



\$~4 to 11

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

Date of decision: 12th November, 2025

+ **ST.APPL. 63/2014**

H.G. INTERNATIONALPetitioner

Through: Mr. Varun Nischal, Mr. Arif Ahmed Khan, Ms. Saira Tagre, Mr. Afroz Ahmed Ahmad Khan, Ms. Shaziya Fahim and Mr. Jitendra Kumar, Advs.

versus

THE COMMISSIONER OF TRADE
AND TAXES, DELHI

.....Respondent

Through: Mr. K. Gopalakrishnan, Adv.

5

WITH

+ **VAT APPEAL 30/2022 & CM APPL. 38967/2022**

M/S CARDIO FITNESS INDIA PVT. LTD. THROUGH ITS A.R.
TANNU ARORAAppellant

Through: Mr. A.K. Babbar and Mr. B.K. Tripathi, Advs.

versus

COMMISSIONER OF DELHI
VALUE ADDED TAX & ORS.

.....Respondent

Through: Mr. K. Gopalakrishnan, Adv.

6

WITH

+ **VAT APPEAL 36/2022**

M/S SUPER STATIONERSAppellant

Through: Mr. Ruchir Bhatia, Adv.

versus

COMMISSIONER OF TRADE
AND TAXES, DELHI

.....Respondent

Through: Mr. K. Gopalakrishnan, Adv.

7

WITH

+ **VAT APPEAL 39/2022**

MEGHAAARIKA INTERNATIONAL PVT LTD FORMERLY
RITZY INTERNATIONAL PVT LTDAppellant

Through: Mr. Ruchir Bhatia and Mr. Abhishek Anand, Advs.

versus

COMMISSIONER OF TRADE AND TAXES DELHI.....Respondent



8 Through: Mr. K. Gopalakrishnan, Adv.
WITH
+ **VAT APPEAL 6/2022& CM APPL. 23862/2022**
R K OVERSEASAppellant
Through: Mr. Varun Nischal, Mr. Arif Ahmed
Khan, Ms. Saira Tagre, Mr. Afroz
Ahmed Ahmad Khan, Ms. Shaziya
Fahim and Mr. Jitendre Kumar, Advs.
versus
COMMISSIONER OF TRADE TAXES & ORS.Respondent
Through: Mr. K. Gopalakrishnan, Adv.
9 WITH
+ **VAT APPEAL 13/2023**
UNIQUE COLLECTION INDIA PVT LTDAppellant
Through: Mr. Ruchir Bhatia and Mr. Abhishek
Anand, Advs.
versus
COMMISSIONER OF TRADE AND TAXES DELHI.....Respondent
Through: Mr. K. Gopalakrishnan, Adv.
10 WITH
+ **VAT APPEAL 44/2023&CM APPL. 55914/2023**
GEM SANITARY APPLIANCES PVT. LTD.Appellant
Through: Mr. Virag Tiwari, Mr. Ramashish and
Mr. Himank Ahuja, Advs.
versus
THE COMMISSIONER, VATRespondent
Through: Mr. K. Gopalakrishnan, Adv.
11 WITH
+ **VAT APPEAL 9/2023&CM APPL. 25345/2023**
INDUS VALLEY TRADING P LTDAppellant
Through: Mr. Ruchir Bhatia and Mr. Abhishek
Anand, Advs.
versus
COMMISSIONER OF TRADE AND TAXES DELHI.....Respondent
Through: Mr. K. Gopalakrishnan, Adv.
CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN
JUDGMENT

**Prathiba M. Singh, J.**

1. This hearing has been done through hybrid mode.
2. This is a batch of VAT appeals which have been filed by the Appellants challenging the various assessment orders which have been upheld at different stages.
3. The facts giving rise to the appeals are that, default assessment orders were issued to the Appellants by the concerned assessing authority for their respective periods of assessment. The said assessment orders determined the tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 (*hereinafter, 'DVAT Act'*) as under:

S. No.	Appeal No. & Name of the Appellant	Period of assessment	Date of Order	Demand Raised (Tax + Interest + Penalty)	Ward No. of territorial jurisdiction	Assessment framed by
1.	ST.APPL 63/2014 H.G. International	2 nd , 3 rd and 4 th Quarter of 2008	15.03.2010 15.03.2010 30.03.2010	Rs. 20,29,877/- Rs. 22,01,632/- Rs. 50,39,960/-	Ward-17 The Assessing Officer at the time of March-2010: Mr. Sham Chand, VATO (Ward 17)	AVATO (Audit) Mr. Subhash Chander
2.	VAT APPL. 30/2022 M/s Cardio Fitness India Pvt. Ltd.	F.Y. 2008-09 Nov., 2008 Dec., 2008 Jan., 2009 March, 2009 October, 2009 September, 2009 April, 2010	13/21.12.2010 13/21.12.2010 13/21.12.2010 13/21.12.2010 13/21.12.2010 13/21.12.2010 13/21.12.2010	Rs. 8,87,198/- Rs. 4,11,888/- Rs. 3,13,436/- Rs. 7,28,355/- Rs. 1,15,663/- Rs. 4,38,708/- Rs. 3,15,159/-	Ward-95	Shri D.S. Verma, VATO (Audit, VAT)
3.	VAT APPL. 36/2022 M/s Super stationers	4 th quarter of 2012-13	05.07.2013	Rs. 11,53,211/-	Ward-64	AVATO, Enforcement Branch 1
4.	VAT				Ward-63	VATO,



	APPL. 39/2022 Meghaaar-ika International Pvt Ltd	November 2011-12	27.04.2012	Rs. 7,80,409/-		Ward-207 Special Cell
5.	VAT APPL. 06/2022 R.K. Overseas	2 nd quarter 2009-10, October, 2009 November, 2009 December, 2009 January, 2010 February, 2010 March 2010	19.05.2011 (07 Orders)	Rs. 98,56,094/- Rs. 32,99,407/- Rs. 32,99,407/- Rs. 36,19,083/- Rs. 98,607/- Rs. 20,13,271/- Rs. 27,82,692/-	Ward-41 The Assessing Officer at the time of March 2010: Mr. Naresh Pal, VATO (WARD 41)	AVATO (Audit) Mr. Subhash Chander
6.	VAT APPL. 13/2023 Unique Collection India Pvt Ltd	2010-11(Feb); 2010-11(March) 2011-12(April); 2011-2012(May) 2011-12(Jun); 2011-2012(July)	28.12.2011	Rs. 51,647/- Rs. 80,792/- Rs. 3,61,704/- Rs. 2,79,422/- Rs.37,50,254/- Rs.11,92,550/-	Ward-90	VATO, Special Cell
7.	VAT APPL. 44/2023 Gem Sanitary Appliances Pvt Ltd.	AY 2008-09 First Quarter Second Quarter Third Quarter March 2009 Fourth Quarter AY 2008-09 First Quarter Second Quarter Third Quarter Fourth Quarter	13/20.9.2011	<u>Demands under DVAT Act-</u> Rs. 1,78,847/- Rs. 63,454/- Rs. 62,555/- Rs. 34,656/- Rs. 31,674/- <u>Demands under Central Sales Act-</u> Rs. 15,74,922/- Rs. 95,550/- Rs. 5,43,661/- Rs. 6,43,084/-	Ward-66 Sh. Manoj Kr. Sharma	VATO (AUDIT) Sh. Ram Avtar Meena
8.	VAT APPL. 9/2023 Indus Valley Trading(P) Ltd.	November 2011	20.03.2012	Rs. 11,80,806/-	Ward-45	VATO, Ward-207 Special Cell



4. The said assessment orders were issued by VATO (Audit). The Appellants/assesseees were registered dealers of different wards. In addition to the demands raised, the claims of ITC were also disallowed in the assessment orders. The demands in each of these appeals is as under:

5. Pursuant to such orders, objections were filed by the Appellants/assesseees. The said objections were rejected by the Objection Hearing Authority (*hereinafter*, 'OHA') vide the respective orders wherein the OHA upheld the demand of tax and interest raised upon the Appellants by the assessing authorities.

6. Thereafter, the orders passed by the OHA were challenged by the Appellants before the Appellate Tribunal, Value Added Tax, New Delhi and the Appellate Tribunal upheld the assessment orders issued by the assessing authorities, thus rejecting the appeals filed by the Appellants.

7. The said orders passed by the Appellate Tribunal, Value Added Tax, New Delhi stand impugned in the present batch of appeals filed under Section 81 of the DVAT Act.

8. *Vide* Order dated 4th August, 2016 the Court had framed the following question of law in **ST.APPL. 63/2014**¹ for its consideration:

“Whether the VATO(Audit) can pass an assessment Order in terms of the Delhi Value Added Tax Act, 2004?”

9. This question of law was decided by the Court on 16th August, 2017, wherein the Court analysed the scheme of the DVAT Act and observed that the VATO(Audit) could, in fact, pass assessment orders. The Court was thus of the view that the order of default assessment of tax, interest and

¹ H.G. International v. The Commissioner of Trade & Taxes, Delhi



penalty issued by the VATO (Audit) were validly issued and were within his powers and jurisdiction in terms of Section 58 (1) read with Section 58 (4), and Section 66 read with Section 68 of the DVAT Act. Accordingly, the Court observed as under :

“16. Thus, under the OVAT Act the officer undertaking the audit has to forward the report to the assessing officer who then, in terms of Section 42 of the OVAT Act, makes an audit assessment. The position under Section 58 of the DVAT Act is very different.

17. Likewise the decisions in Sha. M. Hastimal and Co. v. Deputy Commissioner of Commercial Taxes (1989) 72 STC 308 which was under the Karnataka Sales Tax Act, 1957, Eureka Forbes Ltd. State of Bihar (2000) 119 STC 460 (Pat) which was under the Bihar Finance Act, 1981, Ansal Papers v. State of U.P. (2009/ 20 VST 727 (All) which was under the U.P. Trade and Tax Act, 1948 are distinguishable as they wore in the context of the specific provisions of those enactments which bear no comparison to Section 58 of the DVAT Act.

18. For the aforementioned reasons, the question framed by this Court by order dated 4 August, 2016 is answered in the affirmative. i.e. in favour of the Department and against the Assessee. The order dated 4’ August 2014 of the AT is affirmed. The appeal is dismissed, but in the circumstances, with no orders as to costs.

10. Thereafter, a review application was filed by the Appellants, challenging the said order dated 16th August, 2017. The said application was dismissed on 11th October, 2017.

11. Further to the dismissal of the review application, the orders dated 16th August, 2017 and 11th October, 2017 were challenged before the



Supreme Court in **SLP (C) Nos. 34094-34095/2017** wherein *vide* Order dated 27th September, 2019, the Supreme Court had observed as under :

“Learned senior counsel for the appellant has drawn our attention to the orders passed on 18th February, 2016 and 4th August, 2016 in ST Appeal No. 63/2014 to contend that apart from the question of law which has been decided by the impugned order, the other questions of law which the appellant sought to raise in the appeal have not been framed as question of law and consequently not answered. The submission is that the order would show that the question of law answered was only an additional question of law. In fact he seeks remit to the High Court to take a view whether the other questions of law raised are required to be framed or not and if so, frame those questions of Law.

*On hearing learned counsel for the parties the aforesaid contention of the learned counsel for the petitioner has merit and thus **we remit the matter back to the High Court for consideration as to whether the question of law originally pleaded in ST Appeal 63/2014 actually arises for consideration or not and if the High Court considers it appropriate to frame so, to take a view on the same.***

Insofar as the question of law in the present case is concerned, as to whether that Audit Officer can also pass an assessment order or not, we consider it appropriate to list for hearing. List for the aforesaid purpose on 21st January, 2020 on top of the Board.

12. Thereafter on 28th January, 2020, the Supreme Court finally remitted the entire matter for consideration of this Court in the following terms:

“The matter was listed as item No.1 but passed over as non-appeared for respondent-Department. The



position was not different on the second call when the matter was called out at 12.45P.M.

We thus proceeded to hear learned Senior Counsel for the appellant.

Learned counsel for the appellant seeks to contend that the Officer who carries out an audit should not be the officer who passes an assessment order and in that respect a number of judgments have been delivered by the Division Bench of the Delhi High Court which unfortunately were not brought to the notice of the Bench while passing the impugned order.

He also refers to the Circular dated 11.04.2016 issued by the respondent-Department which reads as under:

*"DEPARTMENT OF TRADE AND TAXES
GOVT. OF NCT OF DELHI, LAW &
JUSTICE BRANCH VYAPAR BHAWAN,
IP ESTATE, NEW DELHI*

*F.No. 7(6)/L&J/Circular/2016/373
11.04.2016*

CIRCULAR

*Sub- Guidelines for VAT Authorities of
Department of Trade Taxes in terms of
jurisdiction and duties assigned exercise
of powers under Chapter X of the DVAT
Act, 2004.*

***In compliance of judgment in the matter
of M/s Capri Bathaid Pvt. Ltd. & Others,
in WPC No.8913/2014, all officers
appointed. as VAT Authorities in the
Department of Trade & Taxes and
exercising powers under Chapter X of
DVAT Act, 2004 are once again directed
to follow the following instructions in
letter and spirit.***

*All officers while exercising any of the
powers under Chapter X of the Act viz.,*



Audit, Survey/Inspection or Stopping & Detention of Goods Vehicles shall prepare reports based on the information & records in their possession and duly examined by them. Whereafter the reports along with the information & records shall be mandatorily forwarded, to the concerned Ward/Branch officer having jurisdiction over the dealer for assessment of tax and penalty, in accordance with the laid down procedure.

Non-compliance of the above instructions shall be viewed seriously and shall attract disciplinary action.

*(S.S. Yadav)
Commissioner
(VAT)"*

Thus his submission is that the Circular itself settles the Issue.

In the absence of assistance from the respondent-department and taking into account the aforesaid pleas, as also the fact that in terms of the order dated 27.09.2019, we had remitted the matter back, to the High Court except on the question whether the Audit Officer can also pass an assessment order or not, we deem it appropriate to remit this issue also to the High Court.

It is stated that the matter is to be listed on 21.5.2020 in the High Court.

The appeals are accordingly disposed of."

13. After the above two orders dated 27th September, 2019 and 28th January, 2020 were passed by the Supreme Court and the matter was remitted to this Court, the questions of law were again framed in these



appeals² vide order dated 19th July, 2023 in the following terms:

“A. Whether ITC could have been refused in the present matters taking recourse to Sections 9(2)(g) of the Delhi Value Added Tax Act 2004 [DVAT Act] since the said provision came into effect only from 01 April 2010?

B. Whether the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer is empowered under the DVAT Act to pass an assessment order?

C. Whether the absence of authority being conferred on the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer in terms of Form DVAT-50 would render that authority bereft of the power to assess?

D. Whether the penalty imposed in some of the batch appeals would sustain if made in violation of the principles of natural justice?”

14. In **VAT APPL. 6/2022³**, the following further question of law has also been framed vide order dated 20th July, 2023:

“(a) Whether the Value Added Tax Officer[VATO](Audit) while conducting an assessment under the DVAT could have questioned or re-opened the assessment with respect to central sales?

(b) Whether the VATO (Audit) Officer could be recognised to have the jurisdiction to undertake an assessment under Sections 32 and 33 of the Delhi Value Added Tax Act, 2004[DVAT]?

² S.T. APPL. 63/2014, VAT APPL. 30/2022, VAT APPL. 36/2022, VAT APPL. 39/2022 & VAT APPL. 9/2023

³ RK OVERSEAS V. COMMISSIONER OF TRADE & TAXES & ORS.



(c) Whether the VATO(Audit) Officer stood denuded of the authority to undertake an assessment in the absence of due authorization as contemplated in terms of Form DVAT-50?

(d) Whether Input Tax Credit [ITC] as claimed by the appellant could have been denied solely on the grounds as noticed in Section 9(2)(g) of the DVAT bearing in mind the judgement of the Court in Quest Merchandising India Pvt. Ltd. vs. Government of NCT of Delhi & Ors. [2017:DHC:6328-DB]?

(e) Whether the impugned order as well as the assessment is liable to be set aside even otherwise in light of the provisions contained in Section 74(9) of the DVAT?"

15. In **VAT APPL. 13/2023⁴**, the following further questions of law have also been framed *vide* order dated 28th July, 2023:

"A. Whether the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer is empowered under the Delhi Value Added Tax 2004 [DVAT Act] to pass an assessment order?

B. Whether the absence of authority being conferred on the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer in terms of Form DVAT-50 would render that authority bereft of the power to assess?

C. Whether any tax liability could have been created where the credit of the Input Tax paid and available with the appellant for the concerned tax periods exceeded the Output Tax liability?"

⁴ UNIQUE COLLECTION INDIA PVT. LTD. V. COMMISSIONER OF TRADE & TAXES, DELHI



16. In **VAT APPL. 44/2023**⁵, the following further questions of law have also been framed *vide* order dated 21st January, 2024:

“a) Whether the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer is empowered under the DVAT Act to pass an assessment order?

b) Whether the absence of authority being conferred on the VATO (Audit)/VATO (Enforcement)/VATO (Special Cell) officer in terms of Form DVAT-50 would render that authority bereft of the power to assess/audit?”

17. Questions B and C in paragraph 13 are common in all appeals. On the said two questions of law, the court has heard the Id. Counsels for the parties.

18. Mr. Varun Nischal, Id. counsel for the Appellants has firstly submitted that some facts are not in dispute *i.e.* that the jurisdictional VATO in **ST.APPL. 63/2014** was VATO Ward 17⁶. However, the assessment was made by VATO (Audit)⁷. The dates of the assessment are 15th March, 2010 and 30th March, 2010 for the fourth quarter in the said appeal. Similarly the jurisdictional VATO in each of the cases is not in dispute. It is also not disputed that the VATO (Audit) had drawn the assessments in all these cases. The said VATO (Audit) was not the jurisdictional VATO.

19. The first submission on behalf of the Appellants is that the question of law which arises for consideration now stands conclusively decided in view of the decision in **Capri Bathaid Pvt. Ltd. and Ors. v Commissioner of Trade and Taxes 2016:DHC:1789-DB**. In the said case, *vide* judgement dated 2nd March, 2016, the Coordinate Bench of this Court had analysed the

⁵ GEM SANITARY APPLIANCES PVT. LTD. V. THE COMMISSIONER, VAT

⁶ Mr. Shyam Chand

⁷ Mr. Subhash Chander



scheme of the DVAT Act i.e. Section 60, 66 and 68 and Rule 65 of the DVAT Rules and had come to the following conclusions:

“24. The combined reading of Sections 60, 66 and 68 of the DVAT Act read with Rule 65 of the DVAT Rules reveals the following position:

(i) The CVAT may delegate any of his powers to any VAT Authority.

(ii) Where the CVAT delegates his powers under Chapter X of DVAT Act (which deals with audit, investigation and enforcement), the delegate shall carry and produce on demand, evidence in the prescribed form, of the delegation of these powers when exercising the powers.

(iii) Where the CVAT has delegated his power to a VAT Authority, he may supervise, review and rectify any decision made or action taken by such VAT Authority.

(iv) Where the CVAT wishes to appoint an officer to exercise any of the powers of audit, investigation and enforcement, he shall issue the grant of authority for the exercise of such powers notified in Form DVAT-50. The authority shall be issued by the person empowered by the CVAT in that regard. The grant of authority in terms of Rule 65 (2) is to be for a period not exceeding three years. The grant of authority shall be to a specific person and expire on the retirement, resignation or transfer of the person.

(v) Rule 65 (3) mandates that every officer or other person authorized by the CVAT under Rule 65 (1) shall carry the authorization in Form DVAT-50 with him when purporting to exercise any of the powers conferred under Chapter X of DVAT Act.

(vi) Such officer is required in terms of Rule 65



(3) (b) of the DVAT Rules to produce the authorisation in Form DVAT -50, if requested by the owner or occupier of any premises where he proposes to exercise these powers.”

34. It requires to be noticed that Section 68 (2) of DVAT Act talks of delegation of the CVAT's powers under Chapter X. Section 68 (3) talks of the powers to supervise, review and rectify any decision made or taken by the VAT Authority to whom such powers have been delegated. The explanation to Section 68 (3) makes it clear that the exercise of such power of “supervision, review or rectification will not lead to the issue of an assessment or reassessment after the expiry of the time referred to in Section 34 of this Act.”

20. Thereafter, in the said case, the Court had also observed that the delegation order dated 12th November, 2013 which is relevant to the facts in the said case, clearly stipulated that *“the officers would exercise powers and perform duties within their respective jurisdiction”*. Relevant portion of the said judgement are set out below:

“27. What is significant as far as the above delegation of powers by the CVAT is concerned is that, in the first place, the officers to whom powers have been delegated are to exercise the powers and perform the duties of such powers “within their respective jurisdiction”. This is critical since it conveys the intention that the exercise of powers by an officer is to be restricted to a certain jurisdiction. For instance, in terms of the above order, the officer not below the rank of AVATO will not exercise the power vested under Sections 32 and 33 of the DVAT Act vis-a-vis a dealer who is outside the ordinary jurisdiction of such officer. Otherwise, officers who are delegated such powers could begin to exercise such powers in respect



of dealers not within their jurisdiction. That apart, there can be an overlapping of the exercise of jurisdiction by different officers that can result in undue harassment of the dealer and administrative chaos.

28. In this light, in *Commissioner of Sales Tax, UP v. Sarju Prasad Ram Kumar* 1976 (37) STC 533 (SC), an order of assessment passed by the Assistant Sales Tax Officer (ASTO), Sector II, Lucknow was challenged as being without jurisdiction on the ground that only the ASTO, Sector III could exercise jurisdiction over the Assessee's circle. The Supreme Court held that since it was not shown that the ASTO, Sector II, had also been conferred with jurisdiction to assess the dealers in Sector III by the Commissioner, the only possible conclusion was that the ASTO, Sector II, had no jurisdiction to assess the dealers in Sector III."

21. Thus, after analysing the said delegation order dated 12th November, 2013, the Coordinate Bench concluded as under:

*"31. Another feature of the above order issued by the CVAT under Section 68 (2) of the DVAT Act is that no officer below the rank of AVATO has been authorized to exercise any other function under the DVAT Act. This is significant since in the present petitions, the powers of assessment have been exercised by the AVATO Enf-I without there being a delineation of the specific jurisdiction of the AVATO Enf-I in relation to the ward in question within the jurisdiction of which the Assessee in question falls. **In the absence of such a specific order, it is the jurisdictional VATO, and not the AVATO Enf-I, who will continue to exercise the power of assessment vis-a-vis the Assessee.**"*

22. In addition, in so far as the power of conduct of audit is concerned,



reliance is placed by the Appellants on the fact that a Form DVAT-50 has to be issued by the commissioner authorizing the concerned officer under Chapter X of the DVAT Act, failing which even the audit as also the other powers under Chapter X cannot be exercised or carried out.

23. It is further submitted that the said DVAT-50 was not issued for a very long time as is admitted by the Commissioner, VAT in the decision in **Larsen & Toubro Ltd. & Anr. v. Govt. of NCT of Delhi & Ors. (W.P.(C) 1820-1822/2013)**. In the said case, on the basis of **Capri Bathaid Pvt. Ltd. (supra)**, the Court took on record the affidavit of the Commissioner (VAT) where he had categorically deposed that the authorization under Form DVAT-50 was issued only *vide* order dated 15th October, 2014 and not before.

24. Thus, as per the Appellants a combined reading of **Capri Bathaid Pvt. Ltd. (supra)** and **Larsen & Toubro Ltd. (supra)** leaves no doubt that on both grounds *i.e.* the lack of delegation and the non-issuance of Form DVAT-50, the initial audit as also the assessment were untenable.

25. Mr. Gopalkrishnan, Id. Counsel, on the other hand has made his submission to the effect that the jurisdictional objection ought to have been raised by the Appellant at the first stage itself, *i.e.* when the objections to the assessment order were raised. In fact, it is his submission that the same has not been raised at all, either before the assessing officer or before the appellate tribunal. Thus, such an objection cannot be permitted to be raised at the stage of second appeal.

26. He further submits that the transfer and posting orders of various VATOs and AVATOs would show that they were exercising powers interchangeably and there was no specific delineation of powers which the



VAT office was following at that time. In addition, it is submitted that the VATO(Audit) or the VATO, who was doing the assessment is not a *quorum non judice*.

27. Mr. Gopalkrishnan, Id. Counsel further emphasises that there is a distinction between erroneous assumption of power and complete lack of jurisdiction. In these cases, at best it could be an erroneous assumption, or an irregularity, and the same does not constitute a lack of jurisdiction.

28. Reliance is also placed upon Section 80 of the DVAT Act to argue that even if there has been some irregularity in assessment proceedings, the same are protected under the said provision. Section 80 of the DVAT Act reads as under:

“80 Assessment proceedings, etc. not to be invalid on certain grounds

(1) No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

(2) The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

(3) No assessment made under this Act shall be invalid



merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act.”

29. Mr. Gopalakrishnan, Id counsel for the Respondent also submits that in so far as Form DVAT-50 is concerned, the delegation of power exists under Section 68(2) of the DVAT Act, read with Section 65 of the DVAT Rules. Once the said power to delegate exists with the commissioner, any officer whom the Commissioner may authorize would be entitled to exercise jurisdiction under Chapter X of the DVAT Act. To such effect, Form DVAT-50 is merely to be produced at the time of audit investigation and enforcement and not for carrying out the assessment.

30. The court has heard the Id. counsels for the parties and has considered the submissions made, along with the judgments relied upon.

31. The decision in **Capri Bathaid Pvt. Ltd. (supra)** was, unfortunately, not brought to the notice of the Court when the order dated 16th August, 2017 was passed in this matter, though, there is a commonality of one of the members in the Bench.

32. The judgment in **Capri Bathaid Pvt. Ltd. (supra)** has, in fact, resulted in the issuance of circular dated 11th April, 2016 by the VAT Department, which has been captured in the order of the Supreme Court dated 28th January, 2020, as extracted above.

33. Thus, in so far as the rationale in **Capri Bathaid Pvt. Ltd. (supra)** is concerned, the decision has been accepted by the VAT Department and the necessary Circular has been issued by the concerned commissioner.

34. With respect to the decision in **Larsen & Toubro Ltd. (supra)**, an affidavit on behalf of Mr. S.S. Yadav, Commissioner, Value Added Tax



(CVAT) was also filed, which has been recorded in order dated 15th March, 2016, wherein the Commissioner has admitted to the position that Form DVAT-50 was not issued prior to 15th October, 2014. The relevant part of the judgment is set out below:

“2. Pursuant to the above order, an affidavit has been filed by Mr S. S. Yadav, Commissioner, Value Added Tax (CVAT). He has enclosed with the affidavit a copy of the inquiry report prepared by him on 10th March, 2016. Inter alia, the conclusions reached by him on examination of the officers concerned with the case of survey of the Petitioner and examination of the records read as under:

“(i) No file was created in the department in the matter of survey and sealing of three premises of M/s L&T Limited on 15.3.2013. The decision was taken based on the study of profile and past history of the company in the computer system after verbal discussion by the officers concerned. The files were not created before such surveys to maintain secrecy of the operation.

(ii) On the basis of information available in the computer system, the Joint Commissioner and his team had reasonable ground to believe that M/s L&T Limited was attempting to avoid or evade tax and was concealing material facts. These grounds were verbally discussed before undertaking the survey. However, these grounds were not written down in any file. The grounds as stated by then Joint Commissioner include high GTO low tax, frequent revision of returns, huge assessment of tax liability of the firm by ward officer concerned.

(iii) A deployment order was issued by Shri Vivek Tripathi, the then Joint Commissioner, Special Zone. The order was issued from his personal branch and for this also no file was



created.

(iv) Although the powers under Section 60 stood delegated to various VAT officers, the deployment order were issued as there were multiple officers in these teams. The stated objective of issuing the order was better coordination, supervision and monitoring of entire operation.

(v) The approval of the Commissioner VAT was not obtained in any file before the survey of M/s L&T Limited as the powers of the Commissioner under Section 60 stood delegated to the officers upto the level of Value Added Tax officers of the department vide order dated 31.10.2005.

(vi) The authority to exercise powers under chapter X of DVAT Act, 2004 in the prescribed form i.e. Form DVAT 50 was not issued. In fact such authorization were not being issued in any case. The matter was discussed in a meeting chaired by the Commissioner on 23.9.2014 and the authorization was issued subsequently vide order dated 15.10.2014."

(vi) The authority to exercise powers under chapter X of DVAT Act, 2004 in the prescribed form i.e. Form DVAT 50 was not issued. In fact such authorization were not being issued in any case. The matter was discussed in a meeting chaired by the Commissioner on 23.9.2014 and the authorization was issued subsequently vide order dated 15.10.2014."

35. A conjoint reading of *Capri Bathaid Pvt. Ltd. (supra)* and *Larsen & Toubro Ltd. (supra)*, as also the circular dated 11th April, 2016 and the report dated 10th March, 2016 leads to the following conclusions:

(i) That prior to 11th April, 2016, no specific authorizations were



given to VATO officers, who were conducting Audit, Survey & Inspection etc. for also closing assessments of other Jurisdictional officers.

- (ii) In addition, no Form DVAT – 50 authorization was given prior to 15th October, 2014.

36. The assessment orders in these appeals, however, are prior to these two dates *i.e.* 11th April, 2016 and 15th October, 2014. In fact, on the basis of the decisions in ***Capri Bathaid Pvt. Ltd. (supra)*** and ***Larsen & Toubro Ltd. (supra)***, the Coordinate Bench of this Court has quashed the assessments by VATO (Audit), for lack of jurisdiction. The said decisions are extracted below:

**“I. ITD-ITD CEM JV v. COMMISSIONER OF
TRADE & TAXES (W.P. (C) 6335/ 2014)**

“In this writ petition, the petitioner challenges the impugned Audit Report and default notices of assessment of tax, interest and penalty issued under Sections 58, 32 and 33 of the Delhi Value Added Tax Act, 2004 (in short 'the Act'), respectively, by the VATO on 16.7.2014 for the year 2010- 11. The grounds of challenge are that the Audit Officer lacks power to complete the assessment proceedings. A direction to quash them is sought. Essentially, the writ petitioner/assessee contends that there was no authorisation on behalf of the respondent State, permitting the VATO for conducting the audit under Section 58 of the Act. It is also contended that the Audit Officer was not competent to complete the assessment.

We find that this issue is squarely covered by a decision of this Court in Capri Bathaid Pvt. Ltd. and Ors. v. Commissioner of Trade and Taxes 2016 (155) DRJ 526 (DB). In the circumstances, this position has not been fairly disputed on behalf of the respondent/department.



The writ petition deserves to be allowed; the impugned order dated 16.07.2014 as well as the order of the VATO demanding VAT, interest and penalty are hereby quashed. The writ petition is allowed in the above terms.”

II. JMD DIGITAL ART XCHANGE PVT. LTD. V. COMMISSIONER OF TRADE & TAXES (W.P.(C) 9408/2014)

“In this writ petition, the order of 09.12.2014 made by the Special Commissioner as well as the default notices of assessment of VAT, interest and penalty, issued on 21.05.2014 are being questioned. A direction to quash them is sought. Essentially, the writ petitioner/assessee contends that there was no authorisation on behalf of the respondent State, permitting the VATO for conduct of audit under Section 58 of the DVAT Act, 2004. It is also contended that the auditing officer was not competent to complete the assessment. We find that this issue is squarely covered by a decision of this Court in Capri Bathaid Pvt. Ltd. and Ors. v. Commissioner of Trade and Taxes 2016 (155) DRJ 526 (DB). In the circumstances, this position has not been fairly disputed on behalf of the respondent/department. In the circumstances, the writ petition is allowed; the impugned order dated 09.12.2014 as well as the order of the VATO dated 21.05.2014 for VAT, interest and penalty are hereby quashed. The writ petition is allowed to the above limited extent.”

37. Thus, in the overall facts and circumstances of these cases, when the VAT (Audit) officer, not being the jurisdictional officer concerned and also not having the necessary delegation to carry out assessments, the assessments orders in this batch of appeals would not be valid.

38. Secondly, Form DVAT-50 was not issued prior to 15th October, 2014 and therefore, the audit itself, wherever carried out, would also be without



jurisdiction.

39. This Court is also bound by the various decisions of the Coordinate Benches of this Court, which are referred to above. In addition, ld. counsel for the Appellant has categorically submitted that *Capri Bathaid Pvt. Ltd. (supra)* and *Larsen & Toubro Ltd. (supra)*, as also *ITD-ITD CEM JV (supra)* and *JMD Digital Art Xchange Pvt. Ltd. (supra)*, have all been accepted by the VAT Department and there has been no challenge to the said decisions.

40. As noted above, the Supreme Court has remitted the matter back for reconsideration of the entire issue *vide* order dated 28th January, 2020. Under these circumstances, after having heard the counsels for the parties and having perused all the judgments, the assessment orders in this batch of appeals deserve to be quashed. Ordered accordingly.

41. In view of the fact that the assessment orders are quashed on the basis of two questions of law framed *vide* order dated 19th July, 2023 extracted above *i.e.* Question (B) and (C), the other questions of law *i.e.* Question (A) and (D) need not be gone into, as the assessments themselves are being quashed.

42. The present appeals stand disposed of in said terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

NOVEMBER 12, 2025/pt/ss