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IN THE HIGH COURT OF DELHI AT NEW DELHI

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

+ W.P.(C) 11708/2023

ASHOK LEYLAND LTD

..... Petitioner

Through: Mr. Ravi Chauhan & Mr.
Vasdev Lalwani, Advs.

versus

THE COMMISSIONER VALUE ADDED TAX

.....

Respondent

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. Writ Petitioner was constrained to approach this Court by way of the instant writ petition consequent to a failure on the part of the respondents to refund an amount of Rs. 3,50,00,000/- along with applicable interest as also interest on refunds issued for Assessment Years ["AY"] 2012-13.

FACTUAL BACKGROUND:

2. Petitioner is a manufacturer of motor vehicles and is registered



under the Delhi Value Added Tax Act, 2004 [“**DVAT Act**”] and the Central Sales Tax Act, 1956 [“**CST Act**”].

3. As per the averments in the petition, in the month of March 2013, the Officers of the respondent department, visited the business premises of the petitioner and asked the petitioner to give a payment of Rs. 3,50,00,000/- to meet the target of Revenue, which was deposited vide challan dated 15.03.2013. Petitioner vide letter dated 28.03.2013, intimated the respondent about the amount deposited and gave instructions that the amount be retained as payment against demand, if any, raised on account of inspection conducted at their premises on 11.03.2013.

4. The assessment of the Company under the CST Act for AY 2012-13 was framed vide order dated 03.03.2017 creating demand on account of non-furnishing of declaration forms. During the pendency of assessment proceedings and after passing of the assessment order, petitioner deposited an amount of Rs. 52,52,640/- on different dates. Subsequently, petitioner filed objections before the Special Objection Hearing Authority [“**SOHA**”] for grant of benefit of declaration forms.

5. SOHA vide order dated 08.10.2018, allowed the benefit of declaration forms received and reduced the demands created vide previous assessment order to Rs. 35,71,180/-. Thus, petitioner became entitled to refund of Rs. 16,81,460/- (Rs. 52,52,640 – Rs. 35,71,180), being the excess amount deposited by it.

6. Since the amount of Rs. 3,50,00,000/-, initially deposited on 15.03.2013 and the excess amount of Rs. 16,81,460/- were not adjusted/claimed in any of the returns furnished under DVAT Act, petitioner filed applications in Form DVAT-21, claiming refund of the



said amount as per the following details:-

Tax Period	Date of filing of DVAT - 21	Amount of refund claimed
March 2013	12.10.2018	3,50,00,000
First Quarter	26.10.2021	3,86,144
Second Quarter		1,55,060
Third Quarter		5,21,081
Fourth Quarter		6,19,175
Total		3,66,81,460

7. Various reminders were sent by the petitioner for the refund of the aforesaid amount. On 02.03.2023, petitioner received a letter from the respondent asking him to explain delay in filing the application for refund of Rs. 3,50,00,000/- in Form DVAT-21. Petitioner vide letter dated 09.03.2023, responded to the same.

8. Aggrieved with the non-issuance of refund, petitioner filed the present writ petition. During the course of hearing, refund orders were issued for all the quarters of 2012-13.

9. As regards the refund of Rs. 3,50,00,000/-, it was informed that the said claim was rejected vide Refund Rejection Order dated 31.10.2023.

10. Petitioner accordingly amended writ petition by including challenge to the Refund Rejection Order dated 31.10.2023.

11. In his counter-affidavit, respondent contested the claim of the petitioner that the amount of Rs. 3,50,00,000/- was deposited under any coercion. The rejection of the refund was sought to be justified on the ground that the claim for refund was barred by limitation.

SUBMISSIONS:



12. Learned counsel for the petitioner has argued that DVAT Act does not provide any limitation period for claiming refund of amount collected as an advance under the mop-up exercise by the respondent and otherwise also, there is no delay in the present case, inasmuch as, refund was claimed by submitting Form DVAT-21 soon after the passing of the order by SOHA. It has also been submitted that the amount of Rs. 3,50,00,000/- was collected from the petitioner without following the due process of law by using coercive powers only to meet the budget targets and therefore the amount so collected is neither a tax deposited by the petitioner nor the amount of tax due to the respondent. With regard to the refund orders already issued, it is submitted that the same does not include interest payable as per Section 42 of the DVAT Act for delay in processing the refund contrary to the settled law as enshrined in **Swarn Darshan Impex (P) Ltd. Vs. Commissioner, Value Added Tax & ANR [(2010) 8 VSTI B-467 (Del.)], Prime Papers & Packers Vs. Commissioner of VAT & Anr. [W.P.(C) 6013/2016] and others.**

13. Per contra, learned counsel for the respondent has argued that coercion and illegality impugned against the voluntary deposit of the amount of Rs. 3,50,00,000/- in apprehension of future demands that may be raised against the petitioner is an afterthought, for the petitioner admittedly never wrote any letter or made any representation before the respondent claiming that the said voluntary deposit was under any alleged coercion or alleged instructions by the respondent's Officers and rather the petitioner's letter dated 28.03.2013 asking the respondent to adjust the said amount towards pending/future liabilities or demands against the petitioner. It is submitted that delay of five years in claiming



refund is attributable on the part of the petitioner. Since the petitioner had been sleeping on its right, he cannot be granted refund after so much delay, refund having been barred by limitation.

14. The factual dispute as to whether the amount of Rs. 3,50,00,000/- was deposited voluntarily or under coercion is of little significance. Undisputedly, the said amount of Rs. 3,50,00,000/- is lying deposited with the respondent since 15.03.2013. As would be manifest from a consideration of Section 38 of the DVAT Act, the claim for refund is to be considered in the light of the 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 forty-five 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.]”

15. The manner and mode in which the refund is to be claimed is dealt with Rule 34 and 57 of the DVAT Rules, 2005, which are extracted herein below:-

- “(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.”*

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Rule 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.”

16. From the bare language of the relevant provisions, we take note that claim for refund is liable to be made in Form DVAT-21, if such refund is not claimed in the return itself. Thus, claim of refund can be made in either of the two modes i.e. through the return or by filing Form DVAT-21.

17. The refund of Rs. 3,50,00,000/- has been rejected on the following grounds:-

- i) the said amount has not been reflected in the returns filed for the relevant period, nor adjusted against the demands;
- ii) no revised return filed within one year to claim the refund as envisaged under Section 28 of the DVAT Act;
- iii) refund has been claimed after a gap of more than five years.

18. Section 28 of the DVAT Act provides as to how any deficiency in the return has to be dealt with. It reads as under:-

“Section 28. Corrections of deficiencies/Rule 29

If a person discovers a discrepancy in a return furnished by him for a tax period under this Act, he shall remove such discrepancy and furnish a revised return within the year following the year of such tax period:

PROVIDED that if, as a result of the discrepancy, the person has paid less tax than was due under this Act, he shall, pay the tax owed and interest thereon:

PROVIDED FURTHER that for the years 2008-09, 2009-10 and 2010-11, except for those returns pertaining to any tax period of 2010-11, which were scheduled to be furnished in the year 2011-12, the revised return shall be required to be furnished by 31st December, 2012.”

19. It is clear from the language of Section 28 of the DVAT Act that if there is any discrepancy in the return furnished for the tax period, the



assessee is liable to furnish a revised return. It is not the case of the respondent that there was any discrepancy in the return furnished by the petitioner and therefore the petitioner was not under any obligation to file the revised return under Section 28 of the DVAT Act, inasmuch as, the amount of Rs. 3,50,00,000/- deposited by the petitioner was not a tax but an amount deposited with the department, out of which, tax amount, if any, was to be deducted.

20. Admittedly, the assessment for the AY 2012-13 was framed vide order dated 31.03.2017 and the objections filed by the petitioner before SOHA were decided vide order dated 08.10.2018. The instruction given by the petitioner while depositing the amount of Rs. 3,50,00,000/- was that the said amount be retained as payment against demand if any raised on account of inspection conducted at their premises on 11.03.2013. The cause of action for claiming refund accrued only after passing of orders by SOHA, when it was found that no further tax was payable or to be adjusted out of Rs. 3,50,00,000/- already deposited. Soon thereafter i.e. on 12.10.2018, petitioner submitted form DVAT-21 claiming refund of Rs. 3,50,00,000/-. There is no inordinate delay in submitting the claim for refund after passing of the orders by SOHA. We also take note that Section 38(2) of the DVAT Act uses the expression “recovery of any other amount due under this Act.” The Commissioner in terms of Section 38(2) is entitled to apply any amount found to have been paid by the assessee in excess of the amount due from him before making a refund only if there exists an enforceable demand against the assessee. As is manifest on a conjoint reading of Section 35(2) and 38(2) of the DVAT Act, as long as objections remained pending with OHA, any amount claimed by the respondent



would clearly not answer the description of an amount due or payable as contemplated under Section 38(2). Respondent, therefore, cannot possibly seek to justify the retention of the refund claim on account of being barred by limitation. The delay in processing the refund is endemic to the DVAT authorities and if the same is considered, the delay, even if any, on the part of the petitioner approaching the authorities is not long. Respondent cannot possibly seek to justify the retention of refund claim on account of its having been deposited voluntarily or being barred by limitation. It is a clear case of unjust retention of the money of petitioner. Respondent clearly appeared to have acted arbitrarily in illegally depriving the petitioner of the refund as claimed, in flagrant violation of the mandate of Section 38 of the DVAT Act.

21. The second aspect relates to the grant of interest on refund. Interest is the return or compensation for use or retention of another's money. The State having received the money without right, 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 money received and retained without right implies and carries with it the right to interest. Section 42 of the DVAT Act deals with the payment of interest. The said Section is set out below:-

“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 for 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.”

22. In terms of Section 42 of the DVAT Act, a person is entitled to interest from the date the refund was due to be paid or the date when the amount was over paid by the person, whichever is later.

23. Once the tax payer succeeds in upsetting the assessments framed under Section 32 & 33 of the DVAT Act, which results in vindicating its claim for refund either in part or as a whole as claimed by either



furnishing a return or Form DVAT-21, interest under Section 42(1)(a) of the DVAT Act would be payable from such date as the refund was due to be paid to the tax payer. The expression “the date that the refund was due to be paid” must be construed as the date when such a refund ought to have been paid to the tax payer. After the assessee succeeds in vindicating its stand that its claim for refund was correct, it would follow that that the assessee would be refunded the amount claimed and interest would be payable. A harmonious reading of Section 38 and 42 makes it clear that the 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 in any manner was responsible for delay in processing of the refunds for 1st, 2nd, 3rd and 4th quarter of AY 2012-13. There is not even any such allegation in the impugned Refund Rejection Order dated 31.10.2023. In terms of statutory time frame which stands constructed by Section 38(3)(a)(ii) of the DVAT Act, the said amount had become refundable within the time frame stipulated under Section 38(3) of the DVAT Act. Since the payment of refund was delayed, petitioner automatically becomes entitled to the interest under Section 42 of the DVAT Act.

25. Similarly, the petitioner would also be entitled to interest along with refund of Rs. 3,50,00,000/- in terms of Section 42(1) of the DVAT Act.

26. In view of the afore-going discussion, the instant writ petition is allowed. The impugned Refund Rejection Order dated 31.10.2023 is hereby quashed. Respondent is consequently directed to refund the amount of Rs. 3,50,00,000/- along with statutory interest as also the interest on refunds for the 1st, 2nd, 3rd and 4th quarters of AY 2012-13



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 decision.

RAVINDER DUDEJA, J.

YASHWANT VARMA, J.

October 16, 2024

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