2024:DHC:3124-DB

$~8

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

% Date of decision: 10.04.2024

\+ W.P.(C) 9302/2019

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. 20,18,729/- besides the statutory rate of interests @1% per month for a period of 90 days from the date the refund was due and @1.5% per month after the expiry of 90 days.

2. An assessment order was framed on 30.03.2006 for the assessment year 2004-05, whereby petitioner was found entitled to a refund of Rs. 20,18,729/-. Said refund order was passed under Section 16 of the Delhi Sales Tax Act, 1975 [hereinafter referred as "the Act"] read with Section 23 of the said Act.

3. During the pendency of the subject proceedings, refund in the sum of Rs. 20,18,729/- has been granted to the petitioner on 18.05.2022 however, without any interests.

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

5. Reference may be had to Section 30 of the Act, which reads as follows: -

> "***30. Refund.***
>
> *(1)If any person satisfies the Commissioner that the amount of tax paid by him or on his behalf for any year exceeds the amount payable by him under this Act for that year, he shall, on making a claim in the prescribed form and verified in the prescribed manner, be entitled to refund of the excess either by cash payment or at his option by deduction of such excess from the amount of tax and penalty (if any) due in respect of any other period: Provided that the Commissioner shall first apply such excess towards the recovery of any amount in respect of which a notice under section 25 has been issued and shall then refund the balance, if any. Explanation. - When no assessment is made, the due tax paid under section 21 by the dealer shall be deemed to be the tax payable under this Act.*

(2) Where on account of death, incapacity, insolvency, liquidation or other cause a person is unable to claim or receive any refund due to him, his legal representative or the trustee or guardian or receiver, as the case may be, shall be entitled to claim or receive such refund for the benefit of such person or his estate.

(3)No claim for refund under sub-section (1) shall be allowed unless it is made within a period of twelve months from the date of the order giving rise to a claim for such refund, and the Commissioner shall, except as otherwise provided in this Act, refund any amount which becomes due to a dealer in the prescribed manner: Provided that the Commissioner may allow a claim for refund to be made after the expiry of the said period but not later than twelve months from such expiry, if he is satisfied that there was sufficient cause for not making such claim within that period.

(4) Where an amount required to be refunded by the Commissioner to any person as a result of any order passed in appeal or other proceedings under this Act is not so refunded to him within ninety days from the date of his claim under sub-section (3), such person shall be entitled to be paid simple interest on such amount at one per cent. per month from the date immediately following the expiry of the period of ninety days for a period of one month and at one and a half per cent. per month, thereafter for so long as the refund is not made. Explanation. - If the delay in making the refund during any of the periods referred to in this sub-section is attributable to the person making the claim, whether wholly or in part, the period of the delay attributable to him shall be excluded from the period for which interest is payable.

(5) Where any question arises as to the period to be excluded for the purposes of calculation of interest under sub-section (4), such question shall be determined by the Commissioner whose decision thereon shall be final.

(6) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Commissioner is of opinion that the grant of the refund is likely to adversely affect the revenue, the Commissioner may withhold the refund till such time as the Commissioner may determine.

(7) In any claim for refund, it shall not be open to the dealer to question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same and the dealer shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

(8) Any tax levied and collected under this Act in respect of sale in Delhi of any declared goods which are subsequently sold in the course of inter-State trade or commerce, shall be reimbursed to the person making the sale on the course of inter-State trade or commerce, in such manner and subject to such conditions as may be prescribed. Explanation. - For the purposes of sub-section (8), "declared goods" means goods declared by section 14 of the Central Sales Tax Act, 1956 (74 of 1956) to be of special importance in inter-State trade or commerce."

6. Section 30(3) of the Act stipulates that no claim for refund would be allowed unless it is made within 12 months from the date of the order giving rise to claim of such refund becoming due. It is an admitted position that refund became due to the petitioner by the framing of assessment on 30.03.2006. Petitioner, thereafter, made a claim in terms of Section 30(3) on 05.05.2006. Said claim remained pending and was not processed by the department. As per petitioner, petitioner made several requests and demands, however, claim was neither processed nor rejected till the petitioner approached this Court by way of subject petition on 19.08.2019.

7. Section 30(4) of the Act stipulates that where any amount required to be refunded by the Commissioner to any person as a result of any order passed in appeal or other proceedings under the Act, is not refunded to him within 90 days from the date of his claim under Sub Section 3, said person is entitled to simple interest @1% per month from the date immediately following the expiry of period of 90 days for a period of one month and @1.5% per month thereafter so long as the refund is not made. In terms of explanation to 30(4), if the delay in making the refund is attributable to the person making a claim, said period of delay attributable to such person is to be excluded from the period for which interest is due.

8. As per the petitioner, since the petitioner had made claim in terms of Section 30(3) of the Act within a period of 12 months and there was unexplainable delay on the part of the respondents to refund the amount, they are liable to pay interests as per Section 30(4) of the Act.

9. In the instant case, there are no pleadings to show that there is any delay attributable to the petitioner for grant of refund. Pending these proceedings, as noticed hereinabove, refund in the sum of Rs. 20,18,729/- has been sanctioned and disbursed.

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. Learned counsel submits that though rate of interest stipulated in the Act is 18%, it was subsequently repealed and Delhi Value Added Tax Act, 2004 was enacted, which mandated delay refund with interest @6% per annum. Petitioner should not be sanctioned interest @18%.

11. 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 interests become due.

12. In terms of Section 30(4) of the Act, interest becomes due and payable on delayed refund on expiry of 90 days from the date of making the claim under Sub Section 3. Accordingly, the period of limitation for claiming interests on the delayed payment would be three years from the expiry of 90 days. Since the refund was delayed, for every passing month the interest accrued @1.5% per month. Accordingly, with every passing month with effect from the commencement of the period of limitation, interest for the preceding one month in the block of three years would extinguish and interest for succeeding one month would accrue.

13. 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. Since the delay is beyond the period of one month as provided under Section 30(4), the rate of interest applicable would be 1.5% per month.

14. In view of the above, this petition is disposed of directing the respondents to pay interest @1.5% per month on the refund amount of Rs. 20,18,729/- for the period of three years immediately preceding the filing of the petition till the date of disbursal of refund to the petitioner. Interests be paid within a period of four weeks from today.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 10, 2024/*vp*