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

\+ **W.P.(C) 13399/2018**

M/S GUPTA POLYMERS ..... Petitioner

Through: Mr.Varun Nischal and Mr.Arif Ahmed Khan, Advocates.

versus

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

Through: Mr.Shadan Farasat, Assessee and Ms.Rudrakshi Deo, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.08.2019**

1. On the previous date, the following order was passed:-

> **"**3. Learned counsel for the Respondent does not dispute that the *suo motu* review assessment order was issued without any notice to the Petitioner. This is clearly in teeth of the decision of this Court in ***S.L. Enterprises v. Commissioner of Value Added Tax***. Further, the review was sought to be undertaken after this Court had in its order dated 25th September, 2017 in W.P.(C) No. 8597/2017 recorded the statement of the learned counsel for the Respondents that 'if a time bound direction is issued, the same shall be complied with and the refund of the Petitioner will be processed'.
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> 4. Learned counsel for the Respondent is agreeable that the Respondents will issue a proper show cause notice ('SCN') to the Petitioner seeking review of the earlier assessment orders stating the grounds unearthed and will complete the fresh exercise in a time bound manner. However, when the Court posed the question whether the Respondents would be prepared to first make the refund that is already overdue together with the interest due thereon to the Petitioner as a condition

> for permitting the above exercise to be undertaken afresh, Mr. Shadan Farasat, learned Additional Standing Counsel for the Respondent sought time for instructions.
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> 5. List on 9th August, 2019."

2. Learned counsel for the Respondent today, on instructions, states that they are not prepared to first refund of the amount due to the Petitioner as a condition for being permitted to issue a fresh show cause notice to the Petitioner proposing review of the earlier assessment orders in a time bound manner.

3. The legal position that the refunds to be made in terms of Section 38 of the Delhi Value Added Tax Act, 2004 (DVAT Act) within the time limit specified in Section 38 (3) thereof not withstanding demands that might be created for other periods other than that for which refund is due and which demands are sought to be raised subsequent to the expiry of the two month period under Section 38 of the DVAT Act, is well settled. The following observations in ***Swaran Darshan Impex Pvt. Ltd. v. Commissioner Value Added Tax 2010 (31) VST 475 (Del)*** settles the position:

> "16. In any event, even if we assume that the said notice was issued by the respondents and that it had been received by the petitioner, it would not change the position in law. Sub-section (4) of Section 38 has to be read with the provisions of sub-section (3) of Section 38. By virtue of the latter provision, the refund had to be paid to the petitioner within two months from the date of the return furnished by him. No such notice under Section 59 requiring additional information had been issued during that period. Consequently, the subsequent purported issuance of notice under Section 59 cannot be taken as a ground

for not paying the refund to the petitioner. In this connection, the provisions of sub-section (7) of Section 38 also needs to be examined. The said provision stipulates that for calculating the period prescribed in Section 38(3)(a), the time taken to, inter alia, furnish additional information sought under Section 59 shall be excluded. It is obvious that exclusion can only be when the period of limitation itself has not run out. The consequence of this discussion is that the notice under Section 59 in connection with refund has to be issued within the period of two months stipulated in Section 38(3)(a)(ii). As a result, the submission of the learned counsel for the respondents that because of issuance of notice under Section 59 of the said Act, albeit beyond the prescribed time, the refund was not payable, is not tenable."

4. This has been reiterated by this Court in its order dated 9th July, 2019 in Writ Petition (Civil) No.13500/2018 (***M/s. Dhanpati Packaging v. Commissioner Trade and Taxes & Ors.***)

5. In that view of the matter, the Court sets aside the impugned review order dated 4th July, 2018 passed by the VATO and directs the Respondents to comply with the earlier order dated 25th September, 2017 passed by this Court in W.P. (C) No. 8597/2017 and issue to the Petitioner refunds for the following tax periods i.e. first quarter 2016-17, second quarter 2016-17, third quarter 2016-17 and fourth quarter 2016-17, together with the statutory interest as per Section 42 of the DVAT Act [and as explained by this Court in ***IJM Corporation Berhard v. Commissioner of Trade & Taxes 2018 (48) GSTR 102 (Del)***] not later than 31st August, 2019.

6. It is made clear that the interest should be calculated strictly in terms of the law explained by this Court in the above decision and up to 31st August,

2019 or the date of actual refund whichever is later. If the refund together with the interest is not credited to the account of the Petitioner on or before 31st August, 2019 the Respondents will pay further cost of Rs.50,000/- to the Petitioner. After the refund is made, it will be open to the Respondents to proceed in respect of the Assessee in accordance with the law.

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

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 09, 2019
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