted to file online returns by selecting either of the two rates, 1% or 25%, while reserving the rights of both the parties to challenge the rates as may be applicable on the given transactions.

5. The petitioner due to the said constraint of not selecting the rate of 12.5%, filed the manual returns for the period from January 2022 to September 2022. However, the petitioner could not download the C-Forms to be issued to the sellers of the petitioner due to the portal showing non filing of returns and also further showing a demand due to mismatch in Annexure 2A & 2B.

6. The respondents have filed their respective affidavits, which are taken on record. The learned counsel for the respondents, on instructions, submits that without prejudice to their rights to make an assessment at such rate as may be determined by the Assessing Officer (AO), the respondents have no objection and shall facilitate the filing of online returns and for revision, the return for quarter October 2021 to December 2021 by appropriate actions on the portal. If the petitioner files its returns online at any rate that is 1% or 25% as may be adopted by the petitioner, the respondents shall not levy any penalty for late filing of online returns and consequently the petitioner may download the C-Forms. The respondents shall further ensure that any mismatch as showing on the portal due to rate difference shall not affect the petitioner in downloading the C-Forms.

7. The learned counsel of the petitioner, on instructions, and in the above background facts states that without prejudice to the petitioner's rights to contest the assessments, solely to facilitate the issuance of C forms by using the automated facility in the system, the petitioner has no objection in adopting the course of action proposed by the respondents as noted above.

8. In view of the above, the present petition is disposed of by giving permission to the petitioner to file returns online by selecting an appropriate rate of interest. It is clarified that all rights and contentions of the parties are

reserved with respect to the rates of tax chargeable under the DVAT Act, 2004 and the notifications uninfluenced by the rate of tax as may be adopted by the petitioner for filing returns on the online portal.

9. The draft of the above order was shared with the learned counsel for the parties and both of them, under instructions, state that they are agreeable to the same. This order is passed with the consent of parties.

10. The petition is disposed of in terms of the above.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 26, 2024

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Click here to check corrigendum, if any