2024:DHC:3151-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 10.04.2024

\+ W.P.(C) 9877/2019

TARAPORE & CO .... Petitioner

versus

COMMISSIONER OF TRADE & TAXES & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Puneet Aggarwal and Mr. Chetan Kumar Shukla, Advocates.

For the Respondents: Mr. Anuj Aggarwal, ASC with Ms. Arshya Singh, Mr. Yash Upadhyay and Mr. Siddhant Dutt, Advocates.

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

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks direction to the respondents to refund an amount in the sum of Rs. 37,99,453 along with interest @ 6% annually from the date of refund in accordance Section 42(1) of the DVAT ACT, 2004 (hereinafter referred as 'the Act')

2. A refund order was issued on 13.07.2022 for March 2006, whereby the Petitioner was found entitled for refund of Rs. 37,99,453/- however, without any interests.

3. The surviving issue in the present petition is with regard to the interests to be paid to the petitioner on the delayed refund and period

thereof.

4. Reference may be had to Section 38 of the Act, which reads as follows: -

"Section 38: Refunds

*1. *****

*2. *****

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

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5. In terms of Section 38(3)(a)(i), the amount of refund is to be refunded to the person within one month after the date on which return was furnished.

6. Further, reference may be had to Section 42 of the Act, which read as follows:

"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. In terms of Section 42(1) of the Act the person 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.

8. As per the petitioner, petitioner filed its return dated 20.12.2006 under Section 26 of the Act, read with Rule 28(1) of the DVAT Rules, for the period of March 2006 and in terms of Section 38(4) of the Act, it was open for Respondents to make inquires while processing refund for an audit of the business affairs of the Petitioner. However, no such steps were taken by the Respondents and there was unexplainable delay on the part of the respondents to refund the amount.

9. Further, the limit in terms of Section 38(3)(a)(i) commenced from the date of filing of return and ended on 25.01.2007. Further, in terms of Section 42(1) of the Act, and Notification No. F.3 (59)/Fin.(T&E)/2005-06/903, the annual rate of interest @ 6% started accruing since 26.01.2007 on the refund amount of Rs. 37,99,453/- until the date on which amount is given.

10. *Per Contra*, learned counsel for respondents submits that the petitioner approached this Court with a substantial delay of nearly 13 years and as such, the petitioner cannot benefit for the said period on account of interest.

11. He submits that as per the return available on DVAT portal the Petitioner did not claim any refund and there are no records regarding issuing the notices under section 59 of the DVAT Act to M/s Tarapore & Co.. Further, the claim or refund by the Petitioner is subject to providing certified copies of returns/TDS/original acknowledgement

receipt and subject to verification of all TDS/ITC on basis of which Petitioner is seeking refund in the month of March 2006.

12. He further submits that Petitioner should not be sanctioned interest because the original or certified copy of returns of the periods for which the ITC is adjusted (carry forwarded) in March 2006 are mandatorily required as well as the issue of the TDS amount needs to verified for issuing the claimed refund of amount of Rs. 37,99,453/- in the month of March,2006.

13. Reference may be had to Article 25 of the Schedule to the Limitation Act, which stipulates that the period of limitation for "money payable for interest upon money due from defendant to the plaintiff" is 3 years and the time from which the period begins is when the interest becomes due.

14. Applying the said principles, we are of the view that petitioner would be entitled to interest for a period of three years immediately preceding the filing of the subject petition till the date payment was made of the petitioner. The rate of interest applicable would be @ 6 % per annum in terms of Notification *No..F.3(59)/Fin.(T&E)/2005-06/903 Dated 30th November, 2005* whereby the annual rate notified by Central Government is 6% per annum.

15. In view of the above, this petition is disposed of directing the respondents to pay interest @6% on Rs. 37,99,453/- refunded on 28.07.2022 for the period of three years immediately preceding the

filing of the petition till the date of disbursal of refund to the petitioner. The interests be paid within a period of four weeks from today.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 10, 2024/*vp*