

ORDER REGARDING MS HDFC BANK LTD., SURYAKIRAN, K.G. MARG, CONNAUGHT PLACE, NEW DELHI.

OFFICE OF THE COMMISSIONER, VAT DEPARTMENT OF TRADE AND TAXES GOVERNMENT OF N.C.T. OF DELHI VYAPAR BHAWAN, NEW DELHI 21 No. CDVAT/2015/3<6 Name & Address of the Dealer Registration Number Assessment Year Present for the Dealer Present for the Department Date: M/s. HDFC Bank Ltd., Suryakiran, Kasturba Gandhi Marg, Connaught Place, New Delhi. 07960258934 2005-06 (for April 2005 to November 2005) Sh. Shammi Kapoor, Adv. Ms. Sh. M.K. Aggarwal, Departmental Representative his Order is passed under the provisions of Section 74A of the Delhi Value Added Tax Act, 2004. The default assessment of tax and interest under section 32 of the DVAT Act 2004 and assessment of penalty under section 33 of the DVAT Act 2004, in respect of the dealer M/s HDFC Bank Limited (Tin no- 07960258934), was done by the VATO, ward-42(KDU). Aggrieved by the order the dealer filed objection before the Objection Hearing Authority contending that the orders passed by the assessing officer are barred by limitation period. The Ld. Special Commissioner, the OHA, after hearing the matter held that the orders passed by the assessing officer are barred by limitation and hence set aside. A detailed examination of the case reflects that the orders passed by the Ld OHA are both erroneous and prejudicial to the interest of State revenue. Hence, I am revising the orders suo-moto under the provisions of section 74(A) of the DVAT Act 2004. Brief facts of the case, leading to the revision of the order of Ld OHA are as under:- 1. The special Audit of the dealer M/s HDFC Bank Limited was conducted u/s 58(A) of the DVAT Act 2004 for the year 2005-06

2. On the basis of the findings of the audit, default assessment of tax, interest and penalty for the period April 2005 to November 2005 was made by the VATO Ward-42(KDU) and the following demands of tax & penalty were raised:- Sl.No. 1. 2. 3. 4. 5. 6. 7. 8. Sl. No. 1. 2. 3. 4. 5. 6. 7

8. Tax Period April 2005 May 2005 June 2005 July 2005 August 2005 September 2005 October 2005
2005 Tax Period April 2005 May 2005 June 2005 July 2005 August 2005 Date of Notice of Total Demand i.e. September 2005 04. October 2005 November 2005 20.12.2011 Default Assessment of Tax 27.05.2011 24.06.2011 25.07.2011 26.08.2011 28.09.2011 28.10.2011 20.12.2011 To Last Date of Notice of Default Assessment of Penalty 28.10.2011 26.08.2011 27.07.2011 07.12.2011 11.2011 23.11.2011 Total Tax + interest (Rs. In Lakh) 47,174.06 25.13 113.00 55.58 66.53 96.00 421,34 6.00 47,48,012.11 Demand (Rs. In Lakh) 53.14 0.00 19.63 38.99 40.75 68.97 324.02 38.19 583.69 3.4

5. The dealer filed objection before the special commissioner on the ground that the return for the period April 2005 would have been filed by the objector on or before 28.05.2005 and correspondingly the assessing authority should have passed the order on or before 1, keeping the limitation period as prescribed by section 34 in mind. But the order framed on 27.05.2011 was dispatched on 24.06.2011 hence the date of passing of the order would be 24.06.2011 and not 27.05.2011 i.e. the date on which the order was dispatched. The Ld OHA considers the submissions made by the dealer, passed the orders and set aside the assessment orders passed by the VATO. Further, the Ld. OHA directed the assessing authority to frame fresh orders, tax period wise for the tax period not barred by limitation. Based on the order of Special Commissioner all the orders framed for the period April 2005 to November 2005 were held time barred by limitation and set aside. With this background notice issued to the dealer under sub-section (2) of section 74(A) in form D VAT 24(B) to present for hearing 23.02.2015, 04-03-2015, and 11-03-2015 at 11.30 a.m. finally on 11-03-2015 Sh. Shammi Kapoor, Adv and Ms. Counsel/ Adv of the dealer, along with POA were present. The Counsel made the following submissions:- (a). That the dealer is a leading and renowned banking company incorporated as a private sector bank, under the provisions of Banking Regulation Act, 1949 and the Reserve Bank of India (hereinafter referred to as 'RBI'), having its registered office in the State of Maharashtra. The Dealer also has its place of business situated at 1st Floor, Kailash Building, 26 Kasturba Gandhi Marg, New Delhi. (b). That the Dealer being a banking company is primarily engaged in (c). (d). (e). the business of borrowing, lending, opening of bank accounts and various other banking activities within the parameters of the Banking Regulation Act and the objects stated in the Memorandum of Association of the Dealer. That the Dealer is also engaged in the sale of gold bullion within India and has thereby got itself registered under the provisions of DVAT Act and the Central Sales Tax Act, 1956 (hereinafter referred to as 'CST Act') vide TIN No.07960258934. That the

Dealer is not into the business of sale and purchase of vehicles under the provisions of DVAT Act and is only acting as a facilitator for the purpose of recovering its outstanding loan back from the defaulter. That under the provisions of Section 26 (1) — Every registered dealer who is liable to pay tax under this Act shall furnish to the Commissioner such returns for each tax period and by such dates as may be prescribed in the prescribed form and manner. Further, Section 2(1)(y) defines the word 'prescribed' as "prescribed means prescribed by rules made under this Act". Accordingly, the date of filing return u/s 26 is to be taken as the date prescribed under the Act. The due date for filing return under Section 26 was 28th of subsequent month. Accordingly, the period of limitation had elapsed when assessment order was passed, when the assessment order was passed by the Assessing Authority. (f). Intention of the legislature was always to provide for a limitation specified under Section 34 of DVAT Act prescribing the time limit for the Authority to act in passing the order before the said period of limitation. In the present facts of the case, as the Assessing Authority has passed the assessment order beyond the period of limitation. Therefore, the order of Ld.OHA is legally correct. The D. R represented that : 6. The contention of the dealer that the date of dispatch of order shall be taken as the date of passing of the order, is wrong, as the assessing officer passed the order before the expiry of the limitation period and once the orders are done through the system, the date and contents of the order cannot be changed without making any change in the original order by means of rectification or review. Hence, the order once passed is beyond the control of the assessing authority for any possible change or modification so it can be safely concluded that the order is passed within the period of limitation though its actual service may be done beyond the period of limitation

7. Further, Section 34(1) of the DVAT Act reads as under .Limitation on assessment and reassessment (1) No assessment or re-assessment under section 32 of this Act shall be made by the Commissioner after the expiry of four years from:— (a). the date on which the person furnished a return under section 26 or sub section (1) of section 28 of this Act; or (b). the date on which the Commissioner made an assessment of tax for the tax period, whichever is the earlier: PROVIDED that where the Commissioner has reason to believe that tax was not paid by reason of concealment, omission or failure to disclose fully material particulars on the part of the person, the said period shall stand extended to six years. It is clear from the above that a. b. The assessment could be made after the expiry of four years from the date on which a person furnishes a return or revise return. The period of four years shall be extended to six years where the tax was not paid by reason of concealment, omission. However, as per section 34(1)(a), the four year and similarly six years are to be counted from the date on which a person furnishes a return. In the present case, the dealer has filed its return for the months of April 2005 to November 2005 on 30th December 2005, hence the limitation period expires on 29th December 2011, which is well within 6 years of date of the order Or dispatch of the orders. Thus the notice of assessment of tax, interest and penalty cannot be said to be debarred by limitation. I have heard the argument put forward from both the sides. I agree with the views of the DR. A simple reading of section 34(1)(a) of the DVAT Act 2004 shows that the period of 4 years commences from the date when the person furnished a return and similar is for the period of 6 years as in the proviso. Hence the orders passed by the Ld V ATO cannot be held as time barred. In view of the above discussion the orders passed by the Ld OHA are set aside and the orders of Ld AA stands. (Sanjeev Irwar) Commissioner, VAT Copy to: All Special Commissioners 2. Addl. Commissioner (L&J) 3. Addl. Commissioner (System) 4. Assistant Commissioner (Policy) 5. Guard File

6. Assessing Authority Ward-42 (KCS) with the direction to issue notice for recovery of tax immediately.(Sanjeev irwar) Commissioner, VAT