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

\+ **W.P.(C) 3502/2017**

I SMART MOBILE TECHNOLOGY PRIVATE LIMITED ..... Petitioner

Through: Mr. Vasdev Lalwani, Mr. Rohit Gautam, Mr. Rahul Gupta, Advocates

versus

COMMISSIONER OF VAT & ANR. ..... Respondents

Through: Mr. Avtar Singh & Mr. Vijender Singh, Advocates

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **25.04.2017**

1. Issue notice. Mr. Avtar Singh, Advocate accepts notice on behalf of the Respondents.

2. The Petitioner's refund application has been pending with the Respondents/ Delhi Value Added Tax Department since 20th January, 2015. The refund amount is Rs. 18,21,440/-. After sitting on the application for over two years, on 11th April, 2017, the Value Added Tax Officer ('VATO'), Ward 44, issued a notice of default of assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act'). A copy of the said default assessment notice/order has been enclosed as Annexure P-3. Therein, it is observed that in its return, the dealer had

claimed an input tax credit of Rs.20,60,500 and on an analysis, it is revealed that the said amount in respect of M/s.ARJ Exim India for Rs.18,69,664/- could not be verified and, therefore, the said amount was disallowed 'as per Section 9(2)(g) of the DVAT Act.' A demand for the said amount was accordingly created.

3. This Court has repeatedly held in several decisions that at the stage of processing the claim for refund, the DVAT Department cannot re-open assessments normally be levied as duty for a period far beyond what is permissible under Section 38 of the DVAT Act. Illustratively, a reference may be made to the decisions in ***M/s. Swarn Darshan Impex v. Commissioner of Trade & Taxes (2010) 31 VST 475 (Del)*** and ***M/s Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347 (Del)***. Despite Circular No. 6/2005 dated 15th June 2005 and the Instruction dated 21st July 2016 issued by the Commissioner, DVAT requiring speedy disposal of refund claims, the Court finds that the VATOs are repeatedly seeking to create fresh demands, instead of processing and making the refunds in accordance with law.

4. Particularly, with reference to Section 9(2)(g) of the DVAT Act, it requires to be noticed that it envisages a situation where a selling dealer fails to deposit the tax that has been collected or fails to lawfully adjust it against the output tax liability. Therefore, the mere fact that what may have been deposited does not match what has been collected will not automatically mean that Section 9(2)(g) of the DVAT Act is attracted. In any event, this

cannot be done without notice to the Petitioner and without affording an opportunity of providing an explanation. In any event it ought not to have been resorted to at a stage when the refund was long overdue. The entire exercise is fraught with illegality and is an abuse of the process of the law by the VATO. The Court, accordingly, sets aside the default assessment order dated 11th April, 2017.

5. There being no other compliance pointed out by the VATO, there can be no justification for delaying the issue of refund to the Petitioner any longer. It is accordingly ordered that not later than two weeks from today, the VATO will ensure that the amount of refund, together with interest payable thereon, is paid directly into the account of the Petitioner. If there is non-compliance with this direction, it will be open to the Petitioner to seek appropriate legal remedies in accordance with law.

6. Before concluding, the Court would like to reiterate the following observations in ***Prime Papers & Packers v. Commissioner of VAT*** (*supra*),:

> "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."

7. The petition is disposed of in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017
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