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

\+ **W.P.(C) 9809/2018**

M/S MUKESH AGENCIES .... Petitioner

Through Mr. Varun Nischal, Mr. Arif Ahmed Khan and Ms. Gauri Grover, Advocates

Versus

COMMISSIONER, TRADE & TAXES & ORS. ..... Respondents

Through Mr. Satyakam, Additional Standing Counsel for GNCTD with Mr. AkshayAlagh, L.A. DTT and Mr. P.W. Tapre, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **25.07.2019**

1. In the present case, the dispute is narrowed down to the issue of the Respondent failing to pay the Petitioner interest on the refund amount for all the periods for which the Petitioner is claiming such refund.

2. The Court is informed that the Respondents realize that the impugned 'zero demand orders' dated 6th July 2012 and 10th July 2012, and the default assessment orders, all dated 31st January 2013 (where reason for such assessment is given as '**a**') for the period from April, 2010 to March, 2010-2011, are unsustainable in law.

3. Even otherwise, this Court has, in a series of decisions including the recent decision dated 17th July 2019 in W.P(C) 9282/2017 ***M/s Mega Media Solutions v. Commissioner Trade & Taxes and Anr.,*** held that

such 'zero demand orders' are unsustainable in law, as "they end up only multiplying litigation needlessly and delaying the grant of refunds to which the dealers are legitimately entitled." As far as the default assessment orders dated 31st January 2013 are concerned, since the reason given in all such orders is uniformly '**a**', these are orders which absolutely make no sense and deserve to be set aside. Accordingly, the 'zero demand orders' and the default assessment orders as referred to hereinabove are hereby set aside.

4. Mr. Satyakam, learned Senior Standing Counsel for the Department informs the Court that the refund orders, as prayed for by the Petitioner, have already been issued. As regards the interest payable on the refund amounts, he says if a time bound direction is issued, it will be abided by the Respondents.

5. The Court would like to emphasize that the DVAT Act and Rules are absolutely clear that the amount of interest has to be calculated and indicated in the order granting the refund itself. There is no occasion whatsoever for the Respondent not to calculate and pay the Assessee the interest on the refund amount in accordance with law simultaneously with the grant of refund. Further, these orders, needless to state, have to be speaking orders.

6. The Court reiterates its decision in***IJM Corporation Berhard v. Commissioner of Trade and Taxes 2018 (48) GSTR 102 (Del)*** wherein para 15 it was observed as under:

> "15. When we harmoniously read sections 38 and 42 of the Act, which relate to processing: of claim for refund and payment of interest, it is crystal dear that the interest is to be

paid from the date when the refund was due to be paid to the assessee or date when the overpaid amount was paid, whichever is later. The date when the refund was due would be with reference to the date mentioned in section 38, i.e., clause (a) to sub-section (3). This would mean that interest would be payable after the period specified in clause (a) to sub-section (3) to section 38 of the Act, i.e., the date on which the refund becomes payable. Two sections, namely, sections 38(3) and 42(1) do not refer to the date of filing of return. This obviously as per the Act is not starting point for payment of interest.*"*

7. It is accordingly directed that the Respondents will pass orders with reasons on the issue of grant of interest on the refund amounts not later than four weeks from today and the interest amounts so found due and payable to the Petitioner will be credited to the Petitioner's account not later than 15th September, 2019, failing which the Respondents will pay the Petitioner Rs.50,000/- as compensation. Needless to state, if the Petitioner is aggrieved by such order, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

8. The writ petition is accordingly disposed of.

9. Copy of the order be given *Dasti* under the signatures of the Court Master.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 25, 2019/*mk*