

H.G. International vs Commissioner Of Trade And Taxes Delhi on 28 January, 2020

Bench: Sanjay Kishan Kaul, K.M. Joseph

1

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s) . 7762-7763/2019

H.G. INTERNATIONAL

Appe

VERSUS

COMMISSIONER OF TRADE AND TAXES DELHI

Resp

O R D E R

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 in 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.

.....J. (SANJAY KISHAN KAUL)J. (K.M. JOSEPH) New Delhi January 28, 2020.

ITEM NO.1

COURT NO.11

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 7762-7763/2019

H.G. INTERNATIONAL

Appellant(s)

VERSUS

COMMISSIONER OF TRADE AND TAXES DELHI

Respondent(s)

Date : 28-01-2020 These appeals were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL HON'BLE MR. JUSTICE K.M. JOSEPH For Appellant(s) Mr. A.K. Ganguli, Sr. Adv.

Mr. Arunabha Ganguli, Adv.

Mr. Parijat Kishore, AOR Mr. Nischal Gupta, Adv.

For Respondent(s) Mr. B. V. Balaram Das, AOR(NP) UPON hearing the counsel the Court made the following O R D E R The appeals are disposed of in terms of the signed order.

Pending applications, if any, also stands disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(ANITA RANI AHUJA)
COURT MASTER (NSH)

(Signed order is placed on the file)