

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar: Member (Judicial)

Appeal No. : 296/21

Date of Judgment: 20/6/2022

M/s. CorsanCorvian Construction
S.A. Sadbhav Engineering Ltd., JV
J-59, Saket, Delhi – 110 017.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

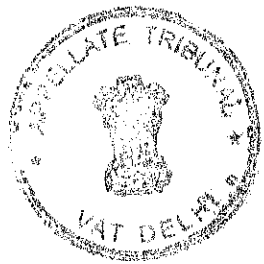
.....Respondent

Counsel representing the Appellant : Sh. Rajesh Jain.
Counsel representing the Revenue : Sh. P. Tara.

JUDGMENT

1. By way of present appeal, dealer has challenged order dated 23/09/2021 passed by Learned Objection Hearing Authority – Special Commissioner (hereinafter referred to as OHA), whereby objections filed by the dealer under section 74 (1) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) challenging non grant of interest on amount of refund, have been rejected.

Vide refund order dated 14/08/2020, learned Special Commissioner (Special Zone) issued refund to the dealer for a sum of Rs. 1,25,60,785/-. But, vide separate order of even



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date, learned Special Commissioner (Special Zone) held that the dealer was not entitled to any interest in view of provisions of Section 42(1)(a) of DVAT Act read with Rule 34(4) of DVAT Rules.

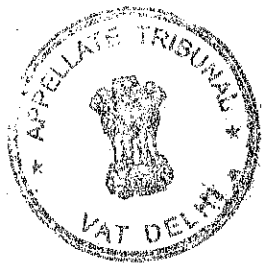
Feeling dissatisfied with the said order on 02/08/2021 the dealer filed objections, which stand dismissed. In other words, relief of interest has been again declined. Hence, this appeal.

2. Arguments heard. File perused.
3. Matter pertains to tax period 4th quarter & Annual 2014-15.

Prescribed period for refund & impact of non service of notice under Sec.59(2) of DVAT Act within the stipulated period

4. Learned Counsel for the appellant has submitted that the dealer filed return for the tax period 4th quarter 2014-15 on 10/07/2015, and as such department was required to refund the amount due to the dealer within a period of two months after the date on which return was furnished, but it failed to do so, and as such the impugned order deserves to be set aside.

It has also been submitted that since the refund was claimed in the return itself and no notice u/s. 59 was issued by the Commissioner, *within the above said period of two months* prescribed for allowing refund to the dealer, provisions of Section 38 (4) of DVAT Act did not come into application,



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and as such the dealer was entitled to interest on the amount of refund from the date of filing of return i.e. 10.7.2015.

In support of this contention, learned counsel has relied on **ITD-ITD CEM JV v. Commissioner of Trade & Taxes**, [2021] 86 GSTR 105 (Delhi) and **Swarn Darshan Impex (P) Ltd. vs. Commissioner, Value Added Tax**, [2010] 31 VST 475 (Delhi).

5. Section 38 of DVAT Act being relevant is reproduced for ready reference :-

“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, -



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(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;

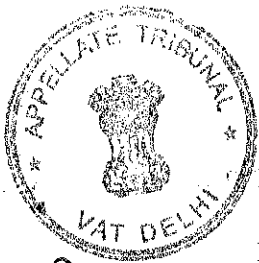
(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter;
or

(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.”

This is not a case where the dealer ever elected or opted that the amount be carried forward to the next tax period as a tax credit in that period. Rather, the dealer put forth claim for refund of the said amount in the return itself.

In **ITD-ITD CEM JV's** case (supra), while interpreting the provisions of Section 38(3)(a)(ii) of DVAT Act, our Hon'ble High Court observed that there was no notice either u/s 58 or 59 of DVAT Act issued to the petitioner therein within two months from the date of filing of the said return claiming the refund. That is why, Hon'ble High Court held that respondent



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therein was under a statutory obligation to grant refund within that time period and further that it was a case of breach of Section 38 of DVAT Act.

In **Swarn Darshan Impex (P) Ltd.** 's case (supra) our own Hon'ble High Court, while dealing with the provisions of sub-section (3) and (4) of Section 38 observed the notice under section 59 in connection with refund has to be issued within the period of two months stipulated in section 38(3)(a)(ii). As a result, the submission of the learned counsel for the respondents/^{herein}that because of issuance of notice under section 59 of the said Act, albeit beyond the prescribed time, the refund was not payable, ^{was held to be} ~~is~~ not tenable.

6. As already noticed above, dealer-appellant filed return for the tax period – 4th Qtr – 2014-15 on 10/07/2015, claiming refund of Rs. 2,56,57,120/-.

Month of July and August have 31 days each. Here, two months did not mean 60 days, and rather 62 days. In this situation, calculating the period of 62 days, it can safely be said that notice under section 59 of Act should have been issued by 10.9.2015. Herein, undisputedly, it was issued on 11/09/2015. Therefore, notice 59(2) of DVAT Act was not issued to the dealer by the Commissioner, *within the above said period of two months* prescribed for allowing refund to the dealer.



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7. The fact remains that this is a case where vide order dated 14.8.2020 refund order has already been passed. The dispute revolves around non grant of interest.

Points for Determination

8. In this matter, following points have arisen for determination:
- (1) As to whether the dealer is entitled to claim interest on the amount of refund of Rs. 1,25,60,785/- ?
 - (2) As to from which date to which date or period the dealer is entitled to interest on this amount?
 - (3) As to whether in the given facts and circumstances, the dealer is required to furnish DVAT 21 to claim interest, where refund stands allowed and refund amount has been given?
9. On the point of interest, Learned Counsel for the Appellant referred to provision of Section 42(1) of DVAT Act and submitted that as per clause (a) the dealer is entitled to simple interest from the later of the date that the refund was due to be paid to the said dealer, until the date on which the refund is given.

In this way, contention raised by the Learned Counsel for the appellant is that appellant is entitled to interest from 11/9/2015 i.e. on expiry of two months period from the date

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of filing of return upto the date the amount of refund is paid or given to the dealer.

10. In order to appreciate as to since when interest is to be granted in suchlike matters, reference to the provision of section 42 (1) of DVAT Act is of much significance. Same is reproduced as under :

“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 there from 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.

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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.”

11. Rule 34(6) of DVAT Rules is also relevant provision on the point of grant of interest. It reads as under :-

“(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.”

12. In the given facts and circumstances, as per section 38(3)(a)(ii), the amount of Rs. 1,25,60,785/- was to be refunded to the dealer within two months after the date on which claim for refund was made i.e. return was filed.

Whether in this case refund can be said to have arisen out of order passed by ^{Special Commissioner} OHA? If so, its effect as regards grant of interest?

13. In the order dated 14/8/2020, Learned Special commissioner (Spl. Zone) observed that amount of Rs. 1,25,60,785/- had already been adjusted and become due to be paid to the dealer pursuant to order passed by learned OHA, no interest amount was payable in view of section 42(1)(a) of DVAT Act read with Rule 34 (4) of DVAT Rules.



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^{as to}
Question is/whether this finding recorded by Learned OHA
deserves to be upheld or set aside?

14. Learned counsel for the appellant has contended that this is not a case where refund can be said to have arisen out of order passed by ~~OHA~~ ^{Special Commissioner} and rather, it is a case where dealer is entitled to interest on the basis of claim in the return as per provisions of section 42(1) of DVAT Act.

In support of this contention, learned counsel has relied on following 4 cases:

- a) CIT v. Scindia Steam Navigation Co. Ltd., AIR 1961 SC 1633.
- b) T.D. Kumar and Brothers (P) Ltd. v. CIT, 1967 (63) ITR 67 (SC)
- c) CTO Vs. Badri Narain Sita Ram and Anr., 1980(45) STC 433 (Raj.)
- d) Frizair Corporation v. CCE, Hyderabad, 1988 (33) ELT 448 (T)

15. Learned counsel for the Revenue submitted that this is a case where refund can be said to have arisen out of the order passed by learned ~~OHA~~ ^{Special Commissioner} and as such the decisions cited by learned counsel for the appellant do not help the appellant.

16. Admittedly, return for the tax period 4th quarter 2014-15 was furnished by the dealer on 10/07/2015. Record reveals that on 25/08/2017, claim of the dealer as regards refund was allowed

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only for Rs. 1,30,96,335/-, while adjusting the balance towards above said demand of Rs. 1,25,60,785/-.

Thereafter, on 02/08/2017 notice of Default Assessment of Tax & Interest- u/s. 32 of DVAT Act- was issued by the Assessing Authority raising additional demand of tax of Rs. 1,25,60,785/-.

While framing assessment as regards tax period Annual-2014, learned Assessing Authority also took into consideration certain documents pertaining to 4th quarter of 2014-15, and made certain observations which read as under :

“During the scrutiny of the documents, it has been observed **that in 4th quarter 2014-15**, DMRC has deducted WCT (TDS) amounting to Rs. 1, 34,65,177/- and on the basis of TDS the GTO should have been Rs. 33, 66, 29,437/- (Taxable Turn over + Labour+ Output Tax), whereas in the 4th quarter return the dealer has shown less GTO of Rs. 32,46,18,384/- (Taxable Turn over + Labour+ Output Tax). Hence, this difference of Rs. 1, 20,11,053/- is to be taxed @ 12.5% after allowing labour exemption @ 25%, thereby creating an additional demand of Rs. 11,26,036/-.”

Accordingly, the Assessing Authority directed the dealer to pay the aforesaid amount by way of additional tax.

17. Feeling aggrieved by the above assessment dated 02/08/2017, the dealer filed objections u/s 74(1) of DVAT Act. _____

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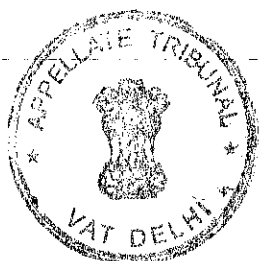
After hearing learned counsel for the objector and going through the record learned OHA-Special Commissioner-III, vide order dated 26/08/2019 accepted the objections and set aside the impugned assessment framed on 02/08/2017.

18. It is true that the aforesaid demand was set aside vide order dated 26.8.2019, but the dealer having already put forth claim for refund in the return dated 10/7/2015, the department was required to return this amount within 2 months, as provided under section 38(3)(a)(ii) of DVAT Act.

How does affect the process of making of assessment going on at the time refund is to be made?

19. As regards assessment, no doubt, the department has ample powers to proceed with framing thereof, as per law, but the refund is required to be returned within the prescribed period of 2 months.
20. Firstly, in case department intended to issue notice under section 59(2) of DVAT Act, it could issue the same within the stipulated period of 2 months. However, the department woke up only a day after the expiry of the stipulated period. There is no explanation from the side of department as to why notice under section 59(2) was not issued within 2 months.

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Secondly, department could ask for security as provided under section 38, but no such step was taken, for the reasons best known to its officers.

What if any assessment pertaining to subsequent period is in the process of being framed?

21. Contention raised by the Learned Counsel for the appellant is that under sub-section (2) of Section 38, Commissioner is not empowered to apply or adjust the excess amount / amount of refund against any subsequent assessment.

In this regard, Learned counsel for the appellant has also referred to decision in **ITD-ITD CEM JV v. Commissioner of Trade & Taxes**, [2021] 86 GSTR 105 (Delhi).

Learned Counsel for the appellant also referred to the provisions of Section 43(6) of DVAT Act, Form DVAT 25A, and rule 37(3) of DVAT Rules to point out that procedure has been laid down in case any recovery is to be made by the Commissioner as provided under Section 38(2), but this is not a case ^{where} any such procedure is said to have been followed.

22. On the other hand, Learned counsel for Revenue has referred to Rule 57 of DVAT Rules and submitted that 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.



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23. In this regard, suffice it to state that when refund order has already been passed and the only point involved here pertains to grant or non grant of interest, the above contentions raised by learned counsel for the parties relegate to the background.
24. Sub-rule (6) of Rule 34 clearly provides that where a refund order is issued, 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.

Here, the Special Commissioner decided the point of interest but against the dealer.

25. Significant to note that the department decided to suo motu review the proceedings/order dt. 26.8.2019. Vide order dated 06/12/2019, the concerned authority found no ground for review and accordingly disposed of the proceedings. On the same day i.e. 06/12/2019, to give effect learned Assessing Authority framed fresh assessment that demand earlier raised stood set aside and was henceforth NIL.
26. In this way, when the objections filed by the dealer against default assessment were allowed on 26.8.2019, the application submitted on 1.11.2019 was just for release of the amount of refund and interest/for enforcement or giving effect to his request for refund already made on 10.9.2015 in the return

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itself. It cannot be said that the amount of refund became payable only on setting aside of the impugned assessment on 26.8.2019 or that claim for refund was raised on 1/11/2019.

27. At this stage, it is just and proper to mention that in the year, 2020 appellant filed petition –W.P(C) 5260/2020 before Hon'ble High Court for the same relief i.e. interest in addition to the relief of refund of Rs.1,25,60,785/-, the reason being that refund had not yet been issued to the dealer – petitioner, what to say of grant of interest.

That petition was decided on 20.8.2020. As finds mention in order dated 20.8.2020 passed by the Hon'ble High Court in W.P(C) 5260/2020, learned ASC representing the Revenue in the said petition submitted that the principal refund claim had ✓ been directed to be refunded to the petitioner by order dated 14/8/2020, and that same shall be credited in the petitioner's account within a week. Learned ASC further submitted that the petitioner's claim for interest ^{was} ~~has been~~ rejected by way of a separate speaking order dated 14/8/20. In view of these submissions, Hon'ble High Court disposed of the WP(C) with liberty to the petitioner to challenge the order dated 14/8/20 refusing grant of interest to the petitioner, by filing appropriate proceedings in accordance with law.



28. It may also be mentioned here that dealer also filed another petition i.e. WP(C) 5656/20 before the Hon'ble High Court

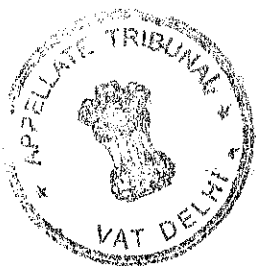
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challenging order dated 14/8/20 whereby prayer for grant of interest was declined. The said WP(C) came to be dismissed with liberty to file appeal / objection, the reason being that the dealer, in the opinion of the Hon'ble High Court, had to exhaust statutory remedy available under DVAT Act.

That is how, dealer filed objection petition before learned OHA on 2/8/2021. The point as to why dealer filed objection on 2/8/2021 and as to why it opted to file WP(C) shall be taken ^{up} ~~of~~ subsequently. Facts remains that said objection petition came to be dismissed on 23/9/21 vide impugned order. This led to filing of present appeal.

29. Learned Counsel for the dealer has referred to the assessment of tax and interest framed on 02/08/17 u/s. 32 of DVAT Act to point out that the said assessment order did not pertain to the point of refund and the Assessing Authority did not discuss or make any observation on the point of refund even though the same had been claimed by the dealer in the return. The contention is that in this situation, it cannot be said that refund arose out of the notice of assessment.

30. Learned Counsel for the appellant has also referred to the order passed by Learned OHA dated 26/08/2019 vide which the Default Assessment of Tax and Interest was set aside and thereafter to the order dated 06/12/2019, to point out that in none of these two orders passed by Ld. OHA, the question of



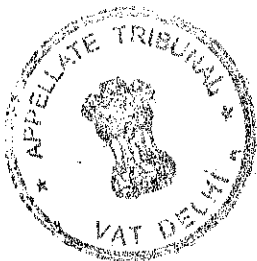
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refund was discussed and as such it cannot be said that this is a case where refund arose in favour of the dealer only from any such decision, and rather this is a case where refund was claimed in the return itself.

31. While referring to sub rule-(4) of Rule 34, Learned Counsel for the appellant has contended that Form DVAT 21 is to be furnished by the person claiming refund where refund is arising out of a judgment of a court or an order of an authority under the Act, but this is not a case where the refund can be said to have arisen out of a judgment of court or an order of the authority under the Act.
32. In CIT v. Scindia Steam Navigation Co. Ltd., AIR 1961 SC 1633, Hon'ble Apex Court, *while interpreting expression "arising out of its order"* summed up the legal proposition in the manner as :

✓ "The result of the above discussion may thus be summed up :

1. When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.
2. When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.
3. When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.



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4. When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. ”

33. It may be mentioned here that regarding interest on the refund of Rs. 1,30,96,335/- i.e. part of the total amount of Rs. 2,56,57,120/- as per return dated 10/7/2015, dealer filed WP(C) 12876/2018. Said WP(C) came to be decided on 22/7/2019 in favour of the dealer and against the Revenue by holding the petitioner entitled to interest on the refund amount for the period from 11/9/2015.

34. In the given facts and circumstances, & for reasons recorded in order dated 22/7/2019 passed by the Hon'ble High Court, it is held that in view of provision of section 42 (1) of DVAT Act, the dealer became entitled to interest from 11/9/2015 i.e. two months after the filing of the return claiming refund, notwithstanding that the dealer filed application on 1/11/2019 for release of the said amount, as dealer was not required to fulfil the requirement of submission of DVAT 21 and the department was to act on its own, within prescribed period.

So, there is merit in the contention of learned counsel for the appellant that this is a case where refund cannot be said to have arisen out of ^{any} order of Learned OHA/^{or special commissioner} passed on 26.8.2019, and rather the claim can be said to have been made by filing return on 10.7.2015.



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In other words, the sum of Rs. 1,25,60,785/-already due as on 11.9.2015 could not be adjusted in the manner it has been adjusted by Revenue, and rather, this amount was to be to be refunded to the dealer within two months period from 11/7/2015.

Entitlement of interest -calculating the period

35. As regards provisions of Section 38(2), in **IJM Corporation Berhad's** case (supra), Hon'ble High Court observed that interest would begin from the period specified in Clause (a) of sub-section (3) of Section 38 of the Act, albeit the quantum of refund would depend upon the adjudication.

While harmoniously reading Sections 38 and 42 of DVAT Act, Hon'ble High Court observed in the manner as:

"15. When we harmoniously read sections 38 and 42 of the Act, which relate to processing of claim for refund and payment of interest, it is crystal clear that the interest is to be paid from the date when the refund was due to be paid to the assessee or date when the overpaid amount was paid, whichever is later. The date when the refund was due would be with reference to the date mentioned in section 38, i.e., clause (a) to sub-section (3). This would mean that interest would be payable after the period specified in clause (a) to sub-section (3) to section 38 of the Act, i.e., the date on which the refund becomes payable. Two sections, namely, sections 38(3) and 42(1) do not refer to the



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date of filing of return. This obviously as per the Act is not starting point for payment of interest."

From
Upto which date liability of interest arises?

36. As regards the date upto which dealer is entitled to interest on the said amount of Rs. 1,25,60,785/-, reference is made to the provisions of section 42(1) of DVAT Act which provides for entitlement of 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.

upto which date - liability arises?

37. In WP(C) 12876/2018 referred to above and decided by our own Hon'ble High Court in the case of the dealer itself, Hon'ble High Court allowed interest upto the date the amount of refund was credited to the account of the dealer.

From the record, it is not clear as to on which date the amount of refund of Rs. 1,25,60,785/- has been credited to the account of the dealer or paid to the dealer by the Department. In the



course of arguments, the said date has not been brought to the notice of this Tribunal.

In the given situation, dealer is held entitled to interest upto the date the said amount of Rs. 1,25,60,785/- was paid/given/ distributed to the dealer by the department.

38. Learned counsel for the appellant has submitted that after issuance of directions dt. 18.10.2019 by Hon'ble High Court in Writ Petition (Civil) No. 11040/19 to the Department to decide the refund in accordance with law within a period of eight weeks, counsel for the appellant appeared before concerned VATO.

In this regard, reference has also been made to letter dated 29/07/2019 issued by Assistant Commissioner to the appellant whereby the amount of interest was calculated to be Rs. 15,82,324/- and the appellant was asked to claim this amount by filing DVAT 21 online.

At that time, the appellant was also asked to file DVAT 21 specifying therein the amount of refund as well as interest accrued thereon, so that the same was credited into the account of the applicant.



39. Learned Counsel for the appellant has submitted that when the dealer had claimed refund in the return itself, provisions of Sub-Rule (1) & (2) of Rule 34 also did not come into

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application and that the dealer was not required to submit Form DVAT 21.

40. Rule 34 of DVAT Rules reads as under :

“Refund of excess payment Section:

(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



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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. 1

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.”

41. So far as requirement of DVAT 21 is concerned, rule 34(1) of DVAT Rules reads as under :-



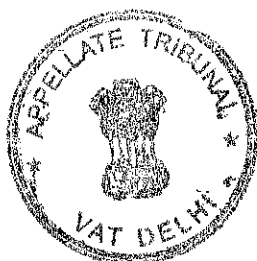
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“(1) A claim for refund of tax, penalty or interest paid in excess of the amount due under the Act (except claimed in the return) shall be made in Form DVAT-21, stating fully and in detail the grounds upon which the claim is being made.”

42. As per record, and as noticed above, it was on 01/11/2019 that the dealer filed an application before the Special Commissioner for claim of refund with interest. Significant to note that non furnishing of DVAT 21 is not the only ground raised by the department or a reason given by learned Spl. Commissioner and learned OHA for declining relief of interest on the refund.
43. This is a case where the dealer's claim pertains to interest on the refund allowed. Cause of action for claim of interest is separate herein, because it was initially declined by the Special Commissioner and then by Learned OHA.

Rule 34 does not provide for furnishing of DVAT 21 in suchlike situation, where dealer is held entitled to refund but not to interest. Law requires filing of DVAT 21 by the dealer only to get refund.

Learned counsel for the appellant has rightly submitted that the DVAT 21 does not apply to the claim of interest and as such, there was no requirement of submission of DVAT 21.



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44. Learned counsel for the appellant has submitted that rules are not to override the provisions of the Act.

In this regard, it is significant to note that Section 38 clearly stipulates that the Commissioner is to refund the amount subject to other provisions of the Act and the rules. Therefore, rules framed under the Act have their significance. Nothing has been brought to notice that any rule concerning refund has been held to be ultra virus of the provisions of the Act.

45. It is significant to note that authorities functioning under the Act are bound by the provisions of the Act. In this regard, reference may be made to decision in **CCE vs. Doaba Co-operative Sugar Mills**, 1988 (37) ELT 478 (SC).

When the authorities functioning under the Act are bound by the provisions of the Act, they are to see that every requirement of law is complied with by the dealer before release of refund.

46. Government having resorted to e-governance for ease of doing business, one of the requirement as regards refund is that the amount is to be transferred electronically. Keeping in view the safety and security reasons, it has been so provided. As per Circular No. 07 of 2010-11 dated 14.07.2010 – Processing of Refund Applications, the authorities are required to adhere to the guidelines strictly.

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47. Learned counsel submits that at that time concerned VATO had explained difficulty being faced by the Department in releasing the refund because of glitches in the system and that is why the applicant was asked to file DVAT 21.

As regards glitches in the system, no supporting material has been placed on record by the dealer-appellant. In absence thereof, it cannot be said that DVAT 21 was asked to be furnished because of any glitches in the system.

But, as noticed above, in case of interest, where refund stands allowed and interest declined, DVAT 21 is not required to be furnished.

Interest on Withholding of Refund

48. Section 39 of DVAT Act empowers the Commissioner to withhold refund in certain cases. Learned counsel for the appellant has referred to sub-section (2) of Section 39 and also to the decision in **IJM Corporation Berhad vs. CTT**, 2018 (48) GSTR 102 (Del) and submitted that where refund is withheld under sub-section (1) of Section 39, the person shall be entitled to interest as provided under sub-section (1) of Section 42 of the Act.

It may be observed that present case is not a case where the amount can be said to have been withheld within the ambit of section 39 of the Act.

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Section 39 comes into an application where any proceeding under this Act is pending against the person entitled to a refund. In this case neither any proceeding under this Act was pending, nor material has been brought on record to suggest that any order was passed by the Commissioner u/s 39 of the Act to withhold the refund or to obtain a security.

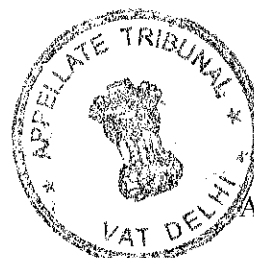
49. Learned counsel for the appellant has also referred to decision in, **C.C. Airport & ACC vs. Pfizer Products India Ltd.**, (2015) 324 E.L.T. 259 (Kar.).

In C.C. Airport case (supra), respondent company had filed an application on 24-12-1998 u/s 27 of Customs Act seeking refund of customs duty deposited on 04-06-1998. Said case was under Customs Act distinguishable on facts, and as such does not come to the aid of the appellant.

Impact of Covid 19 pandemic

50. In the impugned order, learned OHA observed that functioning of the Department had been suspended due to the nationwide lockdown declared on account of ongoing pandemic of Covid-19, therefore, the matter could not be taken up. After, lifting of the lockdown and on resumption of the functioning, application was processed and accordingly refund claim was issued alongwith order on issuance of interest.

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20/7/21



I have enquired from the Revenue if any concession on the point of interest has been granted by the Department to the dealers due to the pandemic or lockdown periods. It has been brought to my notice that no such concession has been granted by the Department so far to the dealers on this ground.

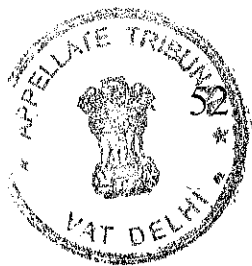
When the department has not extended any concession to the dealers, how can the dealers-assessee be deprived of the benefit of interest available under the Act.

Delay on the part of the dealer

51. Explanation available in sub-section (1) of Section 42 provides that if the delay in granting the refund is attributable to the said person, entitled to refund, whether wholly or in part, the period of delay attributable to dealer is to be excluded from the period for which the interest is payable. This provision pertains to delay, if any, on the part of the person entitled to refund. This provision would not apply in case of claim of interest on the amount of refund.

Dealer did not file objections at the earliest opportunity against denial of refund of Rs. 1,25,60,785/-

As noticed above, in the return dealer had claimed refund of Rs.2,56,57,120/-. When refund order was passed only for a sum of Rs. 1,30,96,335/- dealer should have filed objections



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before Learned OHA while resorting to the appropriate legal remedy available under the Act, but the dealer opted not to file any objections.

There is no explanation from the side of the dealer as to why it did not file any objection under section 74 of DVAT Act for claim of ^{balance of} the refund not granted.

Previous Writ Petition (Civil) No. 12876/18 was filed by the dealer in the year 2018 only on the point of interest on the amount Rs. 1,30,96,335/-allowed by way of refund. There is no explanation from the side of the dealer as to why he did not challenge the order as regards balance amount i.e. Rs. 1,25,60,785/-adjusted by the department, and as to why he filed the petition only on the point of interest and that too on the aforesaid amount of Rs. 1,30,96,335/-.

As noticed above, the impugned order passed by learned OHA is of 23/9/2021, vide which objections filed by the dealer against order of rejection of interest were rejected. The order of rejection of interest was passed by learned Special Commissioner on 14/8/2020. But the objections u/s 74 of DVAT Act against the said order were filed on 2/8/2021 i.e. about a year after the rejection of claim of interest.

Record reveals that even before filing of objections u/s 74 of DVAT Act challenging the order dated 14/8/2020, dealer –

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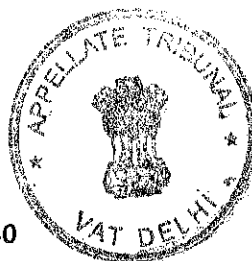


appellant filed WP(C) No. 5260/2020 before the Hon'ble High Court seeking refund with interest. Then, he filed WP(C) No. 5656/2020 challenging the order dated 14/8/2020 vide which interest was denied. The said writ petition came to be dismissed on 22/7/2021 with a liberty to the dealer to file objection. It remains unexplained as to why the dealer filed WP(C) No. 5656/2020 instead of filing objections u/s 74(1) of DVAT Act. It cannot be said to be a case of mistake, ^{proper} when the dealer was having legal assistance.

In the given situation, I find that dealer is not entitled to interest for the period from 15/8/2020 to 22/7/2021.

Result

53. As a result this appeal is partly allowed and while setting aside the impugned order passed by learned OHA and the order dated 14/8/2020, rejecting the claim of interest on a sum of Rs. 1,25,60,785/-, and Revenue is directed to pay interest to the dealer – appellant in view of provisions of section 42(1) of DVAT Act, on the said amount from 11/9/2015 i.e. the date of filing of return upto the date, the said amount was disbursed / given / paid to the dealer – appellant, excluding the period from 15/8/2020 to 22/7/2021.



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54. File be consigned to the record room. Copy of the order be sent to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website

Announced in open Court.

Date : 20/6/2022



Narinder Kumar
20/6/2022
(Narinder Kumar)
Member (J)

Appeal No. 296/22/4848-55

Dated: 21/06/22

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5). PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |


REGISTRAR

