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

\# **CNR No. DLHC012003092009**

\+ W.P.(C) 13971/2009 & CM APPL. 15969/2009

JAINSONS AND ANR. .....Petitioners

Through: Mr. Ankit Jain, Sr. Adv. with Mr. Varun Nischal, Mr. Saira Tagra, Mr. Parth Gautam and Mr. Divyanshu Rathi, Advs.

versus

THE APPELLATE TRIBUNAL VALUE ADDED TAX, DELHI AND OTHERS .....Respondent

Through: Ms. Vaishali Gupta, Panel Counsel (Civil)

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE DINESH BHATT

O R D E R

% 07.10.2026

1. The present petition was filed seeking quashing of the order dated 05.11.2009 (for short 'the impugned order') passed by the Appellate Tribunal, Value Added Tax, Delhi/respondent no.1 (hereinafter 'Appellate Tribunal').

2. The brief facts are that the petitioners stood surety to the tune of Rs.50,00,000/- under the Delhi Sales Tax Act, 1975 (for short '1975 Act') and Rs.4,00,000/- under the Central Sales Tax Act, 1956 (for short '1956 Act') for M/s Jaganath Dudadhar, 13 KM, Rohtak Road, Shakur Basti, Delhi (hereinafter 'the assessee'). The assessee defaulted in payment of the dues and consequently, the recovery notice dated 07.10.2005 was issued to the

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petitioner no. 1 for recovery of the outstanding amount.

2.1 The petitioner no. 1 contended that it had not stood surety for the assessee and preferred an appeal before the Deputy Commissioner, Trade and Taxes, New Delhi/respondent no.3 (hereinafter 'the First Appellate Authority'). The appeal was dismissed on merits *vide* order dated 04.02.2008.

2.2 Aggrieved thereof, the petitioner no. 1 preferred an appeal against the order dated 04.02.2008 before the Appellate Tribunal. The appeal was dismissed. It was held that the appeal is not against the order passed under Section 43(1) of the 1975 Act and is not maintainable under Section 43(2) of the 1975 Act. Hence, the present petition.

3. Learned senior counsel for the petitioners relies upon Section 43 of the 1975 Act to contend that an appeal against the order of the First Appellate Authority was maintainable before the Appellate Tribunal under Section 43(2) of the 1975 Act. The Appellate Tribunal erred in dismissing the appeal as not maintainable.

4. Learned counsel for the respondents contends that the appeal filed before the First Appellate Authority was against a demand notice and not an order.

5. Sections 43(1), 43(2) and 44 of the 1975 Act are reproduced below:

> **"43. Appeals.**
>
> (1) Any person aggrieved by any order, not being an order mentioned in section 44 passed under this Act or the rules made thereunder, may appeal to the prescribed authority:
>
> Provided that where an order, not being an order mentioned in section 44 or made under section 47 is passed by the Commissioner, the person aggrieved may appeal therefrom to the Appellate Tribunal.

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(2) The Commissioner or any person aggrieved by an order passed in appeal by the prescribed authority may appeal to the Appellate Tribunal against such order.

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44. Non-appealable orders.

No appeal and no application for revision shall lie against

(a) a notice issued under this Act calling upon a dealer for assessment or asking a dealer to show cause as to why he should not be prosecuted for an offence under this Act; or

(b) an order pertaining to the seizure or retention of books of accounts, register and other documents; or

(c) an order sanctioning prosecution under this Act; or

(d) an interim order passed in the course of any proceedings under this Act."

6. Under Section 43(1) of the 1975 Act, any person aggrieved by an order not finding mention in Section 44 of the 1975 Act can file an appeal before the prescribed authority. The proviso thereto provides that where the order not covered under Section 44 of the 1975 Act is passed by the Commissioner, the appeal shall lie to the Appellate Tribunal. Under Section 43(2) of the 1975 Act, the Commissioner or any person aggrieved by an order passed by the First Appellate Authority may file an appeal before the Appellate Tribunal. Section 44 of the 1975 Act stipulates non-appealable orders.

7. The Department chose not to avail of the statutory remedies against the First Appellate Order entertaining the appeal on merits. The issue as to whether the first appeal was maintainable was not before the Appellate Tribunal. The First Appellate Authority had dealt with the appeal on merits and rejected it. The appeal filed by the petitioner before the Appellate

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Tribunal was against the order dated 04.02.2008 passed by the First Appellate Authority under Section 43(1) of the 1975 Act. The Appellate Tribunal erred in holding that the notice dated 07.10.2005 was not an order issued under Section 43(1) of the 1975 Act. The appeal before the Appellate Tribunal was against the order dated 04.02.2008 passed under Section 43(1) of the 1975 Act and is appealable under Section 43(2) of the 1975 Act.

8. The impugned order dated 05.11.2009 is not sustainable and is set aside.

9. The matter is remitted to the Appellate Tribunal to decide afresh in accordance with law.

10. Needless to say that the parties shall be at liberty to raise all contentions and legal issues.

11. The interim order dated 21.12.2009, confirmed by order dated 14.01.2011, shall continue for four weeks to enable the petitioner to approach the Appellate Tribunal for decision of the appeal or for seeking interim protection.

AVNEESH JHINGAN, J

DINESH BHATT, J

OCTOBER 7, 2026/pt/ha

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