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2023:DHC:8771-DB

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

% ***Date of Decision: December 07, 2023***

\+ **W.P.(C) 12911/2019 & CM APPL. 52707/2019**

M/S SIEMENS LIMITED ..... Petitioner

Through: Mr. Sujit Ghosh, Ms. Mannat Waraich, Mr. Shubh Dixit & Ms. Ajinkya Tiwari, Advs.

versus

GOVERNMENT OF NCT OF DELHI AND ORS. ..... Respondents

Through: Mr. Satyakam, Adv. for GNCTD

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

VIBHU BAKHRU, J. *(Oral)*

1. The petitioner has filed the present petition, impugning an order dated 11.10.2019 (hereafter '**the impugned order**'), issued by the respondents. The relevant facts are that the notices of default assessment of tax and interest and notices of assessment of penalty, all dated 29.09.2014, were issued under Section 32 and Section 33 of the Delhi Value Added Tax Act, 2004 (hereafter '**the DVAT Act**') by the respondents. The petitioner filed its objections to the default assessments on 19.11.2014. Thereafter, the recovery of demand was

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stayed upon the payment of ₹23,00,000/- on 12.08.2015.

2. The petitioner was also afforded an opportunity to be heard on 23.09.2015 and 30.10.2015 and the orders were reserved. The order sheet was signed by one, Shri R.K. Mishra, Special Commissioner-II/ Objection Hearing Authority ('**OHA**').

3. However, no orders were passed for a period of almost four years.

4. Thereafter, on 27.09.2019, a notice was issued under Section 74(1)(a) of the DVAT Act and, thereafter, the impugned order was passed on 11.10.2019.

5. Although, the petitioner was afforded the hearing by one, Shri R.K. Mishra, the impugned order was passed by Ms. Shilpa Shinde, Special Commissioner, OHA.

6. It is not disputed that Ms. Shinde had not heard the petitioner.

7. We are of the view that, considering the time gap between the hearing of the petitioner and the passing of the impugned order, the same is liable to be set aside. It is also liable to be set aside on the ground that the concerned officer, who had passed the impugned order, had not heard the petitioner.

8. Mr. Satyakam, learned counsel appearing for the respondent, does not contest the same. The present petition has been pending as the petitioner also seeks to resist an order remanding the matter to the concerned authority for considering it afresh. It is the petitioner's contention that the impugned order was void and, therefore, now the option of the Department to proceed against the petitioner stands

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foreclosed by lapse of time. However, the learned counsel does not press this issue.

9. In view of the above, the present petition is allowed. The impugned order is set aside and the matter is remanded to the OHA to decide afresh. The concerned OHA shall pass a speaking order uninfluenced by the impugned order, after affording the petitioner, sufficient opportunity to be heard.

10. We also direct the concerned OHA to conclude the proceedings as expeditiously as possible and, in any event, within a period of four months from date. It is clarified that all rights and contention on the merits of the matter are reserved.

11. The petition is disposed of in the aforesaid terms. All pending applications also stand disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 7, 2023
"SS"