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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1001/2017**

ASIAN POLYMERS

..... Petitioner

Through: Mr. S.K. Khurana, Advocate

versus

COMMISSIONER OF TRADE & TAXES & ANR..... Respondents

Through: Mr.Satyakam, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER

03.05.2017

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Dr. S. Muralidhar, J

CM No. 4631/2017

1. Allowed, subject to all just exceptions.

WP(C) No. 1001/2017

2. This is a petition filed on 2nd February, 2017 with the prayer that the Respondents should grant refund in the sum of Rs. 14,41,004/-, together with interest under Section 42 of the Delhi Value Added Tax, 2004 ('DVAT Act').

3. The Petitioner's refund applications pertaining to the tax period of November and December, 2012 and January and March, 2013 have been pending with the Respondents. Although Section 38 of the DVAT Act obliges the DVAT Department to process the claims within one month, since this a monthly return, nothing was done on the refund claim. This is contrary to the decisions of this Court in *Swarn Darshan Impex P. Ltd. v.*

Commissioner, Value Added Tax & Anr. (2010) 31 VST 475 (Del) and *Prime Papers & Packers v. Commissioner of VAT & Ors. (2016) 94 VST 347 (Del)*.

4. In those decisions, the Court has also emphasised that the Value Added Tax Officer ('VATO') should not view pendency of the refund application as an opportunity to revisit the assessments of the earlier years and create fresh demands, particularly when the time for making refunds has long lapsed.

5. In the present petition, notice was issued and accepted by learned counsel for the DVAT Department on 6th February, 2017. Since then, the matter has been listed on 6th March, 2017 and again on 28th March, 2017. Throughout this period, the VATO of Ward-50, who is the concerned VATO as far as the Petitioner is concerned, chose not take any action. He waited till 31st March, 2017 to pass four separate orders of that date, which are notices of default assessments tax and interest under Section 32 of DVAT Act, creating demands for the periods for November 2012, December 2012, January 2013 and March 2013.

6. The Court has been shown all the four orders. These are standard orders, with the wording virtually being the same, with only the figures being different. As a sample, the first default assessment order for the period November 2012 is reproduced:

“Whereas I am satisfied that the dealer has not furnished returns/furnished incomplete returns or incorrect returns/furnished a return that does not comply with the requirements of Delhi Value Added Tax Act, 2004/any other reason.

The dealer has claimed refund of Rs.3,25,750/- in the Nov 2012-13 As per rule 34(9) of DVAT rules 2005 Before allowing the claimed for refund to a dealer under section 38 of the Act, the Authority concerned shall satisfy himself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are fulfilled. Further circular no.6 of 2014-15 dated 04/08/2014 of Special Commissioner (Policy) has also directed to verify the ITC before allowing the refund. In the instant case, ITC is not verified of Rs.8,39,723/- is disallowed as per section 9(2)(g) of DVAT Act.

The dealer is hereby directed to pay an amount of Rs.8,39,723/- and furnish details of such payment in Form DVAT-27A along with proof of payment to the undersigned on or before 30-05-2017 for the following tax period(s)-

Tax Period	Turnover reported by the dealer	Turnover assessed	Tax reported/paid
(1)	(2)	(3)	(4)
Nov-2012	84,40,438	0	0

Tax assessed	Additional tax due (5-4)	Interest	Total amount due (6+7)
(5)	(6)	(7)	(8)
8,39,723	8,39,723	0	8,39,723

Signature : RAJESH KUMAR
Designation : VATO (Ward 50)
Place : Delhi
Date : 31-03-2017”

7. The only justification put forth by Mr. Satyakam, learned Additional Standing Counsel for the DVAT Department is that under Section 32 read with Section 34(1) of the DVAT Act, the Department was within its rights to re-open the assessment and this was within time because the period within

which such re-assessments should be made under Section 34(1) of the Act expired on 31st March, 2017, the very date on which the aforementioned assessment orders were passed.

8. This Court is not satisfied with the above explanation. The VATO concerned is present in Court with the records. The Court has perused the said records. What led to the passing of the orders is a note prepared for the first time by the VATO on 30th March, 2017. Clearly, the said note has been prepared at the last minute. The VATO was conscious of the fact that the present petition has been pending in which notice was issued way back on 6th February, 2017. Why the VATO had to wait till the last date to prepare such a note is not explained.

9. It is plain to the Court that it is only when the Assessee came forward with the present petition complaining of the failure by the DVAT Department to process its refund claim in terms of Section 38 of the DVAT Act, that the DVAT Department decided to examine the return filed more than four years earlier. While, technically, it could be argued that these default assessment orders were passed within time they were in fact issued on the last date of expiry of limitation. The Court cannot be blind to what the orders really purport to do. They are intended to frustrate the issuance of refund orders for the periods in question which are long overdue.

10. The Court is constrained to observe that there has been a persistent attempt by the DVAT Department to somehow ensure that the refund claims are defeated by creating fresh demands which are then adjusted against the refund amount. This is a pattern that the Court has been observing in several

petitions listed before it on a daily basis. Despite several judgments of this Court lamenting the utter failure of the DVAT Department to act in accordance with law, the approach and attitude of the DVAT Department towards refund claims has not changed one bit. The harassed dealers awaiting refunds for several years are compelled to repeatedly come to this Court for orders.

11. The Court has frowned upon the above conduct of the DVAT Department in several of its judgments including *Teleworld Mobiles Pvt. Ltd. V. Commissioner of Trade & Taxes, (2016) 94 VST 358 (Del)*. On a daily basis, the Court has been passing orders, giving time-bound directions to the DVAT Department to process the refund claims and pay amounts. Yet, nothing seems to alter the routine behaviour of the VATOs concerned. Like in the present case, they utilise the opportunity provided by the pendency of the writ petition seeking refund that is long overdue to create fresh demands. This conduct of the VATOs deserves the strongest condemnation. It is nothing but an abuse of statutory powers. The mere fact that default assessment of tax and interest is being passed on the last date of the expiry of the limitation period, will not in the circumstances noticed hereinbefore, save such orders from the vice of illegality.

12. The Court is, therefore, not able to sustain any of these orders of notice of default assessment of tax and interest passed on 31st March, 2017 by the VATO, Ward-50 creating fresh demands in respect of the periods of November and December, 2012 and January and March, 2013. The said notices of default assessment of tax are hereby quashed.

13. It is directed that the DVAT Department will now pay into the account of the Petitioner the refund amount, together with interest that has accrued thereon, not later than two weeks from today. If there is non-compliance with this direction, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

14. The Commissioner, VAT is directed to examine why fresh demands are being created by the VATOs virtually on the last date of the expiry of the limitation period and that too after a writ petition has been filed by the Assessee seeking directions for refunds that are long overdue, and after notice has been issued thereon. The Commissioner, VAT should ensure that this kind of abuse of statutory powers must stop.

15. The writ petition is allowed in the above terms with costs of Rs.20,000 which will be paid by the DVAT Department to the Petitioner within two weeks. A copy of this order be delivered forthwith to the Commissioner, VAT through a Special Messenger.

16. *Dasti* under the signature of the Court Master.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 03, 2017/tp