IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4551 OF 2022

Hindustan Unilever Ltd. … Petitioner

Versus

The Union Territory of Dadra & Nagar Haveli & Ors. …Respondents

Mr. Sriram Sridharan a/w Mr. Dhananjay Sethuraj i/b Mr. Sriram Sridharan, for the Petitioner.
Mr. Hiten Venegaonkar a/w Mr. Aayush Kedia, for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 6 February, 2024

Oral Judgment :- (Per G. S. Kulkarni, J.)

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:

> "a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India to quash and set aside the impugned Notice of Default Assessment Ref.No.ADM.DNH/DC(VAT)/718 dated 02.09.2020 (Exhibit A) issued by the Respondent No. 3 after going into the validity and legality thereof;

b) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India to quash and set aside, insofar as it is prejudicial to the Petitioner, the impugned Letter F.No.26000001930/VAT-Refund/ 2015-16/718 dated 02.09.2020 (Exhibit B) issued by the Respondent No. 3 after going into the validity and legality thereof;

c) that this Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other Writ, order or direction under Article 226 of the Constitution of India directing the Respondent No. 3 to refund the amount of Rs.1,06,95,341 sanctioned to the Petitioner vide the Letter F.No.26000001930/VAT-Refund/2015-16/718 dated 02.09.2020 (Exhibit "B");

d) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ or order or direction under Article 226 of the Constitution of India ordering and directing the Respondents themselves, their officers and subordinates to refrain from taking any steps or proceedings in pursuance of and/or in furtherance of and/or in implementation of the i) impugned Notice of Default Assessment Ref.No.ADM.DNH/DC(VAT)/718 dated 02.09.2020 (Exhibit A) issued by the Respondent No. 3; and ii) Letter F.No.26000001930/VAT-Refund/2015-16/718 dated 02.09.2020 (Exhibit "B"), insofar as it is prejudicial to the Petitoiner, passed by Respondent No.3;

e) that pending the hearing and final disposal of this Petition, the Respondents by themselves, their officers, subordinates, servants and agents be restrained by an interim order and injunction of this Hon'ble Court from taking any steps or proceedings in pursuance of and/or in furtherance of and/or in implementation of the i) impugned Notice of Default Assessment Ref.No.ADM.DNH/DC(VAT)/718 dated 02.09.2020 (Exhibit A) issued by the Respondent No. 3; and ii) Letter F.No.26000001930/VAT-Refund/2015-16/718 dated 02.09.2020 (Exhibit "B"), insofar as it is prejudicial to the Petitioner, passed by Respondent No.3;

f) for ad-interim reliefs in terms of the prayers above;

g) for costs of this Petition;

h) for such further and other reliefs as the nature and circumstances of the case may require."

3. The case of the petitioner is that for the financial year 2015-16, the petitioner had filed its returns alongwith all relevant documents with the

Department of Value Added Tax, Dadra and Nagar Haveli, Silvassa. The Deputy Commissioner (Department of Value Added Tax, Dadra & Nagar Haveli, Silvassa) considered the returns as filed by the petitioner and passed an assessment order which is titled as Re-conciliation of Statutory Forms / Order under Dadra & Nagar Haveli VAT Regulation – 2005 & Central Sales Tax Act on non-submission of declaration forms ‘C’ / ‘F’ / ‘H’ / ‘E-P’ / ‘E-II’ against the claim of inter-State sales made to registered dealers under Section 9 of the Central Sales Tax Act, 1957 read with Chapter VI of the Dadra & Nagar Haveli Value Added Tax Regulation, 2005. A copy of such order is annexed at Exhibit – ‘F’ (page 54 of the paper book) which clearly records the scrutiny of the returns and other documents as furnished by the petitioner (dealer) as per under the Statutory provisions.

4. The manufacturing activity as undertaken by the petitioner in the establishment at Dadra & Nagar Haveli, Silvassa is of “Skin Creams & Lotions, Soaps and Detergents, Tea”. Insofar as the furnishing of the ‘C’, ‘F’ & ‘H’ forms are concerned, the assessment order clearly records that the petitioner had produced the said forms and in fact a statement of all statutory forms were submitted has been set out. The relevant extract of the said order reads thus:

> **“Re-conciliation of Statutory Forms/Order under Dadra & Nagar Haveli VAT Regulation-2005 & Central Sales Tax Act on non–**

submission of declaration forms 'C' / 'F' / 'F' / 'E-I' / 'E-II' against the claim of interstate sales made to registered dealers.

(Under Section 9 of the Central Sales Tax Act, 1957 read with Chapter-VI of the Dadra & Nagar Haveli Value Added Tax Regulation, 2005.)

And

Scrutiny of Returns and other documents filed by the dealer under Dadra and Nagar Haveli Value Added Tax Regulation, 2005, and CST Act, 1957.

Name and Address of the Dealer		M/s Hindustan Unilever Limited, Srv No.907, Kilwani Road, Gandhi Gram Bus Stop Village-Amli, Dadra and Nagar Haveli.
Tin No.		26000001930
Central Sales Tax No.		DNH/CST/1860 w.c.f. 17.6.1996
Period		01.04.2015 to 31.03.2016
Assessment Year		2018-19
Details of Exemption / Entitlement Certificate		NA.
Document available		1. Copy of Registration Certificate 2. Copy of Returns 3. Sale & Purchase details 4. DVAT 43
Name of Authorized person		Mr. Biswanath Sahoo

The dealer is a Manufacturer of **"SKIN CREAMS & LOTIONS, SOAPS AND DETERGENTS, TEA"** and has furnished Returns of year 2015-16 in Form DVAT 16, Form 1, Annexure-II etc. The dealer has filed DVAT-43 & Returns for the year 2015-16 which is in time.

The dealer in its periodic returns for the tax-periods in the financial year 2015-16 has **claimed concessional rate of tax** on the interstate sales made to registered dealers on the strength of **prescribed declaration forms** under the Act amounting to Rs. 2,82,98,393/-, Rs. 2779,25,02,276/- & RS. 8,19,24,076/- required under Section 8(4) and 8(5) of the Central Sales Tax Act, 1956 and Rule 12(7) of Central Sales Tax Rules, 1957, the dealer is required to submit the Form 'C', 'F' & 'H' (prescribed declaration forms) within the prescribed period of three months of completion of each quarter against the above said claim. The dealer has produced Form 'C' 'F' & 'H' for Rs. 2,82,64,098/-, Rs.2779,25,01,079/- & Rs. 8,19,24,076/-. The dealer has failed to produce Form 'C' & 'F' of R.7,575/- & Rs.1,197/- which are determined as taxable sales @ 10.5% & @12.5% for non submission of Form ‘F’ & ‘H’ and tax comes to Rs.795/- & Rs. 150/- on which interest per annum of Rs.258/- & Rs.49/- is imposed. The total tax and interest comes to Rs. 1,053/ & Rs. 199/- for which a demand notice is created in Form DVAT 24. The dealer furnished all the statutory forms are as per the table below:-

TABLE

Tax period	Declaration forms required to be submitted in Rs.	Declaration forms already submitted in Rs.	Declaration forms not submitted, to be taxed @ 10.5% & 12.5%	Tax payable by the dealer in Rs.	Interest levied per annum on net tax to be paid by the dealer	Net tax & Penalty to be paid by the dealer
1	2	3	4	5	6	7
2015-16 (C)	2,82,98,393/-	2,82,64,098/-	7,575/-	795/-	258/-	1,053/-
2015-16 (F)	2779,25,02,276/-	2779,25,01,079/-	1,197/-	150/-	49/-	199/-
2015-16 (H)	8,19,24,076/-	8,19,24,076/-	--	--	--	--
	Total			945/-	307/-	1,252/-

The dealer has been liable to pay a tax & interest of Rs.1,252/-/- for non submission 'C' & 'F' forms. For which demand notice is created in form DVAT-24.”

5. Thus, the order clearly records that the petitioner was liable to pay a tax and interest of Rs.1252/- for non submission of C & F forms for which demand notice was issued in form DVAT-24 which was complied by the petitioner. The case of the petitioner is that on such assessment order being passed by the Deputy Commissioner (VAT), the petitioner submitted a refund application dated 29 July 2019 submitting all the documents entitling the refund for the period in question (for financial year 2015-16). The petitioner had also enclosed certificate collected from the local supplier in form DVAT-31 that out of total purchase tax imported of Rs.4,42,27,524/- the original DVAT-31 and certificate worth the said amount 4,34,76,174/- which was 98% was being submitted. Also, Re-conciliation of C, F & H form for 2015-16 to June 2017 was also submitted. In the process of consideration of the refund application, correspondence ensued between the department and the petitioner in regard to verification of CST declarations on different forms, copies of which annexed to the petition (page 62 to page 89).

6. The case of the petitioner is that during the course of taking a decision on the refund application, the petitioner was issued two communications both dated 2 September 2020. By the first communication (page 28 F. No.26000001930/VAT-Refund/2015-16/118) the petitioner was informed that the department had scrutinized the VAT refund claim of the petitioner, whereby the eligible refund to the petitioner was quantified at Rs. 1,06,94,341/-. However, despite there being an assessment order dated 1 September 2018, the petitioner was informed that for the financial year 2015-16 there is a demand for tax at Rs.139,51,35,715/- and the net demand to be paid shall be Rs.138,44,40,374/- after adjustment of the eligible refund. The said communication is required to be noted which reads thus:

"Form DVAT-24

(See Rule 36 of the Dadra and Nagar Haveli Value Added Tax Rules, 2005)

Ref.No.ADM/DNH/DC(VATY 718 Dated: 2/9/2020.

To,
M/s. Hindustan Unilever Ltd.
Sry. No. 907, Kilwani Road,
Gandhi Gram Bus Stop,
Village: Amli.

Tin No. 26000001930

Notice of default assessment of tax and interest under section 32

Whereas I am satisfied that the dealer has not furnished returns/furnished incomplete returns or incorrect returns/furnished a return that does not comply with the requirements of Dadra and Nagar Haveli Value Added Tax Regulation, 2005 / any other reason.

The dealer is hereby directed to pay tax of an amount of Rs. 138,44,40,374/- (**Rs One Hundred Thirty Eight Crore Forty Four Lakh Forty Thousand Three Hundred Seventy Four Only**) and furnish proof of such payment to the undersigned on or within 15 days for the following tax period.

Year 2015-16

Tax Period F.Y. 2015-16	**Amount (Rs.)**		
	Tax	**Interest**	**Total**
Demand raised for non submission forms for the year 2015-16	945	307	1252
Demand raised for non Verification forms for the year 2015-16	1395134463	0	1395134463
Total Demand	139,51,35,715/-		
Less:-Eligible VAT Refund	1,06,95,341/-		
Net Demand to be paid	138,44,40,374/-		

7. The second communication demanding tax as issued to the petitioner was a notice for default assessment of tax and interest under Section 32 read with Rule 36 of the 2005 Rules of the Union Territory by which an amount of Rs.1,38,44,40,374/- was the net amount as demanded for the petitioner. The said communication reads thus:

"UT-Administration of
Dadra & nagar Haveli and Daman and Diu,
1st floor Udhyog Bhavan, 66 KV Road
(Department of Value Added Tax)
Silvassa.

F. No.26000001930/VAT-Refund/2015-16/718 2 September 2020.

To,
M/s.Hindustan Unilever Ltd.
Sry. No. 907, Kilwani Road,
Gandhi Gram Bus Stop,
Village : Amli.

Subject :- Application for VAT refund for the FY 2015-16.

Ref. DVAT-21 Ack No.14240066 dated 29.07.2019 of Rs.1,06,95,341/-

With reference to above mentioned subject, it is to inform that the department has scrutinized your VAT Refund claim and calculated as below;

Gross Refund (as per DVAT-21)	Rs.1,06,95,341/-
Eligible Refund	Rs.1,06,95,341/-
Demand for FY 2015-16	Rs.139,51,35,715/-
Net Demand to be paid (copy enclosed)	Rs.138,44,40,374/-

Therefore, the VAT Refund has been deducted towards the recovery of outstanding dues and to pay remaining tax of an amounting to **Rs.138,44,40,374/- (Rs One Hundred Thirty Eight Crore Forty Four Lakh Forty Thousand Three Hundred Seventy Four Only)** and furnished proof of such payment to the undersigned within 15 Days.

Encl:-DVAT-24 for the FY 2015-16

Deputy Commissioner (DVAT),
Dadra and Nagar Haveli
Silvassa"

8. The petitioner being aggrieved by the aforesaid communications dated 2 September 2020 has filed the present petition.

9. Mr. Sridharan, learned counsel for the petitioner would submit that the impugned communications / demands are patently illegal and arbitrary, as also without application of mind, inasmuch as, the authority did not have jurisdiction to make a demand in the teeth of the assessment order dated 1 September 2018, by which the assessment for the financial year was already made, quantifying the demand of Tax at Rs.1252/-. It is submitted that there was no locking procedure under regulation 58(4) of the 2005 Regulations as adopted to make a re-assessment, and without a show cause notice or an opportunity of a hearing being granted to the petitioner, the impugned demand could not have been raised. It is therefore his submission, that not only considering the express provisions of the regulations, but also, considering the well settled principles of law which was required to be followed, it was not permissible for the concerned officer to reopen the concluded assessment to issue the impugned communication. It is therefore his submission that the petition needs to be allowed on the basic premise, on the patent illegality on the part of the Deputy Commissioner in passing the impugned order.

10. On the other hand, learned counsel for the respondents has justified the impugned order referring to the reply affidavit as filed on behalf of the department, which does not dispute the basic contentions as urged on behalf of the petitioner in regard to the petitioner not being heard and the procedure which otherwise could have been followed before any demand could be raised, in the teeth of a concluded assessment. The reply for the first time sets out in para 2 and 3 that in the soft copies and the hard copies of the documents there was a deficiency found in the documents, namely, that the petitioner had not submitted details of the statutory forms in soft copies. It is contended that the refund claim application was not as per the prescribed compliance of the office circular dated 29 December 2014, and that the department had issued a letter dated 3 June 2020, to the petitioner informing the petitioner to comply with the deficiencies and submit soft copies of the forms, with the details in the statutory form. It is submitted that under Regulation 38 of the 2007 amended Regulation, the refund application was required to be processed and sanctioned within 90 days from the date the refund claim was raised, and accordingly such refund claim was processed and the impugned demand was raised.

11. The next contention as urged in the reply is that as per Regulation 74(1) of the 2005 Regulations the petitioner would have an opportunity of a statutory appeal assailing the decision of the department demanding the tax by the impugned communications, to be filed before the Joint Commissioner (VAT) and even for such reason this petition ought not to be entertained.

12. On behalf of the petitioner a rejoinder affidavit is filed disputing the contentions as urged on behalf of the respondents in the reply affidavit. It is contended that all the documents namely the soft copies as also the hard copies were submitted. There was no communication from the respondents in regard to re-consideration of the said documents, and without following the lawful procedure, the impugned demand was issued. The case of the department as pleaded in the reply affidavit has been denied by the petitioner in totality. It is on such backdrop, we have heard learned counsel for the parties.

13. We have heard learned counsel for the parties, we have also perused the record.

14. At the outset, we may observe that there is much substance in the contentions as urged on behalf of the petitioner, namely that at the hands of the Deputy Commissioner (VAT) / respondents, an assessment order was passed on 1 September 2018 whereby taking into consideration the declaration of forms namely C, F & H forms and the amounts as involved, the Tax liability was calculated at Rs.1252/- for non submission of C & F forms. The said amount was admittedly paid. Once such assessment stood finalised in terms of the order dated 1 September 2018, the only course of action available to the department was to reopen such assessment as the law would mandate. Also the department could have taken recourse to the provisions of Regulation 58(4) of the 2005 Regulation which pertains to “reassessment” which reads thus:

> “CHAPTER X
>
> 58(1)…..
>
> (4) The Commissioner shall, after considering the return, the evidence furnished along with the returned, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either__
>
> (a) confirm the assessment; or
>
> (b) serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty, if any, pursuant to section 32 and 33.”

15. It is quite clear that such procedure as the law would recognize was not followed by the Deputy Commissioner in issuing the impugned communication. Thus, an incongruous position is reflected by the record of the department namely, on one hand an assessment order which is not set aside or invalidated in any manner known to law has remained to operate and on the other hand, in the course of processing of the refund application the impugned demand has been raised without any re-assessment of the assessment order and / or invalidating the returns filed by the petitioner as per the procedure the law would mandate the department to follow. This apart, the basic requirement in law of the department following the principles of natural justice, has also been overlooked in issuing the impugned communication.

16. Admittedly, the impugned order is an *ex-parte* order. There is nothing on record to justify that the petitioner was issued any show cause notice or the petitioner was heard, before the deputy commissioner could come to a conclusion that the demands as set out in the impugned order are required to be made against the petitioner.

17. For all these reasons, we are quite certain that the impugned order / communication when tested on law look from any angle cannot be sustained and would be required to be quashed and set aside. We accordingly allow the petition by the following order.

ORDER

i. The impugned orders / communications dated 2 September 2020 Exhibit-A & Exhibit-B are quashed and set aside.

ii. The respondents is at liberty to follow the due procedure in law, in the event, the department is not accepting the assessment order dated 1 September 2018 passed by the Deputy Commissioner and / or to raise a demand against the petitioner for the financial year 1 April 2015 to 31 March 2016, on any ground as the law may permit. All contentions of the parties in respect of any proposed proceedings are expressly kept open.

iii. The refund application of the petitioners shall now be decided by the respondents in accordance with law.

iv. In regard to the admitted amount of Rs.1,06,95,341/- being original refund as accepted by the department, the same shall be refunded to the petitioner within a period of four weeks from today with permissible interest.

iv. Rule is made absolute in the above terms.

18. No costs.

(FIRDOSH P. POONIWALLA, J.) (G. S. KULKARNI , J.)