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

+ **W.P.(C) 6013/2016 & CM No. 24776/2016**

PRIME PAPERS & PACKERS Petitioner
Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR. Respondent
Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

14.

+ **W.P.(C) 6014/2016 & CM No. 24777/2016**

PRIME PAPERS & PACKERS Petitioner
Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR. Respondent
Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

15.

+ **W.P.(C) 6015/2016 & CM No. 24778/2016**

PRIME PAPERS & PACKERS Petitioner
Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

20.

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W.P.(C) 6020/2016 & CM No. 24783/2016

PRIME PAPERS & PACKERS

..... Petitioner

Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

21.

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W.P.(C) 6022/2016 & CM No. 24785/2016

PRIME PAPERS & PACKERS

..... Petitioner

Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional

Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

22.

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W.P.(C) 6023/2016 & CM No. 24786/2016

PRIME PAPERS & PACKERS

..... Petitioner

Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

With

23.

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W.P.(C) 6024/2016 & CM No. 24787/2016

PRIME PAPERS & PACKERS

..... Petitioner

Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

And

44.

+

W.P.(C) 5944/2016

PRIME PAPERS & PACKERS

..... Petitioner

Through: Mr. Vasdev Lalwani with Mr. Mohit
Gautam and Mr. Rohit Gautam, Advocates

versus

COMMISSIONER OF VAT & ANR.

..... Respondent

Through: Mr. Satyakam, Advocate, Additional
Standing Counsel, Govt. of NCT of Delhi with
Ms. Jyoti Seth, VATO Ward 68.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE NAJMI WAZIRI

ORDER

% 28.07.2016

Dr. S. Muralidhar, J.:

1. These are eight petitions by M/s. Prime Papers & Packers, a dealer registered under the Delhi Value Added Tax Act, 2004 ('DVAT Act') for directions to the Respondent – Commissioner, Value Added Tax (Commissioner, VAT) to refund to the Petitioner the amounts claimed in the returns filed for various periods as reflected in the following tabular chart:

Case No.	Refund Period	Date of filing return and refund amount
WP(C) 5944/2016	01.01.2014 to 31.03.2014	7 th October, 2014 Rs.1,84,728/-
WP(C) 6013/2016	01.01.2015 to 31.03.2015	23 rd April, 2015 Rs.2,47,928/-
WP(C) 6014/2016	01.01.2012 to 31.03.2012	28 th April, 2012 Rs. 34,406/-

WP(C) 6015/2016	01.04.2011 to 30.06.2011	27 th July, 2011 Rs.1,03,714/-
WP(C) 6020/2016	01.07.2012 to 30.09.2012	31 st December, 2013 Rs. 92,600/-
WP(C) 6022/2016	01.01.2013 to 31.03.2013	31 st December, 2013 Rs.1,50,264/-
WP(C) 6023/2016	01.01.2011 to 31.03.2011	7 th May, 2012 Rs.1,60,602/-
WP(C) 6024/2016	01.10.2011 to 31.12.2011	13 th February, 2012 Rs.1,23,053/-

2. The grievance of the Petitioner is that despite the lapse of over two months since the filing of the quarterly returns, the refunds were not issued in terms of Section 38(3)(a)(ii) of the DVAT Act. The Petitioner also points out that Circular No. 6 dated 15th June 2005 issued by the Commissioner, VAT requires refund claims to be processed and refund orders issued in Form DVAT-22 within a period of 15 days from the date of receipt of the return unless it has been picked up audit or where additional information sought that has not been furnished.

3. It is further pointed out by the Petitioner that as recently as on 20th July 2016, for the period 1st April 2012 to 31st March 2013, the Department of Trade and Taxes (DT&T) has issued a notice to the Petitioner under Section 59(2) of the DVAT Act seeking certain documents/books to be produced.

4. Notice. Mr. Satyakam, learned Additional Standing Counsel accepts notice for the Respondents and presents a chart which *inter alia* shows that

in respect of the refunds claimed for the 4th quarter of 2010-11 and the first quarter of 2011-12, notice of default assessment has already been issued by the VATO concerned on 14th October, 2011 creating demands for those periods and effectively determining that no refund is due on those periods. The submission of Mr Satyakam is that the said orders were uploaded on the website in the account of the Petitioner dealer soon after they were passed. Both orders refer to notice dated 10th September, 2011 having been issued to the Petitioner under Section 59(2) of the DVAT Act requiring the Petitioner to produce certain documents. It is submitted that on the failure of the Petitioner to submit those documents, the aforementioned notices of default assessments for the above said periods were issued.

5. With reference to the refund claimed for the first quarter of 2011-12, Mr. Satyakam states that the Petitioner uploaded the requisite C-form issued under the Central Sales Tax Act 1956 ('CST Act') only on 9th February, 2015. Without such form being uploaded, the computation of the time limit for the purpose of Section 38 (3) (a) (ii) did not commence. He referred to Section 38(7)(d) of the DVAT Act. His submission is that in any event since the notice of default assessment has been passed for the aforementioned two periods i.e. for the fourth quarter of AY 2010-11 and first quarter of AY 2011-12, the question of now issuing any refund to the Petitioner for those periods did not arise. It was open to the Petitioner to seek appropriate remedies against those orders in accordance with law.

6. Mr. Vasdev Lalwani, learned counsel for the Petitioner submits in reply that the above interpretation of Section 38(3) read with Section 38 (7)(d) of the DVAT is erroneous. He points out that Section 38 encapsulates a time-

bound point scheme for dealing with applications for refund. He points out that where the Commissioner under Section 38 (2) of the DVAT Act determines that any amount is due under the DVAT Act or the CST Act, then he shall first apply the refund towards recovery of such amounts before making any refund either under the DVAT Act or the CST Act. Mr. Lalwani further points out that it is in the context of the tax that is found due that the Commissioner is entitled to issue a notice, in terms of Section 38(4), under Section 58 of the Act, regarding audit, investigation and inquiry or seek additional information under Section 59 of the Act. He could also require the Assessee to furnish security under Section 38(5) of the Act. It is only when such adjustment is contemplated that the question of time limit under Section 38(3)(a) of the Act being subject to Section 38(7) of the Act would arise. He submits that in no instance can the consideration of the application for refund be postponed by the Commissioner beyond what is contemplated under Section 38 of the Act. Mr Lalwani points out that the stage for submitting the requisite forms contemplated under the CST Act would arise subsequently and it would always be open for the DT&T to proceed against the dealer for failure to furnish the requisite forms and to raise a tax demand if so warranted in accordance with the provisions of the DVAT Act. In other words, the powers of the Commissioner or an officer authorized to proceed under Section 59 of the DVAT Act or to create demand for any of the periods for which the refund is granted in accordance with the provisions of the DVAT Act remains unaffected.

7. In the first place a reference is required to be made to Section 38 of the DVAT Act which reads thus:

“38. Refunds

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –

(a) refunded to the person, –

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period.

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to –

(a) furnish the security under sub-section (5) to the satisfaction

of the Commissioner; or
(b) furnish the additional information sought under section 59;
or
(c) furnish returns under section 26 and section 27; or
(d) furnish the declaration or certificate forms as required under
Central Sales Tax Act, 1956,
shall be excluded.

(8) Notwithstanding anything contained in this section, where –

(a) a registered dealer has sold goods to an unregistered person;
and

(b) the price charged for the goods includes an amount of tax
payable under this Act;

(c) the dealer is seeking the refund of this amount or to apply
this amount under clause (b) of sub-section (3) of this section;
no amount shall be refunded to the dealer or may be applied by
the dealer under clause (b) of sub-section (3) of this section
unless the Commissioner is satisfied that the dealer has
refunded the amount to the purchaser.

(9) Where –

(a) a registered dealer has sold goods to another registered
dealer; and

(b) the price charged for the goods expressly includes an
amount of tax payable under this Act,
the amount may be refunded to the seller or may be applied by
the seller under clause (b) of sub-section (3) of this section and
the Commissioner may reassess the buyer to deny the amount
of the corresponding tax credit claimed by such buyer, whether
or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for
the goods is expressed not to include an amount of tax payable under
this Act the amount may be refunded to the seller or may be applied
by the seller under clause (b) of sub-section (3) of this section without
the seller being required to refund an amount to the purchaser.

(11) Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act.”

8. There have been numerous judgements rendered by this Court emphasizing the mandatory nature of the time limit set out under Section 38 of the DVAT Act. Instead of burdening this judgement again with the extracts of those decisions, the Court would only like to set out the list of such decisions as under:

- (i) ***Swarn Darshan Impex (P) Limited v. Commissioner, Value Added Tax (2010) 31 VST 475 (Del)***
- (ii) ***Lotus Impex v. Commissioner DT&T (2016) 89 VST 450 (Del);***
- (iii) ***Dish TV India Ltd. v. GNCTD (2016) 92 VST 83 (Del)***
- (iv) ***Nucleus Marketing & Communication v. Commissioner of DVAT*** [decision dated 12th July 2016 in W.P.(C) 7511/2015]

9. In all of the above judgements, the principles that have been highlighted are:

- (1) the mandatory nature of the time limits under Section 38 of the Act for the processing and issuing of refunds have to be scrupulously adhered to by the Department;
- (2) where the Department seeks to invoke Section 59 of the DVAT Act to seek more information from the dealer after picking up the return in which the refund has been claimed for scrutiny, those steps are to be taken within the time frame envisaged under Section 38 of the DVAT Act;
- (3) even where the Department seeks to invoke Section 39 of the Act,

that action again has to be taken within the time frame in Section 38(3) of the DVAT act.

10. The understanding of the Department regarding the calculation of the time limit under Section 38(3) of the Act being subject to Section 38(7), as was advanced before this Court, does not appear to be consistent with the legislative intent behind the enactment of Section 38 of the Act. It is a time-bound composite scheme which requires, in the first place, the DT&T to take immediate action upon receiving a return in which a refund is claimed. What Section 38(2) expects the Respondent to determine upon examining the claim of refund is whether there is any amount due from the dealer either under the DVAT Act or the CST Act. Such amount should already be found to be due. This is not an occasion, therefore, for the Department to start creating new demands either under the DVAT Act or the CST Act. In any event, even if the Department seeks to initiate the process for creating any fresh demand, that process cannot defeat the time period under Section 38(3)(a)(i) or (ii) for processing the refund claim.

11. Circular No. 6 of 2005 dated 15th June 2005 issued by the Commissioner VAT is binding on the DT&T. It curtails the time limit within which notices have to be issued, either for audit under Section 58 of the DVAT Act or for seeking information under Section 59 (2) of the DVAT Act, to just 15 days from the date of filing of the return claiming refund. The recent instructions issued by the Commissioner, VAT on 21st July 2016 regarding speedy disposal of refund claims also emphasises the mandatory nature of the instructions. There is therefore no question of the DT&T, and in particular the VATO concerned, not responding immediately to the refund claim

made. Where it is felt that more information should be called for then the notice under Section 59(2) DVAT Act has to necessarily be issued within fifteen days thereafter.

12. In the instant case, the return for the fourth quarter of 2010-11 was filed on 28th April, 2011. Yet, the notice under Section 59 (2) of the DVAT Act was issued only on 10th September 2011, well beyond the 15 day time limit in term of Circular No. 6 of 2005. The return for the first quarter of 2011-12 was filed on 27th July, 2011. The notices under section 59 (2) DVAT Act was issued on 10th September, 2011 again beyond the 15 day time limit. In both instances the notices of default assessments were issued on 14th October, 2011. It is another matter that the Petitioner claims not to have received the above notices under Section 59 (2) DVAT Act and the consequent notices of default assessments. The files produced by Mr Satyakam contain copies thereof but no proof of the said notices having been uploaded on the website in the Petitioner's account soon after they were issued.

13. In any event, the above notices having been issued beyond the time limits set by the Commissioner VAT for processing of refund claims, there is no valid explanation offered by the DT&T for not processing the refund claims for the said two periods within the time period under Section 38 (3) (a) (ii) of the DVAT Act. As has been explained by this Court in ***Swarn Darshan Impex (P) Limited v. Commissioner, Value Added Tax (supra)***, proceedings initiated by issuing a notice under Section 59(2) of the DVAT would be independent of the requirement of processing and issuing the refund within the time limit under Section 38 of the DVAT Act. It will not

be constitute an excuse to postpone the issuing of the refund claimed.

14. Consequently, the Court finds no valid explanation for the failure by the DT&T to process and issue to the Petitioner the refunds for the fourth quarter of 2010-11 and first quarter of 2011-12 within the time frame set out under Section 38 of the DVAT Act.

15. On the question of the Petitioner not uploading the requisite Form 9 under the CST Act till 9th February 2015, learned counsel for the Petitioner is right in his contention that Section 38 (7) has to be read with Section 38 (3) of the DVAT Act and not in isolation. Section 38 (3) opens with the words “*Subject to sub-section (4) and sub-section (5) of this Section*” and proceeds to refer to any amount remaining due “*after the application referred to in sub-section (2) of this Section*”. If Section 38(7) is read in the context of Section 38(3) of the Act, it becomes clear that those time limit will have to be calculated in the context of the Commissioner determining that some other amount is due under the DVAT Act or the CST Act against which the refund claimed requires to be adjusted. In the present case, there was nothing found due from the Petitioner whether under the DVAT Act or the CST Act at the time the Petitioner's return for the said periods claiming refund were picked up for scrutiny. Had the DT&T responded promptly as was envisaged, then the Petitioner could have been asked to furnish the information or particulars as envisaged under section 38 (7). If there was a failure by the Petitioner thereafter to provide the information or documents then possibly the question of the time limit under Section 38 (3) being correspondingly postponed might arise.

16. As regards the other periods for which refunds have been claimed, viz.,

the third and fourth quarters of 2011-12 and the second and fourth quarters of 2012-13 and the fourth quarters of 2013-14 and 2014-15, it is not disputed even by the Respondent, that the claims were not processed within the time limit set out under Section 38 of the DVAT Act. It appears that in relation to the return filed for the second quarter of 2012-13, a notice under Section 59(2) was issued on 25th July, 2016. Clearly, therefore it is way beyond the two months period envisaged under Section 38(3)(a)(ii) within which refund had to be processed and issued.

17. Mr. Satyakam urged the Court to grant the Respondent sufficient time so that entire exercise pursuant to the notices issued under Section 59 of the DVAT could be completed. The Court is not, in these petitions, concerned with the outcome of the proceedings sought to be initiated by the Respondent by issuing notices under Section 59 of the DVAT Act. The issue that is before the Court is the failure of the DT&T to issue refunds within the time limits envisaged under Section 38 of the DVAT Act. These refunds need not and should not await the outcome of those proceedings under Section 59 of the DVAT Act which in any event have been initiated beyond the stipulated time limits. The refunds are long overdue and interest on the refund amounts are mounting.

18. The Court is constrained to observe that there have been a large number of petitions filed in this Court by dealers awaiting the processing of their refund claims. Despite numerous judgments of this Court and circulars issued by the Commissioner VAT, including Circular No. 6 of 2005 and recently the Order dated 21st July 2016, the problem of delayed refunds persists. The frequent transfers of VATOs and the lack of any orientation

and training as regards their statutory responsibilities cannot constitute a valid justification for delaying the refunds due to the dealers. The Court would urge the Commissioner VAT to review the issue of grant of refunds on priority basis so that the process is streamlined and his instructions regarding speedy disposal of refunds is strictly followed. He must initiate disciplinary action against those officers of the DT&T who are found disobeying the instructions issued by the Commissioner from time to time in this regard. The Commissioner should undertake a periodic review, at least once in two weeks, as to how many refund applications have been processed and within what time. Responsibility should be fixed on derelict officers and disciplinary proceedings initiated where there is a clear breach of the statutory duties. The collective failure of such officers is imposing a huge interest burden on the exchequer which is clearly avoidable.

19. The Court therefore issue the following directions as far as the present petitions are concerned:

(i) in relation of each of the refund claims for the period above mentioned, the Respondent DT&T will issue to the Petitioner the amount of refund claimed with interest up to the date of payment which shall not be later than two weeks from today;

(ii) if there is disobedience of the above directions, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

20. The petitions are disposed of in the above terms.

CM No. 24776/2016 (Exemption) in W.P.(C) 6013/2016
CM No. 24777/2016 (Exemption) in W.P.(C) 6014/2016

CM No. 24778/2016 (Exemption) in W.P.(C) 6015/2016

CM No. 24783/2016 (Exemption) in W.P.(C) 6020/2016

CM No. 24785/2016 (Exemption) in W.P.(C) 6022/2016

CM No. 24786/2016 (Exemption) in W.P.(C) 6023/2016

CM No. 24787/2016 (Exemption) in W.P.(C) 6024/2016

21. Allowed, subject to all just exceptions.

22. A certified copy of this order be delivered forthwith to the Commissioner VAT by a Special Messenger. Order *dasti* under the signature of the Court Master.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 28, 2016

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