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

\+ **W.P.(C) 6438/2022**

AVG LOGISTICS LIMITED ..... Petitioner

Through: Mr Ruchir Bhatia, Advocate.

versus

COMMISSIONER OF STATE GOODS AND SERVICES TAX & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE POONAM A. BAMBA

O R D E R

% **22.04.2022**

[Physical Hearing/Hybrid Hearing (as per request)]

CM APPL. 19489/2022

1. Allowed, subject to just exceptions.

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2. Mr Ruchir Bhatia, who appears on behalf of the petitioner, says that since the Appellate Tribunal under the Central Goods & Services Tax (CGST) Act, 2017/Delhi Goods and Services Tax (DGST), 2017, is not in place, the petitioner has approached this Court by way of the writ petition.

3. On merits, the petitioner is aggrieved by the fact that the amount deposited on its behalf by the Delhi Metro Rail Corporation [in short, 'DMRC'] with the respondents/revenue, has not been refunded.

3.1. Mr Bhatia says that the amount deposited by the DMRC is not in the nature of tax, and, therefore, ought to be refunded to the petitioner.

3.2. This grievance of the petitioner appears to have arisen on account of the land taken on lease from DMRC. The petitioner, along with another entity, had participated in the tender floated by DMRC *qua* a land admeasuring 35,440 sq. mtrs.

3.3. Ultimately, according to the petitioner, for unavoidable reasons, the parcel of land which was given on lease to the petitioner was limited to 16,432.81 sq. mtrs.

3.4. In other words, the counsel for the petitioner says that insofar as the land admeasuring 19007.19 sq.mtrs. was concerned, no supply in terms of the CGST Act/DGST Act took place.

3.5. It is, thus, the contention of the petitioner that, while the excess premium was returned by the DMRC, it refused to refund the amount deposited by it towards tax as the amount lay with the respondents.

4. In our view, DMRC ought to have been arrayed as a party in the matter, since, even if it is not a necessary party, in view of the observations made in the impugned order, it surely is a proper party.

4.1. Accordingly, DMRC is arrayed in the present proceedings, as respondent no.3.

4.2. Mr Bhatia will file an amended memo of parties, within one week from today.

5. Issue notice to respondent nos.1 and 2, and the newly arrayed party i.e., respondent no.3/DMRC, *via* all permissible modes, including e-mail.

6. List the matter on 03.08.2022.

RAJIV SHAKDHER, J

POONAM A. BAMBA, J

APRIL 22, 2022 /tr *Click here to check corrigendum, if any*