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

% *Date of Decision: 19.01.2023*

+ W.P.(C) 1247/2021

M/S JIWAND SINGH AND SONS Petitioner

Through: Mr. Rajesh Mahan, Ms. Sonia
Sharma & Mr. Abhay Bhatia,
Advs.

Versus

SPECIAL COMMISSIONER OF TRADE
AND TAXES & ORS.

..... Respondents

Through: Mr. Amandeep Joshi & Mr.
Vinod Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 15.12.2020, whereby the respondents had declined the petitioner's claim for interest on the refund amount of ₹10,00,000/-.

2. It is the petitioner's case that since there is no dispute that it was entitled to a refund of the duty deposited, it is also entitled to interest as specified under Section 30(4) of the Delhi Sales Tax Act, 1975 (hereafter '**the Act**').

3. Briefly stated, the relevant facts are as under:

3.1 The original assessment in respect of sales tax liability of the petitioner was framed on 31.08.1999. The petitioner filed an appeal against the said assessment order before the First Appellate Authority. The said appeal was entertained subject to the petitioner making a pre-deposit of a sum of ₹10,00,000/-. The petitioner complied with the said condition and deposited the said sum on or before 09.03.2000.

3.2 The petitioner prevailed before the First Appellate Authority and by an order dated 12.08.2011, passed by the said Authority, the assessment order dated 31.08.1999 was set aside. The matter was remanded to the Assessing Officer (AO) to decide afresh.

3.3 In compliance with the order dated 12.08.2011, the AO completed the assessment on 02.04.2012. The operative part of the said assessment order reads as under:

“..... Assessment of the dealer is framed as under:

Gross Turnover	:	5,30,73,573
First point tax-paid sales	:	5,13,17,266
Sales of taxfree repair work	:	15,495
Sales taxable @5%	:	94,067
Sales taxable @7%	:	3,14,883
Sales taxable @12%	:	13,31,862
Tax assessed	:	1,86,569
Tax deposited	:	1,86,575
Tax due	:	nil

The amount of Rs.10,00,000/- (Rs. Ten Lacs Only) deposited by the dealer in stay in the appeal is refundable to him for which he will file proper application in the prescribed manner within the time period prescribed.”

3.4 In compliance with the directions to make an application for refund of the amount of ₹10,00,000/-, the petitioner made an application

in Form ST-21 on 18.05.2012. Although, there is no dispute that the petitioner is entitled to a refund of the sum of ₹10,00,000/-, the respondents had failed and neglected to refund the same to the petitioner.

3.5 The petitioner claims that it pursued the concerned authority for the refund but in vain. It once again filed an application dated 14.10.2020, before the Assistant Commissioner, seeking refund of the amount as well as interest thereon. The petitioner followed up the said application with a reminder dated 26.10.2020, seeking refund of the said amount along with interest.

3.6 Aggrieved by the inaction on the part of the respondents to process the request for refund, the petitioner filed a petition before this Court [being W.P.(C) No.8726/2020 captioned *M/s Jiwand Singh & Sons v. Commissioner Trade & Taxes & Anr.*]. The said petition was disposed of by a judgment dated 06.11.2020 with a direction to the respondents to decide the petitioner's application for refund of the amount, along with interest in accordance with law.

3.7 The petitioner communicated the said order to the concerned authorities and, thereafter, also filed an application requesting them to process its request for refund along with interest. Finally, respondent no.1 acceded to the said request and passed an order dated 15.12.2020, refunding the principal amount of ₹10,00,000/-, however, the petitioner's request for interest was not acceded to. This has led to the petitioner filing the present petition.

4. It was contended on behalf of the petitioner that the deposit of ₹10,00,000/- could not be considered as deposit of tax; the same was deposited as a pre-condition to exercise the right of appeal. The petitioner had succeeded in its appeal; therefore, the said amount was required to be refunded to the petitioner. The petitioner also relies on the decisions of the co-ordinate bench of this Court in the case of *Shri Rathi Steel Ltd. v Commissioner of Trade and Taxes: W.P.(C) 8635/2018* decided on 24.09.2018 and *MRF Ltd. v Commissioner of Trade and Taxes: W.P.(C) 3118/2018* decided on 10.08.2018

5. The learned counsel for the respondents contends that the amount deposited by the petitioner as a pre-condition for maintaining the appeal, is required to be considered as tax, as it was against the pending liability. He also submits that the order passed in *MRF Ltd. v Commissioner of Trade and Taxes (supra)* has been stayed by the Supreme Court.

6. In the facts of the present case, it is not necessary to enter into the aforesaid controversy. In either event, the respondents were liable to refund the said amount to the petitioner at the material time. In the event the petitioner's contention is accepted, that the amount of ₹10,00,000/- was deposited only to avail the right to prefer an appeal, the said amount is required to be refunded forthwith after the petitioner has succeeded in its appeal before the First Appellate Authority, that is, on 12.08.2011. Even if the contentions of the respondents are accepted, that the amount deposited is required to be construed as deposit of tax, the petitioner is entitled to interest on the said amount, in terms of Section 30(4) of the

Act, as the same was not refunded within a period of 90 days.

7. Section 30(4) of the Act reads as under:

“30. Refund

(4) Where an amount required to be refunded by the Commissioner to any person as a result of any order passed in appeal or other proceedings under this Act is not so refunded to him within ninety days from the date of his claim under sub-section (3), such person shall be entitled to be paid simple interest on such amount at one per cent. per month from the date immediately following the expiry of the period of ninety days for a period of one month and at one and a half per cent. per month, thereafter for so long as the refund is not made.”

8. Initially, it was contended on behalf of the respondents that the controversy involved in the present case is covered against the respondents, by the decision in the case of ***MRF Ltd. v. Commissioner of Trade and Tax and Anr.*** (*supra*) and that a Special Leave Petition, being SLP(C) no. 31522/2018 against the said decision has also been filed before the Supreme Court and the said order has been stayed. In view of the said contention, this Court had called upon the learned counsel for the respondents to examine the said SLP and the grounds urged to assail the same. He has now handed over a copy of the same and fairly states that the facts in the said case are different as in that case, the assessee had not filed the Form ST-21 for nearly three years before approaching the High Court. And, this is the principal ground on which the SLP has been preferred against the said decision. As noted

above, in the present case, the petitioner had filed the relevant form (DVAT 21) on 18.05.2012 seeking refund of the amount deposited.

9. Notwithstanding, that there is no dispute that the petitioner is entitled to a refund of the amount of ₹10,00,000/-, the learned counsel for the respondents states that the present petition ought to be rejected on two grounds: first, that the petitioner has an alternate remedy; and second, that the petitioner had not taken any action for a period of eight years after it had filed the relevant form for seeking refund of the tax along with interest.

10. This Court does not find any merit in the aforesaid contentions. It is not necessary that in a case where an alternate remedy exists, the Court must refrain from exercising its jurisdiction.

11. In the instant case the petitioner had pursued the respondents for processing its claim for tax and interest. Despite the same, the respondents had failed to take any action. The petitioner was constrained to approach this Court by filing a writ petition [W.P.(C) No.8726/2020]. The said writ petition was disposed of by an order dated 06.11.2020. Undisputedly, in compliance with the directions passed by this Court, the respondents were required to process the petitioner's application for refund along with interest in accordance with law. No contention has been advanced before this Court as to why the petitioner is not entitled to interest on the said amount. In the circumstances, we do not consider it apposite to relegate the petitioner to the alternate remedy, in this case.

12. The second contention that the petitioner is guilty of inaction for

an inordinately long period is also unpersuasive. Once the petitioner had filed the application for seeking refund of the amount along with interest, it was incumbent upon the respondents to either allow or reject the same as per law. The inaction, if any, is largely on the part of the respondents. First of all, the respondents ought to have refunded the amount as it was deposited to avail of the remedy of appeal without awaiting filing of any form, as held by this court in ***MRF Ltd. v. Commissioner of Trade and Tax and Anr*** (*supra*). In any event, the respondents were required to process the request for refund of tax along with interest pursuant to the petitioner's application (in Form DVAT 21) dated 18.05.2012. Admittedly, the petitioner had once again filed a written representation on 14.10.2020, however, this representation was also not disposed of within a reasonable period and the petitioner was constrained to approach this Court.

13. Mr. Rajesh Mahana, learned counsel appearing for the petitioner, states that the petitioner would be satisfied if the petitioner is paid interest at the rate specified under Section 30(4) of the Act, from the period commencing from the ninetieth day after the date of application dated 18.05.2012. He states that he is not pressing for interest from the date the petitioner had prevailed before the First Appellate Authority.

14. In view of the aforesaid statement made on behalf of the petitioner, the respondents are directed to pay interest on the sum of ₹10,00,000/- at the rates as specified under Section 30(4) of the Act, computed from the ninetieth day after the date of application dated 18.05.2012 till the date of payment. It is directed that the said payment

should be made within a period of four weeks from date.

15. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JANUARY 19, 2023

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