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

\+ **W.P.(C) 12876/2018**

CORSAN CORVIAM CONSTRUCCION S.A.- SADHBHAV ENGINEERING LTD. JV ..... Petitioner

Through: Mr. Rajesh Jain, Mr. Virag Tiwari and Mr. Ramashish, Advocates

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr. Anuj Aggarwal, ASC, GNCTD with Mr. Atul Goyal, Advocates

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **22.07.2019**

Dr. S. Muralidhar, J.:

1. A short issue is involved in this petition regarding the obligation of the Respondent to pay interest on the refund issued to the Petitioner by an order dated 20th August, 2017.

2. The admitted facts, as evident from the order granting refund, are that the Petitioner, a registered dealer under the Delhi Value Added Tax Act, 2004 (DVAT Act), filed a return claiming refund on 10th July, 2015. The tax period for which refund was claimed was the fourth quarter of 2014. The refund claimed was Rs.2,56,57,120/- and refund allowed was Rs.1,30,96,335/- After set off/adjustments the net amount of refund worked out to Rs.1,30,96,335/-.

3. On account of the failure of the Respondents to pay interest for the period between 11th September, 2015 (i.e. expiry of two months after filing of the refund application) and 14th September, 2017, the date when the refund amount was received by it, the Petitioner has filed the present petition.

4. In response to the petition, a counter affidavit has been filed, wherein it is sought to be contended by the Respondent that the revised return was filed on a Friday i.e. 10th July, 2015 and the period of two months as per Section 38 (3)(a)(ii) of the DVAT Act would commence from the following Monday i.e. 13th July, 2015. It is further stated that on 11th September, 2015, a notice under Section 59(2) of DVAT Act was issued to the Petitioner and this was therefore within the period of two months as stipulated under Section 38 (3)(a)(ii) of the DVAT Act.

5. Section 38 (3) of the DVAT Act and Section 38(7) read as under:

> **Section 38 (3)**
>
> (3) Subject to sub-section (4) and sub-section (5] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either—
>
> (a) refunded to the person,
>
> (i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;
>
> (ii) within two months after the date on which the return was furnished or claim for the refund was

made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period

Section 38(7)

'(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to—

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.'

6. With the Petitioner having admittedly filed the return claiming the refund on 10th July 2015, the question of construing the starting of the limitation period of two months from 13th July, 2015 does not arise. It is indeed an ingenuous argument that merely because two days following the date of filing happened to be holidays, the date of filing of the revised return would get postponed to the next working day. This is untenable and is rejected as such.

7. In that view of the matter, the notice issued under Section 59(2) of the Act on 11th September, 2015 was beyond the period of two months after the filing of the revised return and to no legal effect. In terms of

38 (3)(a)(ii) read with Section 38 (7) of the DVAT Act, the period for which interest will become payable would run from 11th September, 2015 itself.

8. The legal position has been clearly explained by this Court in its decision in ***IJM Corporation Berhard v. Commissioner of Trade and Taxes***, ***2018 (48) GSTR 102 (Del)*** in Para 15, where 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."

9. In the same decision in the context of Section 39 (1) of the DVAT Act, it was further explained as under:

> "19. The interpretation given by us gets affirmation from section 39 of the Act, which relates to power to withhold refund in certain cases. Section 39 of the Act reads as under:
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> > 39. Power to withhold refund in certain cases.-
> > (l) Where a person is entitled to a refund and

> any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.
>
> (2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under subsection (1) of section 42, of this Act if as a result of the appeal or further proceeding, or any other proceeding he becomes entitled to the refund,"

Sub-section (1) gives power to the Commissioner, who may for reasons to be recorded in writing either obtain security equal to the amount to be refunded or withhold the refund till such time the proceedings or audit has been concluded. The said power can be exercised as prescribed and stipulated in sub-section (1). Sub-section (2) states that where refund is withheld under sub-section (1), the person would be entitled to interest if as a result of the appeal or further proceedings or any other proceedings, he becomes entitled to the refund. In other words, under sub-section (2), interest would begin from the period specified in clause (a) to sub-section (3) to section 38 of the Act, albeit the quantum of refund would depend upon the adjudication. To this extent on interpretation of sub-section (2) to section 38, counsel for the parties are ad idem."

10. In that view of the matter, the stand taken by the Respondents in the

counter affidavit that the Petitioner is not entitled to interest on refund is hereby rejected.

11. Mr. Rajesh Jain, learned counsel for the Petitioner points out that although the refund order was issued on 25th August 2017, the actual refund amount was credited in the Petitioner's account only on 14th September, 2017. This is not disputed by Mr. Anuj Agarawal, learned counsel for the Respondent. Mr. Jain refers to Section 42(1) of the DVAT Act to contend that the interest payable on the refund amount would be for a period till the date the refund amount was actually received i.e. from 11th September, 2015 till 14th September, 2017.

12. Section 42 of the DVAT Act reads as under:

> "42. Interest
>
> (1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the Government from time to time, computed on a daily basis from the later of—
>
> (a) the date that the refund was due to be paid to the person; or
>
> (b) the date that the overpaid amount was paid by the person, until the date on which the refund is given:
> Provided that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):
>
> Provided further that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.

> Explanation: If the delay in granting the refund is attributable to the said person, whether wholly or in part, the period for the delay attributable to him shall be excluded from the period for which the interest is payable.
>
> (2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.
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> (3) Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.
>
> (4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.
>
> (5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen."

13. The wording of Section 42(1) of DVAT Act is unambiguous. It talks of the two dates i.e. date the refund was due to be paid to the person and 'until the date' on which the refund is 'given'. The word 'given' should in the context of the provision mean, the date on which the refund amount is actually received by the Petitioner and not the date simply on which the refund order is issued. As a matter of routine, the Court notes that invariably, the refund amount is not received by an Assessee on the date of

issuance of the refund order. That date is usually a later date. In the present case, as already noted, the Respondent has not disputed the fact that the refund amount was in fact received by the Petitioner only on 14th September, 2017.

14. In that view of the matter, it is held that the Petitioner is entitled to interest on the refund amount issued by the order dated 25th August, 2017 for the period from 11th September, 2015 till 14th September, 2017. The said interest amount calculated in terms of Section 42 read with Rule 34 and 36 of the DVAT Rules will be credited to the Petitioner's account not later than 16th August, 2019. It is further directed that if the said amount is not credited by that date, the Respondent will pay the Petitioner Rs.50,000/- as compensation.

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

CM APPL. 49882/201 (Exemption)

16. Allowed, subject to all just exceptions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 22, 2019

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