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

\+ W.P.(C) 8592/2017

SPECTRUM WOOD ..... Petitioner

Through: Mr. Rajesh Jain, Mr.Virag Tiwari and Ms.Aastha Gandhi, Advocates.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr.Satyakam, Addl. Standing Counsel, Govt. of NCT of Delhi.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **24.09.2018**

Further to this Court's directions - in the present proceedings, the petitioner claims interest on refund (of its VAT amount paid) for the different tax periods spread from last quarter of 2013 to the end of 2015. The revenue/VAT authority through VATO made an order that spelt out rationale for limiting refunds from the period 2017 onwards. The order dated 04.07.2018 after noticing relevant statutory provisions, observed as follows:-

> *"It is further submitted that interest u/s 42(1)(a) is also not dependent upon the availability of forms. Filing of C, E1, E2, F and H form etc. is not visualized in the return Performa which is DVA 16. Under the column R11, dealer is only to give the turnover of sale/purchase made*

against C, E1, E2, F & H form. Further argued that the time taken to furnish the declaration form or certificates as required under the Central Act is to be excluded for the purpose of calculating the period prescribed u/s 38(3)(a), this is so specified in Section 38(70(d).Clause (d) in sub-section (7) of Section 38wasintroduced w.e.f 18.6.2012. However, the provision of determination of net tax u/s 42 were to apply in its literal sense when even the grant of refund was not subject to furnishing of declaration form.

The dealer in this case has also made concessional sale i.e Central Sales against C-Forms in all the aforesaid tax periods and the C-Forms in original have been physically submitted by the dealer only after the directions of Hon'ble High Court on 6.10.2017.

The aforesaid written arguments submitted by the dealer for release of interest from a date of two months from the date of filling of refund as per the calculation sheet enclosed with the written submission have been considered viz.a.viz., the relevant provisions governing the grant of refund and interest on thereon contained in Section 38 and 42 of the DVAT Act 2004.

As would be clear from the section 38 (3) which clearly distinguishes between the two acts of the applicant pertaining to seeking of refund and carrying forward of any excess amounts remaining after the prescribed deduction to the next tax period as a tax credit in that period as distinct rights under the Act. Dealer also has the absolute discretion to elect either of the two options. This clearly implies that the relevant point of time where any of the provisions relating to refund or grant of interest thereon would be the date on which the dealer elects to seek the refund of the excess amount so remaining after the prescribed deductions.

However, sub section 7 qualifies the calculation of these periods in different situation and sub section 7(d) *relevant to the present case clearly prescribes that time taken to furnish the declaration or certificate forms as required under CST Act, 1956 shall be excluded while calculating the time of two months as applicable in the instant case. This point gets further emphasized when one peruses the provisions contained in section 38(1) of the Act which clearly says that the provisions relating to refund of the excess amount due to a Dealer are subject to the other provisions of section 38 of the Act as well as the rules prescribed in this regard.*

Further this provision is also to be read in relation to the provisions under Section 8(1) and Section 8(4) of the CST Act 1956 which deals with the concessional rate of tax in the course of inter state trade or commerce. As per the provision under this Section of the CST Act, any Dealer shall qualify for the concessional rate of tax only when the Dealer selling the goods furnishes to the prescribed authority in the prescribed manner in the declaration form duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority.

A conjunct reading of these provisions in the context of the case clearly beings out that the period within which the refund of the excess amount is to be made is to counted from the date when the relevant 'C' Forms are furnished by the dealer. In this case the Dealer has furnished the 'C' forms with the department only on 06.10.2017.

The entire amount of the tax credit gets converted into refund only when the dealer elects to do so. The conditions prescribed under section 38(7) are meant to protect the genuine interest of the revenue and are mandatory in nature and apply to the amount of the refund claimed as well as interest thereon. It is thus clear that the amount due becomes a refund when it is elected *to be so treated by the dealer and the various provisions governing the time limit in terms of section 38(3)(a) as well as the provisions for exclusion of the time for calculating the said time limit as provided u/s 38(7) would become applicable to the entire amount of the refund as and when elected to be claimed.*

It is further noted that the Hon'ble Supreme Court vide its order dated 01.2.2018 in Civil Appeal No. 242/2018 in the matter of Commissioner of Trade & Taxes vs. Vizien Organics, has further stayed the order of the Hon'ble Delhi High Court dated 19.01.2017 in WP(C) No. 3496 of 2017 on the issue of similar nature.

The above position was further noted by the Hon'ble High Court in many of the subsequent similar cases. ***In the instant case also the Hon'ble High Court has directed in WP(C) 8593 & 8595 that the interest for the period during which the C-Forms were not available, the payment of the amount will be subject to the final outcome of the appeals preferred by the Respondent before the Supreme Court against the order dated 19th January 2017 passed by this Court in W.P (C) No.3496 of 2017 (Vizien Organics v. Commissioner, Trade & Taxes)****.*

In view of the above it is therefore held that on the issue of interest in the present matter the Dealer is entitled to interest only for a period excluding the time taken to furnish the declaration or certificate form under CST Act 1956, as prescribed u/s 38(7)(d) of the DVAT Act 2004.

This Court has considered the submissions of the parties. In the judgment *Vizien Organics vs. Commissioner, Trade & Taxes & Anr.* (dated 19.01.2017 in W.P. (C) 10701/2016 and other connected cases) in paras 23 & 24, the Court had summarized the position and issued directions. In effect, the Court has clarified that whenever VAT returns are filed and the period prescribed for their processing [Section 38(3) of Delhi Value Added Tax, 2004] is exceeded, the right to refund with interest *per se* vests in the assessee. The Court clarified in *Vizien Organics* (supra) that time taken by the revenue authority to verify particulars regarding transactions for which exemptions are sought through C-Forms would not be excluded altogether and that it would depend on whether in a given case, the assessee furnishes the requisite documents within the time granted to it or not and if it does, the time taken by the revenue too has to be excluded reasonably. In all other respects, the entire period is to be reckoned for the purposes of granting interest.

Given the declaration of law in *Vizien Organics* (supra) and the further development that the operation of the judgment as of now is stayed, this Court is of the opinion that Assessing Officer should work out the direction in *Vizien Organics* (supra) for the sake of clarity but not give any effect to it. In other words, for the period concerned, the VATO should necessarily consider, when the notices were issued calling for verification of the C-Forms and depending upon the facts, decide the period of exclusion, for grant of interest on the refund amount. Such determination however would not *ipso facto* entitle the assessee to receive the amounts; that would be subject to the final decision of the Supreme Court in the pending appeals preferred by the respondent/revenue.

The writ petition is disposed of in the above terms and VATO is directed to complete the verification and work out the necessary entitlements pursuant to these directions within eight weeks.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 24, 2018
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