

# Anr International Private Limited vs Commissioner, Delhi Goods And Services ... on 28 November, 2023

**Author: Yashwant Varma**

**Bench: Yashwant Varma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 12572/2019

ANR INTERNATIONAL PRIVATE LIMITED..... Petitioner

Through: Mr. Ruchir Bhatia & Mr.

Rakesh Kumar, Advocates

versus

COMMISSIONER, DELHI GOODS AND SERVICES

TAX (DELHI) & ANR. .... Respondent

Through: Mr. Anuj Aggarwal, ASC,

GNCTD along with Mr. Yash

Upadhyay, Advocate

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 28.11.2023

1. The present writ petition questions the validity of the order dated 26 March 2013 and which essentially represents notices issued by the respondents seeking to undertake a default assessment of tax. Self-assessed returns are stated to have been filed by the petitioner. However, on 26 March 2013 demands came to be created in terms of the notices issued by the second respondent and referred to hereinabove.

2. Aggrieved by the aforesaid, the petitioner is stated to have filed objections on 30 May 2013. The Objection Hearing Authority ["OHA"] however, failed to dispose those objections leading to the petitioner submitting a notice under Section 74(8) of the Delhi Value Added Tax Act, 2004 ["Act"] placing the Commissioner on notice of the obligation to dispose of the pending objections within a period of fifteen days. The aforesaid notice also did not move the respondents This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 02/12/2023 at 21:00:46 and it is in the aforesaid backdrop that the petitioner contends that the objections would be deemed to have been allowed and accepted by the OHA in light of the deeming fiction which stands embodied in Section 74(9) of the Act.

3. We note that while dealing with an identical question we had in ITD-ITD CEM JV vs Commissioner of Delhi Goods and Services Tax [WP(C) 5820/2022, Order dated 26 September 2023] held as follows:

"14. In the facts of the present case we find that not only have adjustments been made contrary to the mandate of Section 38 of the Act, the demand as raised for FY 2010-2011 and which has been adjusted against the refund as claimed is additionally liable to be set aside on grounds resting on the provisions contained in Section 74 of the Act.

15. Section 74 of the Act stands framed in the following terms:-

"74 Objections (1) Any person who is dis-satisfied with -

(a) an assessment made under this Act (including an assessment under section 33 of this Act); or

(b) any other order or decision made under this Act;

may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner;

PROVIDED that no objection may be made against a non-appealable order as defined in section 79 of this Act:

PROVIDED FURTHER that no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid failing which the objection shall be deemed to have not been filed:

PROVIDED ALSO that the Commissioner may, after giving to the dealer an opportunity of being heard, may direct the dealer to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained.

PROVIDED ALSO that only one objection may be made by the person against any assessment, decision or This is a digitally signed order.

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PROVIDED ALSO that in the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

PROVIDED ALSO that no objection shall be made to the Commissioner against an order made under section 84 or section 85 of this Act if the Commissioner has not delegated his power under the said sections to other Value Added Tax authorities.

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing was served by the person, may make an objection against such failure. (3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made -

(a) in the case of an objection made under sub-section (1) of this section, within two months of the date of service of the assessment, or order or decision, as the case may be; or

(b) in the case of an objection made under sub-section (2) of this section, no sooner than six months and no later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under sub-section (5) of this section and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person. (7) Within three months after the receipt of the objection, the This is a digitally signed order.

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Commissioner shall either -

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be; and in either case, serve on the person objecting, a notice in writing of the decision and the reasons for it, including a

statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under sub-section (7) of this section, the person may serve a written notice requiring him to make a decision within fifteen days. (9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in sub-

section (8) of this section, then, at the end of that period, the Commissioner shall be deemed to have allowed the objection. (10) Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of [ten] years from the date of the commencement of this Act. (11) Where the dispute referred to in sub-section (10) of this section has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer."

16. In terms of sub-section (8) of Section 74, where objections have remained pending for a period of 5 months [the maximum time frame as prescribed by Section 74(7)], the assessee may serve a written notice apprising the Commissioner of the aforesaid circumstance and calling upon him to render a decision within 15 This is a digitally signed order.

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17. In terms of Section 74(9), if the Commissioner fails to dispose of the objections by the end of the period of 15 days after being placed on notice, the objections would be deemed to have been allowed. This position was lucidly explained by the Division Bench of the Court in Combined Traders in the following terms:-

"22. Mr. Jain also placed reliance on the decision of this Court in CST v. Behl Construction (2009) 21 VST 261 (Del) in support of his plea that the fifteen day period in terms of Section 74(8) of the DVAT Act was the mandatory time limit and if an order was not passed within that period the objection would be deemed to have been accepted. Mr. Jain submitted that the time limit under Section 34(2) of the

DVAT Act, which provides that the Commissioner may make an assessment of tax within one year after the date of the decision of the Appellate Tribunal or Court, would not apply in the instant case. In the Petitioner's case the re- assessment order was of 8th January, 2018 which had not been disturbed by this Court while remanding the matter to the OHA on 28th September, 2018. All that the OHA was required to do was to dispose of the objections under Section 74 of the Act. The order that had been set aside by this Court was the one dated 17th May, 2018 of the OHA passed under Section 74(7) of the Act.

23. In reply, Mr. Shadan Farasat, learned counsel for the Respondent, first submitted that after the order dated 17th May, 2018 had been passed by the OHA rejecting the earlier objections, the question of three months period again reviving in terms of Section 74(6) read with Section 74(8) did not arise. According to him, after the order dated 28th September, 2018 of this Court restoring the Petitioner's objections to the file of the OHA for a fresh disposal, there was no time limit as such for the OHA to dispose of the objections.

24. This Court is unable to agree with the above submissions of Mr. Farasat.

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28. Learned counsel for the Petitioner is right in his contention that this three-months period not having been adhered to, the procedure under Section 74(8) of the DVAT Act would kick in. The Respondent has not controverted the assertion of the Petitioner that despite best efforts service of notice under DVAT-41 could not be effected in person on the OHA and was ultimately served on the Commissioner This is a digitally signed order.

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29. Mr. Farasat next submitted that the Petitioner had not complied with Section 74(8) of the DVAT Act since the notice under DVAT-41 was not served „in person on the OHA but on the Commissioner. He submitted that unless the conditions for applicability of Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules are fulfilled, it cannot be invoked and in support thereof relied on the decision in *Mancheri Puthusseri Ahmed v. Kuthiravattam Estate Receiver* (1996) 6 SCC 185.

30. The above submission appears to overlook the fact that the Respondent has not controverted the statements made on oath by the Petitioner in the petition that despite best efforts to personally serve the DVAT 41 on the OHA he could not do so. It is seen from Annexure P-5 to the petition, that on the copy of the DVAT-41 Form

served on the Commissioner by the Petitioner, there is an acknowledgement stamp with the diary no. E-820717 dated 4th January, 2019. The stamp is of the Central Resources Unit, DT& T.

31. Mr. Jain produced before this Court reply received by him from the Public Information Officer (PIO)/Assistant Commissioner in the DT&T, GNCTD dated 22nd February, 2017 in response to an application under the Right to Information Act where in response to the specific question:

"What is the medium of personal service of documents in the CVAT's office generally? How they are received and who receives them?", the response received was:

"Generally, an employee is deployed for receiving letter/DAK to receive the same of personal service of documents in Commissioner (VAT) Office."

32. The above reply appears to be consistent with the general practice in Government offices where services of notice upon public officials are usually done at one desk where the offices are located. There is a clerk who usually receives all notices and gives an acknowledgement. The Court is therefore unable to accept the plea of Mr. Farasat that there was non-compliance with Section 74(8) of the DVAT Act read with Rule 56 of the DVAT Rules."

18. As would be evident from the aforesaid extracts of Combined Traders, the Court not only accepted the position which would directly flow from Section 74(9) of the Act, it also specifically dealt with the contention of the respondents who had urged that This is a digitally signed order.

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19. The position which therefore emerges is that not only would the Hearing Notice of 24 May 2022 be rendered unsustainable in law, even the adjustments which have been made in the Refund Order of 29 April 2022 would be contrary to the provisions of the Act. We come to this conclusion since it is manifest that insofar as the demand for FY 2010-2011 is concerned, the objections would be deemed to have been accepted and granted by the Commissioner upon the expiry of 15 days when computed from 04 May 2022. The demand as created in terms of the assessment order as framed would thus clearly not survive. This clearly in light of the legal fiction which stands placed in that provision and as a consequence of which the Commissioner would stand denuded of the jurisdiction to adjudicate upon those objections once the statutory fiction comes into effect. Section 74(9) in that sense not only accords a closure but commands us to hold that the objections preferred by the assessee would be deemed to have been accepted."

4. In light of the statutory fiction which came to operate, we find that the impugned notices of default assessment cannot possibly be proceeded with further.

5. We accordingly allow the instant writ petition and quash the default assessment notices dated 26 March 2013. We further hold that the objections as preferred by the petitioner would as a consequence be deemed to have been accepted bearing in mind the provisions made in Section 74(9) of the Act.

6. The writ petition shall stand disposed of.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

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