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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 4130/2019**

SHIVAM MEDICOS PVT. LTD. ..... Petitioner
Through: Mr Amif Ahmid Khan, Mr Gaurav Grover and Mr Manoj Kumar Sharma, Advocates.

versus

COMMISSIONER TRADE & TAXES & ORS. ..... Respondents
Through: Mr Dhananjay Mishra, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

<u>O R D E R</u>
% **10.05.2019**

1.The Petitioner has approached this Court aggrieved by the refusal by the Respondents to refund the pre-deposit amount of Rs.2 lacs along with interest for the periods March, 2010-11 and March, 2011-12.

2. The Petitioner is registered under the DVAT Act as well as under the Central Sales Tax Act ('CST Act'). The Petitioner was assessed for the above tax period of March, 2010-11 and a demand of Rs.17, 82,037/- (tax and interest) and Rs.22, 96,615/- (penalty) was raised by the order dated 29th March, 2015. For March, 2011-12, a demand of Rs.14, 43,042/- (tax plus interest) and Rs.18, 59,760/- (penalty) was raised by order dated 29th March, 2016.

3. The Petitioner filed objections under Section 74 of the DVAT Act in respect of the above orders. The Objection Hearing Authority ('OHA') while invoking power under proviso to Section 74 (1) (b) of the DVAT Act directed the Petitioner to deposit Rs.2 lacs as a pre-condition to considering the appeals. This was done by the Petitioner on 9th March, 2017.

4. On 4th July, 2017, the objections filed by the Petitioner were allowed by the OHA and the assessment orders for the aforementioned periods were set aside. The matter was remanded to the Value Added Tax Officer ('VATO') for framing a fresh assessment.

5. The VATO issued notices to the Petitioner under Section 59 (2) of the DVAT Act on 8th November, 2017 and 4th May, 2018, calling for documents. The Petitioner states that its authorized representative ('AR') appeared before the VATO on several dates with all the requisite documents. Neither was assessment initiated nor any order passed by the VATO.

6. On 4th July, 2018, the limitation of one year, from the date of the order of the OHA, for passing the fresh assessment order expired. With the assessment having become time-barred, the demands could not be enforced. Accordingly, the Petitioner asked for refund of its pre-deposit. It filed a Form DVAT-21 on 15th February, 2019, claiming refund of the aforementioned pre-deposit.

7. It is under those circumstances that the present petition was filed.

8. That the Petitioner is entitled to refund is no longer *res integra* in view of this Court's order dated 5th August, 2016 passed in W.P.(C) No.5478/2016 (***Shaila Enterprises v. Commissioner of Value Added Tax***). SLP (Civil) No.27037 of 2016 filed by the Respondents against the above decision was dismissed by the Supreme Court on 4th July, 2017.

9. Learned counsel for the Respondents does not dispute the above position. Accordingly, as far as the refund by the Revenue in the sum of Rs.2 lacs of the Petitioner is concerned, it is directed that it shall be done forthwith, and in any event, not later than 31st May, 2019.

10. On the question of the interest that is payable to the Petitioner on the aforementioned sum of Rs.2 lacs, learned counsel for the Petitioner relied upon the judgment of this Court dated 10th August, 2018 in W.P.(C) No.3118/2018 (***MRF Ltd. v The Commissioner of Trade and Taxes***). In terms of the said judgment, the interest on the amount of Rs.2 lacs became due from 4th July, 2018 itself.

11. However, the contention of the Respondents is that interest would be payable only from the date of filing of the DVAT-21 which is 15th February, 2019. He further points out that the said decision in ***MRF Ltd. v. The Commissioner of Trade and Taxes*** (*supra*) has been appealed against. He has produced a copy of an order dated 10th December, 2018 in SLP (Civil) No.31522/2018 (***The Commissioner of Trade and Taxes v M/s MRF Limited***) whereby while issuing notice in the SLP, the order of this Court dated 10th August, 2018) has been stayed.

12. In that view of the matter, it is directed that simple interest will be paid by the Respondents on the aforementioned sum of Rs.2 lacs for the period from 15th February, 2019, till the date of actual refund @ 6% per annum. As regards the interest for the period 4th July, 2018 till 15th February, 2019, it will await the decision of the Supreme Court in SLP (Civil) No.31522/2018 (***The Commissioner of Trade and Taxes v. M/s MRF Limited***). The demand raised against the Petitioner will be removed from the DVAT portal of the Respondents forthwith.

13. The petition is disposed of in the above terms. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 10, 2019
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