2023:DHC:8792-DB

$~15

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

% *Date of Decision: 05.12.2023*

\+ **W.P.(C) 3799/2019**

INDUSIND BANK LIMITED ..... Petitioner
Through: Mr Gunjan Kumar and Mr Rajeev M. Roy, Advocates.

versus

DEPARTMENT OF TRADE & TAXES, GOVERNMENT OF NCT OF DELHI ..... Respondent
Through: Mr Dhananjaya Mishra and Mr Navneet Dogra, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, challenging the constitutional validity of the definition of the term 'dealer' as defined under Clause (j) of Sub-section (1) of Section 2 of the Delhi Value Added Tax Act, 2004 (hereafter '**the DVAT Act**').

2. The petitioner is, essentially, aggrieved by the Explanation to Sub-clause (vii) of Clause of Section 2(j) of the DVAT Act, inasmuch as it also includes any corporation or company engaged in commercial banking. Sub-clause (vii) of Clause (j) of Section 2(1) of the DVAT Act is set out below:

"2(1)(j)(vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation.- For the purposes of this clause, each of the following persons, bodies and entities who sells any goods whether in the course of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

(i) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);

(ii) Departments of Union Government, State Governments and Union territory Administrations;

(iii) Local authorities, Panchayats, Municipalities, Development Authorities, Cantonment Boards;

(iv) Public Charitable Trusts;

(v) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;

(vi) Incorporated or unincorporated societies, clubs or other associations of persons;

(vii) Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;

(viii) Delhi Transport Corporation;

(ix) Shipping and construction companies, air transport companies, airlines and advertising agencies."

3. The petitioner is a scheduled bank and its challenge is premised on the ground that the expansive definition of the word 'dealer' militates against the object of the DVAT Act. The petitioner also impugns the definition of the word 'dealer' as being *ultra vires* Article 265 of the Constitution of India.

4. The petitioner is, essentially, aggrieved by the notices issued under Sections 32 and 33 of the DVAT Act by the respondent – notices dated 23.03.2018 seeking to recover tax and interest amounting to ₹39,35,466/- and penalty of ₹75,33,449/- and notices dated 06.03.2019 seeking to recover tax and interest amounting to ₹94,09,083/- and penalty of ₹1,79,71,806/-. The said notices (hereafter referred to as the impugned notices) have been issued imposing liability of value added tax (VAT) on the petitioner as a dealer in respect of sale of re-possessed vehicles.

5. Mr Kumar, the learned counsel appearing for the petitioner submits that the petitioner is not involved in adding any value to any vehicle repossessed by it. It is merely engaged in selling the same on behalf of the borrower for the purpose of recovery of its dues. He submits that in the aforesaid circumstances, the levy of VAT on the sale of re-possessed vehicles would amount to imposing a tax, which is not based on any value addition. He also referred to the object of introducing DVAT Act and emphasized that the said DVAT Act was enacted to introduce a VAT regime in the local area of National Capital

Territory of Delhi. He submitted that the expansive definition of the term 'dealer' seeks to expand the incidence of VAT under the DVAT Act to beyond any charge of tax on value addition. He also contended that there was a paradigm shift in the nature of tax with the enactment of the DVAT Act, from the earlier regime of sales tax under the Delhi Sales Act, 1975. He submitted that the sales tax under the Delhi Sales Tax Act was imposed on sale of goods but the levy of VAT under the DVAT Act was confined to the element of value addition.

6. He also referred to the decision of the Supreme Court in ***Punjab Aromatics v. State of Kerala: (2008) 11 SCC 482*** and drew the attention of this Court to paragraph no. 20 of the said decision, wherein the Supreme Court had referred to its earlier decision in the case of ***State of Karnataka v. B. Raghurama Shetty and Ors.: (1981) 2 SCC 564***. He strongly relied on the observations to the effect that the VAT was different from "turnover tax" inasmuch as the turnover tax taxed every transaction constituting the turnover but VAT was a tax on the value added.

7. He also relied on the decision of the Supreme Court in ***Sundaram Finance Ltd. v. State of Kerala and Ors.: 1965 SCC OnLine SC 88*** in support of his contention that sale of re-possessed vehicle in the course of business would not be exigible to tax on sale of goods.

8. The learned counsel appearing for the respondent countered the aforesaid submissions.

9. We have heard the learned counsel for the parties.

10. We are not persuaded to accept that the definition of the word 'dealer' falls foul of the Constitution of India. Article 265 of the Constitution of India merely provides no tax will be levied without authority of law. Clearly, the DVAT Act is an enacted law and there is no dispute that the tax sought to be collected is in terms of said law. Thus, any challenge on the ground that the definition of dealer is *ultra vires* of the Constitution of India would have to be sustained on the basis of the same falling foul of any other provision of the Constitution of India.

11. The contention that the expansive definition of the term 'dealer' carries it beyond the scope of the DVAT Act is also unpersuasive. It is necessary to read the object of the said Act for its true meaning and import. The opening sentence of the preamble indicates that it is an "*Act to consolidate and amend the law relating to levy of tax on sale of goods, tax on transfer of property involved in execution of works contracts, tax on transfer of the right to use goods and tax on entry of motor vehicles by way of introducing a value added tax regime*." It is, thus, apparent that the object encompasses the law relating to levy of tax on sale of goods as well as right to use goods.

12. It is also relevant to refer the provisions relating to charge of VAT. The provisions regarding imposition of VAT are contained in Chapter II of the DVAT Act. Section 3(1) of the Act expressly provides that subject to the provisions of the DVAT Act, every dealer, who is registered or is required to be registered under the DVAT Act, would be liable to pay tax calculated in accordance with the provisions of the

DVAT Act.

13. In terms of Sub-section (2) of Section 3, VAT is payable at the rates as specified under Section 4 of the DVAT Act. Section 5 of the DVAT Act, explains the term 'taxable turnover' as the turnover during the tax period subject to adjustments. Sections 6 and 7 of the DVAT Act contains provisions regarding sales that are exempted from tax and certain sales that are not liable to tax. Section 9 of the DVAT Act contains provisions regarding the tax credit.

14. The adjustments of tax credit in essence encapsulates the VAT regime. The machinery provisions, subject to other provisions, restrict the aggregate VAT to the tax at the last point of taxation. Thus, the petitioner's contention that the Scheme of the Act does not entail a charge on sale of goods, is erroneous. The DVAT Act expressly provides for charge of tax on sale of goods subject to certain exemptions and adjustments provided for under the DVAT Act. The scheme of DVAT Act does provide for credit for the taxes already borne to avoid the cascading effect of tax on sale of goods. However, it would be erroneous to assume that charge of tax in not on the sale of goods.

15. The contention that the petitioner is not liable to pay any tax on sale of goods on the ground that there is no value addition, is insubstantial. The petitioner's challenge to the constitutional validity of the definition of the 'dealer' is founded on *ex facie* erroneous premise. The same is, accordingly, rejected.

16. The reliance placed by the petitioner on the decision in ***Punjab***

Aromatics v. State of Kerala (*supra*) is also misplaced. As noted above, the petitioner had referred to paragraph 20 of the said decision, which in turn referred to an earlier decision in the ***State of Karnataka v. B. Raghurama Shetty and Ors.*** (*supra*). The petitioner had, particularly, placed reliance on the difference between the VAT and tax on turnover/ sales as explained by Professor Paul A. Samuelson in his book entitled 'Economics', (Tenth Edition, 1976), which was quoted in the said passage. The said Explanation as quoted by the Supreme Court in its decision is set out below:

> "A turnover tax simply taxes every transaction made : wheat, flour, dough, bread. VAT is different because it does not include in the tax on the miller's flour that part of its value which came from the wheat he bought from the farmer. Instead, it taxes him only on the wage and salary cost of milling, and on the interest, rent, royalty, and profit cost of this milling stage of production. (That is, the raw material costs used from earlier stages are subtracted from the miller's selling price in calculating his "value added" and the VAT tax on value added….)"

17. The aforesaid Explanation clearly brings out the difference between the incidence of VAT and a turnover tax. The tax is chargeable on sale of goods at multiple stages. But the credit for the taxes on inputs effectively reduces the quantum of tax to the value addition. However, the said explanation cannot be read to mean that the tax is not chargeable on the sale of goods. The machinery for collection of VAT takes into account the value added at each stage in the chain of transaction. However, the charge of tax is on the sale of goods. A dealer is required to pay VAT on its taxable turnover. It may be allowed credit (subject to other machinery provisions) of the taxes borne by the goods

at an earlier stage, however, it is erroneous to suggest that the sale of goods is not chargeable to tax under the DVAT Act, if there is no increase or accretion in the value of goods by the dealer.

18. The reliance placed on the decision of the Supreme Court in ***Sundaram Finance Ltd. v. State of Kerala and Ors.*** (supra) is also misplaced. The said decision was rendered in the context of the definition of the term 'sales' under the Travancore-Cochin General Sales Tax Act, which reads as under:

> "'sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge;
>
> Explanation (1).—A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.
>
> Explanation (2).— * *"

19. As is apparent from the above, the definition specifically excludes hypothecation of goods. The principal issue involved in that case was whether the documents such as promissory notes, hire-purchase agreement etc., which were executed by the borrower in respect of vehicles that were financed by the appellants in that case, would bring the said appellants within the net of sales tax. In the present case, the impugned notices have been issued to the petitioner demanding VAT on the sale of re-possessed vehicles and not on the

transaction of financing the vehicles at the initial purchase.

20. The controversy regarding levy of tax on the sale of re-possessed is squarely covered by an earlier decision of the Coordinate Bench of this Court, of which one of us (Vibhu Bakhru, J) was a member, in ***M/s Citi Bank v. Commissioner of Sales Tax M/s Citi Bank v. Commissioner of Sales Tax: ST. REF. 1/2003, decided on 14.12.2015***. The said decision was rendered in the context of the Delhi Sales Tax Act, 1975. However, in a later decision in ***HDFC Bank v. Commissioner of Value Added Tax, Delhi: VAT APPEAL 29/2016***, another Coordinate Bench of this Court had, following the decision of ***M/s Citi Bank v. Commissioner of Sales Tax M/s Citi Bank v. Commissioner of Sales Tax*** (*supra*), rejected an appeal against the decision of the VAT Tribunal holding that sale of such re-possessed vehicles was subject to the charge of VAT. The said two decisions cover the petitioner's challenge to the impugned notices demanding VAT, interest, and penalty under the DVAT Act.

21. The petition is unmerited and, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 5, 2023
RK