$~

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

Date of Decision: 16.09.2016

\+ W.P.(C) 5263/2016

TAXATION BAR ASSOCIATION (REGD.) ..... Petitioner

Through: Mr.Vasdev Lalwani along with Ms.Neera Gupta, Mr.Vinod Gautam and Mr.Mukul Gautam, Advs.

Versus

CHIEF SECRETARY, GOVERNMENT OF NCT DELHI & ANR ..... Respondents

Through: Mr.Satyakam, ASC for GNCTD

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

MS. G. ROHINI, CHIEF JUSTICE (ORAL)

1. "Taxation Bar Association", a registered association of Tax Legal Practitioners dealing with cases pertaining to Value Added Tax (VAT) in Delhi, filed this petition by way of Public Interest Litigation with the following prayers:

> "A. Directing the respondents and its subordinate officials with delegated powers to release the refunds claimed by all the registered dealers under the provision of DVAT Act till the date of filing this petition before this Hon'ble Court.
>
> B. To grant interest to all the registered dealers as provided under Section 42 of the DVAT Act whose refunds have been released after the statutory period provided under the provision of the DVAT Act.

> C. To grant exemplary damages to all the registered dealers whose refunds have been deliberately, intentionally and without any reason have been delayed in violation of the provisions of the DVAT Act.
>
> D. Any other relief/order/direction may also be passed by this Hon'ble Court which this Hon'ble Court deem fit and appropriate in the circumstances of the present case against the respondents."

2. We have heard the learned counsel for both the parties and perused the material available on record.

3. It may at the outset be noted that one of the members of the Petitioner association filed W.P.(C) No.4886/2016 as a PIL with the very same prayers and the same was dismissed by us by order dated 25.05.2016 observing as under:

> "2. Apparently, the petitioner seeks to raise the issue relating to alleged failure on the part of the respondents in releasing the 'refund' to the registered dealers under the provisions of the Delhi Value Added Tax Act, 2004. It may be true that the petitioner is complaining about the non-compliance with the statutory provisions, however, we are of the view that the 'refund' under the provisions of the Act being an individual claim, it is for the aggrieved person, if any, to seek redressal of his grievance. hence, in our considered opinion, the issue sought to be raised deserves no consideration in a public interest litigation."

4. Though the present petition has been filed with the very same averments as in W.P.(C) No.4886/2016, it is contended by the learned counsel for the Petitioner association that since the impugned action of the Respondents in withholding the refund to which the registered dealers are

entitled to under the provisions of the Delhi Value Added Tax Act, 2004 (DVAT Act) is *ex facie* illegal apart from being in violation of the law laid down by this Court in W.P.(C) No.3817/2010 dated 03.06.2010 titled ***M/s Swarn Darshan Impex (P) Ltd. v. Commissioner, Dept. of Trade & Taxes and Anr.***, the Petitioner association may be permitted to espouse the cause in the interest of the public at large.

5. While drawing the attention of this Court to Sections 38, 39 and 42 of the DVAT Act, it is contended that it is mandatory to make the refund within two months after the date on which the return is furnished or the claim for the refund is made by the dealer. Placing reliance upon the ***Swarn Darshan Impex (P) Ltd.*** (supra), it is also contended that the impugned action of the Respondents in withholding the refunds cannot be justified on any ground whatsoever. It is alleged that not only the Respondents are illegally withholding the refunds due to the dealers, but the interest payable under the DVAT Act has also not been paid where the refunds are made beyond the period provided under Section 38 of the DVAT Act and thus compelling the dealers to take recourse to the legal remedies for recovery of the amount to which they are entitled to.

6. To substantiate the plea that the refunds to various dealers are due for the tax period from 01.04.2011 to 31.03.2015, the information furnished by the Value Added Tax officers of Ward No.8, Ward No.10, Ward No.11, Ward No.13 and Ward No.14 under the Right to Information Act, 2005 has been annexed to the writ petition.

7. Though it is contended by the learned ASC for GNCTD appearing for the Respondents that in the light of the earlier order passed by us in W.P.(C) No.4886/2015, the petition is liable to be dismissed in limine, having taken

into consideration the fact that the cause, which apparently involves public interest, is sought to be espoused by a registered association of legal practitioners dealing with the issue in controversy on behalf of the dealers, we are of the view that the interest of justice would be met if the Respondent No.2/ Commissioner of VAT, New Delhi is directed to look into the issue and take the necessary steps for rectification of the lapses, if any, in implementation of the statutory provisions.

8. We accordingly dispose of the writ petition with a direction to the Respondent No.2 to consider the issues raised in this writ petition by treating the same as a representation. The Petitioner association is at liberty to make a representation before the Respondent No.2 within two weeks from today furnishing a list of specific instances where the refund is withheld. On receipt of the same, the Respondent No.2, after making the necessary enquiry into the allegations made in the writ petition, shall pass an appropriate order in accordance with law within eight weeks and communicate the same to the Petitioner association.

9. Writ petition is accordingly disposed of.

CHIEF JUSTICE

JAYANT NATH, J.

SEPTEMBER 16, 2016
pk