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

% Date of decision: 10.04.2024

\+ W.P.(C) 5293/2024

M/S SATBIR FILING STATION .... Petitioner

versus

DELHI VALUE ADDED TAX OFFICER WARD 101 & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Pulkit Verma, Mr. R. R. Maurya & Mr. Jitendra Kumar, Advocates.

For the Respondents: Mr. Rajeev Aggarwal, ASC with Ms Shaguftha Hameed & Ms. Samridhi Vats, Advocates.

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks computation/quantification of interest on the delayed refund in terms of Section 42 of Delhi Value Added Tax Act, 2017 w.e.f. 01.06.2015 i.e. expiry of two months from the date of filing of refund of the application till 23.05.2023 when the refund was disbursed to the petitioner.

2. Issue notice. Notice is accepted by learned counsel appearing for the respondents. With the consent of parties, the petition is taken up for final disposal.

3. Section 38 of *Delhi Value Added Tax Act, 2004* reads as under:-

"Section 38: Refunds:-

(1) Subject to the other provisions of this section and the rules, the Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(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.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act the amount shall be carried forward to the next tax period as a tax credit in that period

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under sub-section (5).

(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.

(8) Notwithstanding anything contained in this section, where –

(a) a registered dealer has sold goods to an unregistered person; and

(b) the price charged for the goods includes an amount of tax payable under this Act;

(c) the dealer is seeking the refund of this amount or to apply this amount under clause

(b) of sub-section (3) of this section;

no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

(9) Where –

(a) a registered dealer has sold goods to another registered dealer; and

(b) the price charged for the goods expressly includes an amount of tax payable under this Act,

the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

> *(11) Notwithstanding anything contained to the contrary in sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."*

4. In terms of Section 38 (3) (a) (ii) of the Act, the Commissioner shall refund to a person the amount of tax, penalty and interest, if paid in excess within two months after the date on which the return was furnished or claim for the refund was made. In the instant case, the petitioner had made an application for refund on 31.03.2015 by filing a VAT Return for the Fourth Quarter of 2013-2014. Accordingly, in terms of Section 38 (3) (a) (ii), the refund claim become due on expiry of two months w.e.f 01.06.2015.

5. It is an admitted position that refund has been sanctioned and disbursed to the petitioner on 23.05.2023, however, without any interest.

6. Further, *Section 42* of the Act reads as under:-

> "Section 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 of 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.

(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."

7. Section 42 (1) of the Act mandates grant of simple interest at the annual rate notified by the Government from time to time, to a person who is found entitled to refund in case of any delayed payment.

8. In the instant case, refund has been sanctioned without any

interest. It is an admitted position that annual rate notified by the Government for the purposes of Section 42 of the Act is simple interest @ 6% per annum.

9. In view of the above, the petition is disposed of directing the respondents to consider the claim of petitioner for grant of interest on the delayed refund in terms of Section 42 of the Act.

10. In case, the petitioner is found entitled to interest the same be sanctioned and disbursed to the petitioner within a period of four weeks from today. In case, the proper officer is of the view that interest is not payable a speaking order be communicated to the petitioner within a period of four weeks.

11. It would be open to the petitioner to avail of such further remedies as may be permissible in law, in case petitioner is aggrieved by any order passed by the respondents.

12. Petition stands disposed of in the above terms.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 10, 2024/*sk*