

# THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 31.01.2013

+ **W.P.(C) 7259/2012**

AAR TEE TRANSPORT CO. PVT. LTD

.... Petitioner

versus

COMMISSIONER, DEPARTMENT OF TRADE AND TAXES AND  
ORS.

..... Respondent

## Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Mahna with Mr.Ruchir Bhatia

For the Respondents : Mr Vineet Bhatia

## **CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE R.V.EASWAR**

## **JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

**CM 18700/2012**

Exemption is allowed subject to all just exceptions.

The application is disposed of.

**CM 689/2013**

This is an application for amendment of the writ petition as mentioned in the previous order. The learned counsel for the respondent has no objection to the amendments being carried out. Consequently, this application is allowed. The amended writ petition, which is annexed along with this application, is taken on record.

This application is disposed of.

**WP(C) 7259/2012**

1. With the consent of the learned counsel for the parties, this writ petition is taken up for hearing at the admission stage itself.

2. In this writ petition, the petitioner has prayed for quashing of an order dated 13.7.2006 passed by the Value Added Tax Officer as also the order dated 19.11.2012 passed by the Objection Hearing Authority. It is also prayed that a direction be given to the effect that the objections filed by the petitioner against the order dated 13.7.2006 be deemed to have been allowed in view of the provisions of Section 74(8) and 74(9) of the Delhi Value Added Tax Act, 2004. A prayer for refund of an amount of Rs.4 lakhs which has been deposited by the petitioner, alongwith interest accrued thereon, has also been made.

3. This case has a chequered history inasmuch as this is the third round before this Court. In the first round, this Court disposed of the petitioner's writ petition (W.P.(C) No.10434/2006) on 5.10.2010 by observing that the question which arose for consideration was whether the goods were actually sold in Delhi or only transported through Delhi to reach another destination. It was the case of the petitioner that it is not a dealer and is only transporter and the goods were never sold in Delhi, but were meant for transportation to other states. This Court on 5.10.2010 observed that the said inquiry could not be carried out in a petition under Article 226 of the Constitution of India and consequently it directed the Value Added Tax Officer to conduct such an inquiry on production of documents before him after affording an opportunity of hearing to the petitioner. The amount of Rs.4 lakhs which had been deposited with the

Registrar General of this Court was directed to be transferred to the Value Added Tax Authority. It was also directed that the competent authority should complete the aforesaid exercise within two weeks from the date of receipt of the order passed on that day.

4. The Value Added Tax Officer passed the order on 8.11.2011 which was challenged by the petitioner in another writ petition being W.P.(C) No.8929/2011. That writ petition was also disposed of by an order dated 23.12.2011 with the following directions:-

“10. Having heard learned counsel for the parties, we feel that the petitioner should be entitled to exclude the period during which the Writ Petition Nos. 10418/2006 and 10434/2006 had remained pending before this Court and the period taken up in the enquiry proceedings till order dated 8th November, 2011 was passed, under Section 14 of the Limitation Act, 1963. If the aforesaid period is excluded, then the petitioner can file objections within the period of limitation specified in Section 74(4) of the Act.

11. In these circumstances and keeping in view the earlier order passed by the High Court dated 5th October, 2010 read with order dated 29<sup>th</sup> November, 2010, we grant liberty to the petitioner to file objections on or before 6th January, 2012. In case objections are filed within the aforesaid period, the same will not be dismissed on the ground that they are barred by limitation, as we have excluded the period during which the aforesaid writ petitions had remained pending and the period during which the inquiry was conducted. It is clarified that till the objections are disposed of, no further recovery will be made. It is also clarified that the Division Bench while passing the order dated 5th October, 2010 had not commented upon or expressed any view on merits of the claim or payment, tax or penalty imposed by the VATO. The objections once filed will be decided in accordance with law and as per the Act.”

5. Pursuant to the aforesaid directions, the petitioner filed his objections on 30.12.2011. On 24.8.2012, the petitioner sent a notice/letter to the Objection Hearing Authority to dispose of the objections. The said notice purported to be one under Section 74(8) of the said Act. The said notice reads as under:-

“Date: 24/08/2012

Commissioner of Trade & Taxes  
Bikrikar Bhawan, IP Estate  
New Delhi

**Reg.: Aar Tee Transport Company (P) Ltd, 5810/8,  
Block No.4, 3<sup>rd</sup> Floor, Dev Nagar, Karol Bagh,  
New Delhi-110005.**

**Sub.: Disposal of objection filed by the appellants u/s  
74 (8) of DVAT Act.**

Sir,

The above named appellant had filed objection on 30/12/2011 and the same were listed before Sh.Ajay Kumar Gupta, Addl. Commissioner for hearing.

The proceedings were taken up by Mr.Ajay Kumar Gupta on various dates when the case was fixed for hearing on 17/08/2012 the appellant along with the counsel reached the department and they were informed that the charge of Sh.A.K. Gupta is being transferred to the office of Sh.A.K. Kaushal Addl. Commissioner 6<sup>th</sup> Floor. On further enquiry from his office the appellant has come to know that the files have not reached the office of Sh.A.K. Kaushal, Addl. Commissioner. Today on 24<sup>th</sup> Aug 2012 all the list containing the particular of files transferred have been checked but the name of such file is not appearing.

As per provision of sec 74(7) the objection hearing Authority is required to dispose the objection within a period of 8 months. Whereas the time limit of eight months would expire on 30<sup>th</sup> Aug 2012. The particular of file are not traceable with the result the appellant is suffering harassment as there is nobody who can look into the matter and decide the objections.

Kindly issue necessary directions for the hearing of the matter in order to decide the objection after hearing of the same.

Thanking you,

Yours faithfully,

For Rajesh Mahna & Co. Advocates.”

6. On 10.09.2012, the petitioner received a notice dated 31.08.2012 from the Additional Commissioner/Objection Hearing Authority indicating that the objections were to be heard on 20.09.2012. It may be pointed out that this notice, though dated 31.08.2012, was actually dispatched on 08.09.2012, as is evident from the tracking result of India Post, a copy whereof is placed at page 79 of the paper book. In response to this notice dated 31.08.2012, the petitioner sent a further objection dated 19.09.2012 wherein he has specifically indicated that since the earlier objections had not been disposed of within 15 days of the notice dated 24.08.2012, in view of the provisions of Section 74(9) of the said Act, the objections have to be deemed to have been accepted and therefore, there was no question of further hearing in the matter.

7. Thereafter, the petitioner filed the present writ petition which came up for hearing on 21.11.2012. On that date, notice was issued to the respondents and was accepted by the learned counsel for the respondents. This Court directed that on the next date of hearing, the learned counsel for the respondents would produce the relevant file containing the objections which

are the subject matter of the present proceedings. The matter was re-notified on 31.01.2013 (today).

8. In the meanwhile, the petitioner received an order dated 19.11.2012 which shows that the order was apparently signed on 16.11.2012. The said order disposed of the initial objections filed by the petitioner on 30.12.2011. There is no reference to the petitioner's notice dated 24.08.2012 or the further objection dated 19.09.2012. In fact, the Objection Hearing Authority has not at all considered the point raised by the petitioner that since the objections had not been disposed of within 15 days of the issuance of the notice dated 24.08.2012, the objections would be deemed to have been accepted under Section 74(9) of the said Act. The learned counsel for the petitioner also pointed out that he had referred to the decision of this Court in **CST v. Behl Construction: 21 VST 261** in the objection dated 19.09.2012 which has also not been noticed by the Objection Hearing Authority in the impugned order dated 19.11.2012.

9. We have heard the learned counsel for the petitioner as also the learned counsel for the respondent at length and we find that the impugned order dated 19.11.2012 does not at all deal with the issue raised by the petitioner with regard to the applicability of Section 74(8) and 74(9) of the said Act in the backdrop of the notice issued by the petitioner on 24.08.2012. For this reason alone, we feel that the impugned order is liable to be set aside. It is ordered accordingly.

10. The matter is remitted to the Objection Hearing Authority for consideration of the issues raised by the petitioner particularly with regard to the notice dated 24.08.2012 and the subsequent objection dated 19.09.2012. It would also be open to the Objection Hearing Authority to examine the entire matter on merits. The necessary documents have already been filed by the

petitioner and are on the record of the Objection Hearing Authority. We direct that the Objection Hearing Authority shall dispose of the matter within three weeks from today after giving an opportunity of hearing to the petitioner. For this purpose, the petitioner and/or its representatives shall appear before the Objection Hearing Authority on 05.02.2013 at 11.00 a.m. No further notice for appearance would be necessary.

11. The writ petition is disposed of with the above directions.

**BADAR DURREZ AHMED, J**

**R.V.EASWAR, J**

**JANUARY 31, 2013**

gm

