



2024:DHC:7992-DB



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

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Judgment reserved on: 12 August 2024
Judgment pronounced on: 16 October 2024

+ W.P.(C) 11710/2023

ASHOK LEYLAND LTD.Petitioner
Through: Mr. Ravi Chauhan & Mr. Vasdev
Lalwani, Advocates.

versus

THE COMMISSIONER, VALUE ADDED TAXRespondent
Through: Mr. Rajeev Aggarwal, ASC with
Mr. Prateek Badhwar, Ms.
Shaguftha H.Badhwar & Ms.
Samridhi Vats, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The present writ petition had been originally preferred seeking the issuance of a direction, commanding the respondent to sanction and issue refund of Rs. 94,71,440/- along with interests for the Assessment Year ['AY'] 2011-12 in terms of Section 38 and 42 of the Delhi Value Added Tax Act, 2004 ['DVAT Act'].

2. From the record it would appear that when the matter was taken up on 04.09.2023, the respondent was directed to examine the case as set forth in the writ petition and place a reasoned and speaking order dealing with the claim of refund. It appears that refund for certain quarters was thereafter released but without payment of interests.



Thereupon, the petition was amended by the petitioner.

FACTUAL BACKGROUND

3. The petitioner is a manufacturer of motor vehicles and was registered under the DVAT Act and Central Sales Tax Act [**'CST Act'**]. The assessment under the CST Act for the year 2011-12 was framed vide order dated 21.03.2016 creating a demand on account of non-furnishing of declaration forms.

4. The petitioner deposited an amount of Rs. 1,45,09,588/-. The petitioner then filed objections before the Special Objections Hearing Authority [**'SOHA'**]. SOHA, vide order dated 05.10.2018 allowed benefit of declaration forms and reduced the demand created vide assessment order to Rs. 50,38,148/-. The same resulted in excess payment of Rs. 94,71,440/- (Rs. 1,45,09,588/- Rs. 50,38,148/-) by the petitioner.

5. The amount of Rs. 94,71,440/- was not adjusted /claimed in any of the returns furnished under the DVAT Act. Petitioner filed applications in form DVAT-21 for the respective tax periods of AY 2011-12 claiming refund of the said amount.

6. Despite reminders and regular follow ups, the refund was not released, whereupon the present writ petition was filed by the petitioner.

7. During the pendency of the petition, the refund was sanctioned for the first three quarters of AY 2011-12 but without payment of interests. Petitioner, therefore, amended the petition for claiming the refund for the fourth quarter of AY 2011-12 of Rs. 72,87,677/- and also claimed interest on the refund for all the four quarters.

8. In its counter affidavit, the respondent submitted that refund of



Rs. 72,87,677/- has also been sanctioned.

SUBMISSIONS

9. The learned counsel of petitioner has submitted that the refund application submitted in form DVAT-21 were to be processed within two months in terms of Section 38 of the DVAT Act, and therefore, the petitioner is entitled to receive interest in terms of Section 42 of the DVAT Act.

10. During arguments, the learned counsel for the petitioner has fairly admitted that refund for the fourth quarter amounting to Rs. 72,87,677/- has since been released.

ANALYSIS AND CONCLUSION

11. As would be manifest from a consideration of Section 38 of DVAT Act, the claim for refund is to be considered in the light of plain language employed in that provision and principally sub section (2) thereof which enables the commissioner to adjust any amount which becomes refundable against tax dues that may exist. Section 38 of the DVAT Act reads as follows:

“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.”

12. The subject of refund is also dealt by Rule 34 of the DVAT Rules, 2005 which is extracted herein below:

Rule 34

“(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 may, for reasons to be recorded in writing, issue notice to any person claiming refund to furnish security under sub-section (5) of section 38 in Form DVAT 21A, of an amount not exceeding the amount of refund claimed, specifying therein the reasons for prescribing the security.

(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 subsection (2) of section 38).

(5A) The order for withholding of refund/furnishing security under section 39 shall be issued in Form DVAT-22A.

(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.

PROVIDED that the Commissioner may transfer the amount of refund through Electronic Clearance System (ECS) in the bank account of the dealer.

(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.

(9) Before allowing the claim for refund to a dealer under section 38 of the Act, the Authority concerned shall satisfy himself that the conditions laid down in clause (g) of sub-section (2) of section 9 of the Act are fulfilled.”

13. In terms of sub Section (1) of Section 38 of the DVAT Act, the Commissioner is obliged to refund the amount of tax, penalty or interests, if paid by a person in excess of the amount due from him. In terms of sub Section (2) of Section 38 of the DVAT Act, the Commissioner is required to apply the excess amount due to be refunded towards the recovery of any other amount due under the DVAT Act or the CST Act. Sub Section (3) of Section 38 of the DVAT



Act requires that the amount remaining after adjustment under sub Section (2) of Section 38 of the DVAT Act be either refunded to the person in terms of Clause (a) of sub Section (3) or, at the option of the tax payer, be carried forward as tax credit to the next tax period in terms of Clause (b) of sub Section (3) of Section 38 of the DVAT Act. As per Rule 34(1) of the DVAT Rules, the claim for refund of tax, penalty or interest paid in excess of the amount due under the DVAT Act is required to be made in Form DVAT-21 setting out the grounds for claiming such a refund. Sub Rule (2) of Rule 34 of the DVAT Rules expressly provides that a claim in Form DVAT-21 is required to be made only if it is not made in the previous return. Once Form DVAT-21 is submitted by the assessee, there is no additional obligation placed upon him.

14. If the assessee does not elect to carry forward the refund to the next period in terms of Clause (b) of Section 38(3) of the DVAT Act, the refund is required to be processed within the period as specified in Clause (a) of Section 38(3) of the DVAT Act. The obligation of amount of refund payable towards any other amount due is clearly of such outstanding amounts that satisfies the two conditions. First, that the amount is due and payable when the refund is required to be processed, that is, within the period of one month or two months as specified under Section 38(3)(a) of the DVAT Act. And second that the dues are other than that covered under the quantification, determination or assessment resulting in the claim of the refund.

15. 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 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.”

16. Concededly, the petitioner had submitted Form DVAT 21 for all the four quarters of AY 2011-12 on 26.10.2021. Admittedly, the refund was not released within the stipulated period of two months from the date of submitting the Form DVAT 2 in terms of Section 38(3)(a)(ii) of the DVAT Act.

17. The State having received the money without rights and having retained and used it, is bound to make the party good, just as an individual would be under the circumstances. The obligation to refund the money received and retained without right implies and carries with



it the right to interest. Interest is the return or compensation for use or retention of another's money. Section 42 of the DVAT Act deals with payment of interest. The said section is set out below:

“**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.”

18. Harmonious reading of Section 38 and 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 DVAT Act.

19. There is no material on record to indicate that the petitioner was in any manner responsible for delay in processing of the refund. There is not even any such allegation in the counter affidavit filed by the respondent. In terms of statutory time frame which stands constructed by Section 38(3)(a)(ii) of DVAT Act, the refund had become payable on 26.12.2021. It is a clear case of illegal retention of money of the petitioner. The petitioner cannot be denied interest on the amount of interest withheld unjustifiably. Mr. Krishna Aiyer, J. speaking for the



Court in M/s Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others [1980] 1SCR 1170 observed as under:

“Where public bodies, under colour of public laws, recover people’s money. Later discovered to be erroneous levies, the dharma of the situation admits of no equivocation there is no law of limitation, especially for public bodies, on the virtue of returning what was wrongly recovered to whom it belongs. Nor it is palatable to our jurisprudence to turn down the prayer for high prerogatives writs on the negative plea of “alternative remedy” since the root principle of law married to justice is ubi jus the remedium.”

..... Further on, the Court observed:

“ANOTHER point. In our jurisdiction, social justice is a pervasive presence; and so, save in special situations it is fair to be guided by the strategy of equity by asking those who claim the service of the judicial process of embrace the basic rule of distributive justice, while moulding the relief, by consenting to restore little sums, taken in little transactions, from little persons, to whom they belong.”

20. Respondent has collected, retained and enjoyed benefit of money of the petitioner for a long time without authority of law. Petitioner therefore automatically becomes entitled to interest under Section 42 of the DVAT Act. It is further made clear on a plain reading of Section 39 of the DVAT Act which provides as under:

“39 Power to withhold refund in certain cases

- (1) Where a person is entitled to a refund and any proceeding under this Act, including an audit under section 58 of this Act, is pending against him, and the Commissioner is of the opinion that payment of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the Commissioner may for reasons to be recorded in writing, either obtain a security equal to the amount to be refunded to the person or withhold the refund till such time the proceeding or the audit has been concluded.
- (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:



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21. For the forgoing reasons, we are of the view that the petitioner is entitled for interest on refund. Admittedly, statutory rate of interest is 6% by virtue of notification dated 30.11.2005. Petitioner shall be therefore entitled to simple interest @ 6% per annum from the date it became due bearing in mind the observations made hereinabove. Compliance be made within a period of four weeks of the date of this judgment.

22. The writ petition is accordingly allowed.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

OCTOBER 16 2024/vp