

ITEM NO.2

COURT NO.5

SECTION XIV

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

Petition(s) for Special Leave to Appeal (C) No(s). 1109/2013

(Arising out of impugned final judgment and order dated 07/12/2012 in WPC No. 4236/2012 passed by the High Court Of Delhi At New Delhi)

SALES TAX BAR ASSOCIATION (REGD)

Petitioner(s)

VERSUS

GOVT. NCT OF DELHI & ORS.

Respondent(s)

WITH

SLP(C) No. 8791/2013  
(With Office Report)

Date : 15/04/2015 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s) Mr. S. Ganesh, Sr. Adv.  
Mr. P.H. Parekh, Sr. Adv.  
Mr. Sumit Goel, Adv.  
Mr. Virag Tiwari, Adv.  
Mr. K.G. Bhat, Adv.  
Mr. Rajesh Jain, Adv.  
Mr. Sanjay Sharma, Adv.  
Ms. Nandita Bajpai, Adv.  
For M/s. Parekh & Co., Adv.

SLP No. 8791/2013 Mr. P.H. Parekh, Sr. Adv.  
Mr. Virag Tiwari, Adv.  
Mr. K.J. Bhat, Adv.  
Mr. Avadh Bihari Kaushik, Adv.  
  
Mr. Tushar Mehta, ASG  
Mr. M.P. Gupta, Adv.  
Mr. Arun Kumar Sinha, Adv.  
Mr. R.R. Rajesh, Adv.

For Respondent(s) Mr. Aman Sinha, Adv.  
 Mr. Gaurav Sharma, Adv.  
 Mr. R.R. Rajesh, Adv.  
 Mr. D.S. Mahra, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

Heard Mr. S. Ganesh, learned senior counsel for the petitioner. It is submitted by him that in the present special leave petition, amendment was filed which has been allowed wherein the petitioner-association has called in question the constitutional validity of third proviso to Section 74 of the Delhi Value Added Tax Act. To appreciate the controversy in proper perspective, we may reproduce sub-section (1) of Section 74 which reads as under :

"74. Objections-- (Rules: 51 to 57)

(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

order.

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."

Be it noted, the said provision occurs in Chapter XII which deals with objections, appeals, disputes and questions. Learned senior counsel has drawn our attention to Section 35(2) which has been substituted by Delhi Value Added Tax (Amendment) Act 2013 (5 of 2013) with effect from 12.09.2013. It reads as follows :

"35(2) Where a person has made an objection to an assessment or part of an assessment and has complied with the condition, if any, to entertain such objection in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of balance amount in dispute under that assessment until the objection is resolved by the Commissioner."

Prior to the said amendment, learned senior counsel would submit, the provision was different. The unamended provision reads as follows :

"(2) Where a person has made an objection to an assessment or part of an assessment in the manner provided in section 74 of this Act, the Commissioner may not enforce the payment of any amount in dispute under that assessment until the objection is resolved by the Commissioner."

It is urged by the learned senior counsel, that if the third proviso to Section 74 is declared as ultra vires or read down, then Section 35(2) would lose its significance. He has only drawn our attention to the said provision to highlight that that the third proviso is extremely onerous and, in any case, it would not withstand scrutiny, regard being had to default assessment under Section 32 of the Act. To bolster the said submission, he has commended us to the decision in Mardia Chemicals Ltd. & Ors.

vs. Union of India & Ors. [(2004) 4 SCC 311].

Learned counsel for the parties are requested to file their citations by way of convenience volume by 21.04.2015.

Let the matter be listed on 28.04.2015 as part-heard.

(Gulshan Kumar Arora)  
Court Master

(H.S. Parasher)  
Court Master