



2024:DHC:5621-DB



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

Judgment reserved on: 18 July 2024
Judgment pronounced on: 31 July 2024

+ W.P.(C) 9990/2023

MANGALAM TRADERS

.....Petitioner

Through: Mr. Rakesh Kumar & Mr.
Praveen Kumar, Advocates

versus

**COMMISSIONER OF DELHI VALUE ADDED TAX
DEPARTMENT OF TRADE AND TAXES AND**

ANR

.....Respondents

Through: Mr. Rajeev Aggarwal, ASC with
Ms. Samridhi Vats, Advocate

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

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RAVINDER DUDEJA, J.

1. Petitioner has preferred this petition seeking following reliefs:-

“(a) Set aside the Impugned order dated 11-04-2023, 10-05-2023 and 03-10-2023.

(b) Issue a Writ of declaration or any other writ, order or directions directing respondent to issue the interest of Rs. 23,27,644 (16,78,226 on round of Rs. 53,99,140/- for 4th Quarter 2016-17 and Rs. 6,49,418/- on refund of Rs. 20,86,966/- for 1st Quarter 2017-18) as Petitioner is legally entitled for the same as per the provision of law.

(c) Grant exemplary damages cost to Petitioner as the Respondents had acted in mala-fide and colorable exercise of power in with holding the interest ignoring the provisions of not following its own Circulars on the subject and the judgments pronouncement by our own Hon’ble court.”



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**FACTUAL BACKGROUND:**

2. Petitioner is a registered dealer under Delhi Value Added Tax Act, 2004, [hereinafter '**DVAT Act**'] and the Central Sales Tax Act, 1956, [hereinafter '**CST Act**']. Petitioner filed quarterly returns for the 4th quarter of the assessment year ['**AY**'] 2016-17 and the 1st quarter of the Assessment Year 2017-18 on 01.06.2017 and 29.07.2017 respectively, therein claiming concessional rate of interest in respect of interstate sales on the basis of C Form. Petitioner reported interstate sales of Rs. 5,29,68,790/- and Rs. 2,39,20,824/- for the aforesaid two quarters and claimed a refund of Rs. 53,93,100/- and Rs. 24,47,850/- respectively against the 'C' Forms.

3. Since the claim for refund was not processed, petitioner filed writ petitions before this Court, praying that the directions be issued for refund of the amount claimed for the 4th quarter of assessment year 2016-17 and the first quarter of Assessment Year 2017-18.

4. Both the writ petitions were disposed of by common order dated 30.10.2017, which reads as under:-

“Learned counsel for the respondents submits that the Petitioner has to file 'C' forms in physical form with the Authorities and thereafter the claim for refund can be processed by the Authorities.

It will be open to the petitioner to file the physical 'C' forms with the Authorities within a period of 15 days from today and the respondent authority will thereafter process the refund claim of the petitioner within the statutory period. In case there is a delay in the process of refund claim of the petitioner beyond the statutory period, it would be open to the petitioner to file an application in these writ petitions and ask for revival.

With the aforesaid observations, the writ petition is disposed of.”



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5. Petitioner accordingly furnished the physical 'C' Form. Respondents passed a refund order dated 11.12.2017 for the 1st quarter of the Assessment Year 2017-18 wherein the refund amount of Rs. 20,86,966/- was allowed after adjusting Rs. 3,60,884/- against the claim of Rs. 24,47,850/-. However, the refund amount was not credited to the account of the petitioner. The refund for the 4th quarter of assessment year 2016-17 was not even processed.

6. The Value Added Tax Officer, [hereinafter 'VATO'] issued a Notice of Default Assessment dated 11.04.2018 for both the tax periods. The VATO noted that a communication was received from his counterparts located where the purchasing dealers were registered that some of the 'C' Forms were issued in respect of other commodities and not Cosmetics, Shampoos, Hair Oils and other such items. VATO concluded that the 'C' Forms furnished by the petitioner related to another product and some of the 'C' Forms could not be verified. He thus held that interstate sale made by the petitioner may be treated as central sales without valid 'C' Forms. Accordingly, VATO raised demand of additional tax along with interest.

7. Assessment Order dated 11.04.2018 was appealed before Objections Hearing Authority, [hereinafter 'OHA']. OHA remanded the matter to the Assessing Authority with the direction to pass a well-reasoned and speaking order after affording the petitioner an opportunity to be heard.



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8. VATO issued notice under Section 59 (2) of the DVAT Act and passed the assessment order dated 29.08.2020. Such order was substantially in similar terms as the order dated 11.04.2018. The benefit of 'C' Form was denied to the petitioner.

9. Feeling aggrieved, petitioner preferred WP (C) 10546/2021 before this Court.

10. Vide order dated 13.12.2022 passed by this Court, the assessment order dated 29.08.2020 was set aside.

11. The Assessing Authority in compliance of directions of this Court, sanctioned refund to the petitioner vide reference No. 677581 dated 06.03.2023 for Rs. 53,93,140/- with respect to 4th quarter of 2016-17 and reference No. 9002222952414 dated 06.03.2023 for Rs. 20,86,966/- with respect to 1st quarter of 2017-18. However, no interest was awarded.

12. Petitioner moved application on 28.03.2023, praying for grant of interest of Rs. 16,60,496/- on the refund of Rs. 53,93,140/- for the 4th quarter of 2016-17 and Rs. 6,42,556/- for the refund of Rs. 20,86,966/- for 1st quarter 2017-18 from the date of submission of 'C' Form till the issue of refund. However, the claim of interest was rejected vide order dated 11.04.2023. The operative part of the impugned order is reproduced as under:-

“It is Worthwhile to mention here that since there were an investigation and legal issues involved in the instant case which has been ultimately decides in favour of the dealer by the Hon'ble Delhi High Court as mentioned herein above, and moreover, the assessing authority has also sanctioned the refund to the dealer with respect to



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the tax period 4th Quarter, 2016-17 & Ist Quarter, 2017-18/therefore, under such circumstances, the question of interest does not arise at all.

Keeping in view of the peculiar facts of case and the available records, the dealer is not entitled for any interest on the refund order already issued to the dealer dated 06.03.2023 pursuant to the directions of the Hon'ble High Court of Delhi as stated herein above. Thus, the undersigned hereby reject the application dated 28.03.2023 for claiming interest on the late issuance of the refund order."

13. Petitioner moved yet another application for the grant of interest. However, the same was also rejected vide order dated 10.05.2023.

SUBMISSIONS:

14. Learned counsel for Petitioner has submitted that as per the mandate of Section 42 of the DVAT Act, if the refund is not granted within the stipulated period, petitioner becomes entitled to statutory interest on the refund and therefore the impugned orders have been passed by the Respondents in gross violation of Section 42 of the DVAT Act.

15. Per contra, the learned counsel for the Respondents has argued that the refund was delayed because a legal issue was involved, which was ultimately decided in favour of the petitioner by the High Court, pursuant to which, the refund was sanctioned to the petitioner and therefore the petitioner is not entitled to any interest on the refund.

REASONS & ANALYSIS

16. Sections 38 of the DVAT Act deals with the grant of refund. It would be apposite to extract the relevant provision.



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"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)."

17. As per plain reading of the aforesaid provision, the Commissioner is obliged to refund the tax, penalty and interest, if any, paid by an assessee which is more than the amount due from it. The Commissioner has powers to first apply such excess amount towards the recovery of any other amount due under the DVAT Act. Section 38

(3) (a) (i) & (ii) make it further clear that where the tax period for



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claiming the refund is one month, interest would accrue from the date one month elapses after the date of filing of the return or the date when the claim for refund is lodged. Where, however the dealer's tax period for claiming the refund is a quarter, interest accrues two months after the return is filed or a claim for refund is made. If a notice is issued under Section 58 or an additional information is sought under Section 59, the refund will be carried forward to the next tax period as a tax credit.

18. The DVAT Act, 2004 provides strict guidelines for the grant of refund which are mandatory and not discretionary. The Supreme Court in the case of **Prime Papers & Packers v. Commissioner of VAT & Anr. 2016 SCC OnLine Del 4211**, reiterated the aforesaid position as under:-

“8. There have been numerous judgements rendered by this Court emphasizing the mandatory nature of the time limit set out under Section 38 of the DVAT Act. Instead of burdening this judgement again with the extracts of those decisions, the Court would only like to set out the list of such decisions as under:

- (i) Swarn Darshan Impex (P) Limited v. Commissioner, Value Added Tax (2010) 31 VST 475 (Del)
- (ii) Lotus Impex v. Commissioner DT&T (2016) 89 VST 450 (Del);
- (iii) Dish TV India Ltd. v. GNCTD (2016) 92 VST 83 (Del)
- (iv) Nucleus Marketing & Communication v. Commissioner of DVAT [decision dated 12th July 2016 in W.P.(C) 7511/2015]

9. In all of the above judgments, the principles that have been highlighted are:

- (1) the mandatory nature of the time limits under Section 38 of the Act for the processing and issuing of refunds have to be scrupulously adhered to by the Department;
- (2) where the Department seeks to invoke Section 59 of the DVAT Act to seek more information from the dealer



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after picking up the return in which the refund has been claimed for scrutiny, those steps are to be taken within the time frame envisaged under Section 38 of the DVAT Act; (3) even where the Department seeks to invoke Section 39 of the Act, that action again has to be taken within the time frame in Section 38(3) of the DVAT act.”

19. Rules 34 & 57 of the DVAT Rules, 2005 also deal with grant of refund and are extracted herein below:-

34. Refund of excess payment:-

- (1) A claim for refund of tax, penalty or interest paid in excess of the amount due under the Act (except claimed in the return) shall be made in Form DVAT-21, stating fully and in detail the grounds upon which the claim is being made.
- (2) Only such claim shall be made in Form DVAT-21 that has not already been claimed in any previous return. A claim for refund made in Form DVAT-21 shall not be again included in the return for any tax period.
- (3) The Commissioner shall issue notice to any person claiming refund to furnish security under sub-section (5) of section 38, in Form DVAT -21A.
- (4) Where the refund is arising out of a judgment of a Court or an order of an authority under the Act, the person claiming the refund shall attach with Form DVAT-21 a certified copy of such judgment or order.
- (5) When the Commissioner is satisfied that a refund is admissible, he shall determine the amount of the refund due and record an order in Form DVAT-22 sanctioning the refund and recording the calculation used in determining the amount of refund ordered (including adjustment of any other amount due as provided in sub-section (2) of section 38).
- (6) Where a refund order is issued under sub-rule (5), the Commissioner shall, simultaneously, record and include in the order any amount of interest payable under sub-section (1) of section 42 for any period for which interest is payable.
- (7) The Commissioner shall forthwith serve on the person in the manner prescribed in rule 62, a cheque for the amount of tax, interest, penalty or other amount to be refunded along with the refund order in Form DVAT-22.
- (8) No refund shall be allowed to a person who has not filed return and has not paid any amount due under the Act or an order under section 39 is passed withholding the said refund.



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57. Refund on account of objection:- The procedure for the refund of any amount due in consequence of an order made pursuant to an objection, or any other proceeding under the Act, shall be that provided in rule 34.”

20. Requirement to file DVAT-21 was considered by this Court in **Flipkart India Private Limited Vs. Value Added Tax Officer, W.P.(C) 6430/2022**. This Court had held that once a claim for refund stands embodied in the return itself, there is no obligation upon the assessee to file Form DVAT-21. Paragraph 37 of the said judgment is relevant and reads as under:-

“37. We are at the outset constrained to observe that as would be evident from a bare perusal of Rule 34, a claim for refund of tax is liable to be made in Form DVAT-21 only if such a refund is not claimed in the return itself. This clearly emerges from Rule 34(1) which uses the expression “except claimed in the return”. The aforesaid position is again reiterated in sub-rule (2) and which stipulates that only such claim for refunds may be made in Form DVAT-21 which have not been claimed in any previous return. It is thus manifest that once a claim for refund stands embodied in the return itself, there is no additional obligation placed upon the assessee to file Form DVAT-21. This position, in any case, stands concluded against the respondents in light of the judgments rendered by the Court in Corsan Corviam and Consortium of Sudhir Power Projects.”

21. Thus, the return filed by the Assessee is required to be considered as an application for refund and the Respondent is required to process the same. With regard to the question of grant of interest, a Coordinate Bench of this Court in **IJM Corporation Berhad Vs. Commissioner of Trade & Taxes 2017 SCC Online Del 11864** held that in terms of Section 42 of the DVAT Act, interest would be payable, if the refund is not paid within a period of two months of filing of the return. Paragraphs 16 & 17 of the said judgment are extracted below:-



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“16. Section 42 relates to interest and sub-section (1) thereof stipulates that an assessee who is entitled to refund 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. It fixes the time from which the interest is payable i.e. the date on which refund was due to be paid to the assessee; or the date when the overpaid amount was paid by that person, whichever was later. Interest is payable up to the date on which the refund is given. Subsection (1), therefore, fixes the starting point and the end point. With reference to the starting point, the date on which the refund was due to be paid to the assessee or the date when the overpaid amount was paid by the assessee, whichever is later is applicable. There is also stipulation in the first proviso with regard to adjustment, deduction etc. with which we are not concerned in the present case. The second proviso stipulates that if the amount of such refund is enhanced or reduced, as the case may be, the interest would be enhanced or reduced accordingly. Explanation to the sub-section (1) states that if the delay in granting the refund is attributable to the assessee, whether wholly or in part, the period of delay attributable to him shall be excluded from the period for which interest is payable.

17. 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 clear 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.”

22. Concededly, petitioner had filed quarterly returns for the fourth quarter of Assessment Year 2016-17 on 01.06.2017 and for the first quarter of assessment year 2017-18 on 29.07.2017. The refund in terms of Section 38 (3) (a) (ii) of the 2004 Act for the 4th quarter of



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assessment year 2016-17 thus accrued on 01.08.2017 and for the 1st quarter of assessment year 2017-18 accrued in favour of petitioner on 29.09.2017.

23. Harmonious reading of Sections 38 & 42 makes it clear that interest is payable to the Petitioner from the date when it accrued, in terms of Section 38 (3) (a) (ii) of 2004 Act.

24. There is no material on record to indicate that Petitioner was in any manner responsible for the delay in processing of the refund. There is not even any such allegation in the Impugned Orders dated 11.04.2023 and 10.05.2023. In terms of the statutory time frame which stands constructed by Section 38 (3) (a) (ii) of the DVAT Act, the said amount had become refundable post 1st August 2017 and 29th September 2017 respectively. The proceedings undertaken thereafter i.e. issuance of notice under Section 59 (2) followed by Default Assessment Order dated 29.08.2020 are to be regarded as non-est in the eyes of law. The fact that this Court vide order dated 13.12.2022 set aside the notice of Default Assessment dated 28.08.2020, revived the claim for refund embedded in the Petitioner's return with the removal of the clog placed upon it by the Default Assessment Order dated 29.08.2020. Petitioner cannot be denied interest on the amount of interest withheld unjustifiably. Since the refund was withheld, assessee automatically becomes entitled to the interest under Section 42 (1) of the DVAT Act. This is further made clear on a plain reading of Section 39 of DVAT Act, which provides as under:-



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"39 Power to withhold refund in certain cases

(1). XXXXXXXX

(2) Where a refund is withheld under sub-section (1) of this section, the person shall be entitled to interest as provided under sub-section (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."

CONCLUSION

25. Thus for the foregoing reasons, we are of the view that petitioner is entitled for interest on refund and such claim cannot be defeated on the mere ground of investigation and involvement of legal issues, which ultimately came to be decided in favour of the petitioner by orders passed by the High Court.

26. Admittedly, statutory rate of Interest is 6% by virtue of notification dated 30.11.2005. Accordingly, the Impugned orders dated 11.04.2023, 10.05.2023 & 03.10.2023 passed by the Respondents are set aside. Consequently, Petitioner shall be entitled to simple interest at the rate of 6% per annum from the date it fell due bearing in mind the observations made hereinabove. The refund be effected within a period of four weeks from the date of this judgment.

27. Writ Petition is accordingly allowed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 31, 2024

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