$~62, 64 & 65

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

\+ **W.P.(C) 11330/2024**

BHARAT HEAVY ELECTRICALS LTD. .....Petitioner
Through: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish, Mr. Rishabh Jain and Ms. Tanya Saraswat, Advocates.

versus

COMMISSIONER OF TRADE AND TAXES .....Respondent
Through: Mr. Mayank Kamra with Mr. Manbhar Mittal Advocates for Mr. Rajeev Aggarwal ASC.

WITH

64

\+ **W.P.(C) 11337/2024**

BHARAT HEAVY ELECTRICALS LTD. .....Petitioner
Through: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish, Mr. Rishabh Jain and Ms. Tanya Saraswat, Advocates.

versus

COMMISSIONER OF TRADE AND TAXES .....Respondent
Through: Mr. Mayank Kamra with Mr. Manbhar Mittal Advocates for Mr. Rajeev Aggarwal ASC.

AND

65

\+ **W.P.(C) 11342/2024**

BHARAT HEAVY ELECTRICALS LTD. .....Petitioner
Through: Mr. Rajesh Jain, Mr. Virag Tiwari, Mr. Ramashish, Mr. Rishabh Jain and Ms. Tanya Saraswat, Advocates.

versus

COMMISSIONER OF TRADE AND TAXES .....Respondent
Through: Mr. Mayank Kamra with Mr. Manbhar Mittal Advocates for Mr. Rajeev Aggarwal ASC.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

<u>O R D E R</u>

% 17.12.2024

1. This hearing has been done through hybrid mode.

2. The present writ petitions under Articles 226 and 227 of the Constitution of India have been filed by the Petitioner seeking issuance of writ in nature of *mandamus* for directing the Respondent, *inter alia,* to release the interest on refund, for the following period:

- to release interest on refund of Rs.1,91,72,509/- beginning from 26.5.2012 till 10.1.2023 in accordance with second proviso to Section 42(1) of the Delhi Value Added Tax Act, 2004 ('the Act') in ***W.P. (C) 11330/ 2024***;
- to release interest beginning from 2nd January, 2016 till 10th January, 2023 for the month of March 2011 in accordance with Section 42(1) of the Act and to release interest beginning from 27th May, 2011 till 1st January, 2016 as per the second proviso to Section 42(1) of the Act in ***W.P.(C)11337/2024***;
- to release interest beginning 29th April, 2017 till 10th January, 2023 in accordance with Section 42(1) of the Act; and to release beginning from 30th May, 2013 till 28th May, 2017 under second proviso to Section 42(1) in ***W.P.(C)-11342/2024***.

3. On the last date of hearing, i.e., 9th December, 2024, this Court had passed the following directions: -

> "*3. It is made clear that this shall be the last opportunity given to the Department to pass a reasoned and speaking*

order. If the said order is not passed by 15th December, 2024, the concerned Commissioner shall remain present in-person before this Court on the next date of hearing.
4. Mr. Jain, has handed over a chart computing the interest as per Section 42 (1) of the Delhi Value Added Tax, 2004 to the learned Counsel for the Respondents and the same shall also be forwarded to the concerned official and be verified."

4. Insofar as the refund amount is concerned, the same has been paid by the Department and regarding the claim of interest payable, the Department had passed a reasoned order on 16th December, 2024 in compliance of the aforesaid directions issued by this Court on the last date of hearing. The order passed by the Respondent/Department has been handed over by the learned Counsel for the Respondent and the same is taken on record. The operative portion of the said order reads as under: -

"*15. It is relevant to mention that section 38 (3) provides that once the dealer elects for grant of refund of the excess amount the same has to be paid within one month after the date on which the return was furnished or claim of refund was made, if the tax period for the dealer claiming refund is a month. However, section 38 (7) qualifies the calculation of these periods in different situations and section 38 (7) (d) relevant to the present case clearly prescribes that time taken to furnish the declaration or certificate forms as required under the CST Act shall be excluded while calculating the time period of one month as applicable in the present case. A conjunct reading of these provisions on the context of the case clearly brings out that the period within which the refund of the excess amount is to be made is to counted from the date when the relevant statutory Forms (C, F, H etc.) are furnished by the dealer. It is thus clear that the amount due becomes a refund when it is elected to be so treated by the dealer and the various provisions governing the time limit in terms of section 38 (3) as well as the provisions of of exclusion of time for calculating the said time limit as provided under section 38 (7) would become applicable to the entire amount of* *the refund.*

xxxx xxxx xxxx

28. In terms of the above discussion, I hold that contention of the Applicant that he is eligible for interest from the date of filing of the original return (differential amount) or revised return cannot be accepted as devoid of any merit and hence, it is liable to be rejected. I further hold that since refund in all the three tax period was issued within one month from the date of filing of Form DVAT-21 after attaining finality of all the pending dues/reconciliation. Applicant is not entitled for interest amount and claim (s) of interest on the refund amounts of Rs. 69,45,106/, Rs, 1,91,72,509/- and Rs. 1,43,63,235/-for the months of March-2011, March-2012 and March-2013 respectively are hereby rejected."

5. As can be seen from the above order, the claim of the Petitioner for interest from the date of filing original return or revised return is rejected. In view of the same, the Petitioner is free to avail of its remedies in accordance with law in respect of the order dated 16th December 2024.

6. The order passed by the competent authority is stated to have been uploaded on the official portal of the Respondent/Department. Let the same be communicated to the Petitioner.

7. The petitions are disposed of in the above terms along with all pending applications.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

DECEMBER 17, 2024/*kr*