BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial)

Appeal No : 301/ATVAT/21
Date of Decision : 29/08/2022

M/s Reliance Infrastructure Ltd.,
C/o 317, Indra Prakash Building,
Barakhamba Road,
New Delhi-110001. .....Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. S.K. Verma.
Counsel representing the Revenue : Sh. C.M. Sharma.

JUDGMENT

1. Present appeal has been preferred u/s 43 of Delhi Sales Tax Act, 1975 (hereinafter referred to as DST Act) read with Section 106 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act).
2. The impugned order is dated 18/08/2021 passed by learned Special Commissioner - AVATO (Ward-02).
3. Vide impugned order, learned AVATO declined interest on the refund amount of Rs. 7,63,47,003/-. Said refund amount was

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deposited by the dealer-appellant before First Appellate Authority by way of pre-condition for entertainment of appeal.

The relief of interest has been declined due to the following reasons:

> "A conjunct reading of these provisions in the context of the present case clearly brings out that the claim of refund of pre-deposit in the prescribed form i.e. ST-21 was filed by the dealer applicant on 28.07.2020 as provided by section 30(1) read with section 30(4) and Rule 29(1) and the said refund amount has been issued well within the period of 90 days as prescribed u/s 30(4) i.e. on 17.08.2020. Nevertheless to say, section 30(5) also provides that wherever 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.
>
> It is also observed that the dealer/applicant has vehemently relied upon the decision of Hon'ble High Court of Delhi in the matter of MRF Ltd. vs. CT&T, WP(C) No.3118/2018 wherein Hon'ble High Court has held that the pre-deposit amount does not bear the stamp of tax. It is observed that the Hon'ble Court has allowed the issuance of interest from the date on which the appeal of the dealer was allowed in his favour. However, being aggrieved, Department has preferred a Special Leave Petition (C) No.31522/2018 before Hon'ble Supreme Court of India and

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Hon'ble Supreme Court vide its order dated 10.12.2018 has stayed the operation of the judgment & order passed by Hon'ble High Court of Delhi."

4. Vide order dated 25/11/2008, First Appellate Authority held the dealer-appellant entitled to exemption and accordingly remanded the matter for fresh assessment. Said order was revised u/s 74A of DVAT Act. The dealer preferred an appeal before this Appellate Tribunal and same was allowed on 25/09/2019 while setting aside the demand.

5. For the assessment year 2004-2005, assessment was made on 30/03/2006 raising a demand of Rs. 1,29,96,40,948/-.
Feeling aggrieved, the appellant preferred appeal before First Appellate Authority. The First Appellate Authority directed appellant to deposit a sum of Rs. 7,63,47,003/- by way of pre-deposit.

6. Case of the dealer-appellant as per memorandum of appeal is that it was obligatory for the revenue to release refund within 60 days from the date of order i.e. 25/09/2019 when the appeal was allowed, but refund was not released. Thereupon, dealer filed an application dated 22/11/2019. As alleged in appeal, Zonal Special Commissioner sanctioned the refund on

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07/08/2020. Refund was credited to the bank account of the dealer on 20/10/2020 i.e. 7 months after the date of sanction i.e. 7/8/2020.

7. Even though in the memorandum of appeal, period of 60 days has been mentioned by the appellant, actually the amount of refund is required to be released within 90 days and that too not from the date of order and rather from the date of the claim put forth by the dealer. The fact is that the dealer filed application / claim seeking refund on 22/11/2019.

As finds mention in the impugned order, ST-21 is stated to have been submitted by the dealer-applicant on 28/07/2020 and refund amount was issued on 17/08/2020.

8. Dealer has claimed interest in view of provisions of Section 30(4) of the DST Act 1975. Relevant portion of Section 30 is reproduced as under:

> "**30 Refund**
>
> (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

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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."

9. Learned First Appellate Authority, while rejecting the prayer of the appellant for interest observed that decision in MRF Ltd. vs. CT&T, WP(C) No.3118/2018 was stayed by the Hon'ble Apex Court vide order dated 10/12/2018.

Case of the dealer-appellant as put forth in the memorandum of appeal (Para 11) is that here the facts are totally different from the decision in MRF's case (supra) and that the revenue authorities have not properly appreciated the things. However, in the course of arguments on merits, learned counsel for the appellant has submitted that the decision is applicable to the present case even though the facts are distinguishable.

In MRF's case, claim of the dealer-petitioner was that while accepting the default plea, the department had not permitted

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any interest. Therein, on behalf of the Revenue, it was contended that the decision not to grant interest on refund amount was justified as the assessee was required to approach the authority in a particular manner i.e. by filing form ST-21. Further, it was submitted on behalf of the Revenue that the amount of interest would become due only from the time such procedure is followed and not before that. Further, reference was made to provision of Section 30(4) for grant of interest in case the amount required to be refunded was not refunded within 90 days. Revenue further pleaded that Form ST-21 having been filed on 25/05/2018 by virtue of order 09/05/2018 passed by Hon'ble High Court, the interest on the refund amount could be granted with effect from 25/05/2018.

Hon'ble High Court referred to decision in **Suvidhe Ltd. v. UOI,** 1996 (82) ELT 177 (Bom), by Hon'ble Bombay High Court and confirmed by **Union of India v. Suvidhe Ltd.**, 1997 94 ELT A 159 (SC). Hon'ble High Court of Delhi observed that though the said decision was in the context of Section 11B of Central Excise Act, pre-deposit before the Appellate Authority would not amount to depositing or paying excise duty but rather to avail remedy of an appeal, which amount was to be refunded when the appeal was allowed with consequential relief.

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In para 5 of the judgment in MRF's case (supra), Hon'ble High Court observed that pre-deposit sums which the assessee is compelled to pay to seek recourse to an appellate remedy, do not necessarily bear the stamp or character of tax, especially when it succeeds on the particular plea.

10. Learned Counsel for the appellant has referred to decision in **Deific Abode Llp vs. Union of India & Ors**, WPA 11123 of 2020 decided on 16/04/2021 by Hon'ble Calcutta High Court wherein it has been observed as to the binding nature of decision by Hon'ble Division Bench in the case of M/s. Ganapati Dealcom Pvt. Ltd. (mentioned in Para 27 of the judgment) even though the operation of the said judgment had been stayed by the Hon'ble Supreme Court.

There is no doubt that this Appellate Tribunal cannot ignore the law declared by our own Hon'ble High Court, as rightly submitted by Learned Counsel for the appellant, here reference needs to be made to the provisions of section 30 (4) of DST Act.

In Section 30(4) word "an amount" finds mention to be the amount required to be refunded by the Commissioner as a result of any order passed on any appeal under DST Act, on

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which amount the person is entitled to simple interest, when the said amount is not refunded within 90 days from the date of claim.

In this sub-section (4) of Section 30 it does not find mention that the amount should be towards tax, interest or penalty. When Section 30(4) applies where any amount required to be refunded is not refunded, it would apply even to the amount deposited by way of pre-deposit.

11. On behalf of the appellant, reliance has been placed on decision in **Union of India & Others v. M/s. Hamdard (Waqf) Laboratories,** Civil Appeal No. 1666 of 2006 decided by Hon'ble Supreme Court of India on 25/2/2016.

Therein, while dealing with the provisions of section 11B of Central Excise Tariff Act, 1996, Hon'ble Apex Court observed that the application for refund in that case was filed on 25/8/2099. The assessee was granted three days time and the same was complied by stating that the duty had not been passed on by the assessee to any consumer and amount was deposited under protest. The question involved therein was as to whether there was a delay in the grant of refund and whether the assessee was entitled to interest.

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In this regard Hon'ble Apex Court referred to decision in **Ranbaxy Laboratories Limited vs. Union of India & Ors.**, (2011) 10 SCC 292.

12. Learned counsel for the appellant has also placed reliance upon decision in **Commissioner of Central Excise vs. Sterlite Industries Ltd.,** CE Appeal No. 26 of 2016 decided by ~~the~~ Hon'ble High Court of Judicature at Bombay on 4/8/2017, where the issue was also regarding payment of interest due to delay in sanctioning of refund claims of the respondent therein.

13. It has been contended by learned counsel for the appellant that this is a case where refund was sanctioned on 10/1/2020 and it was thereafter that Sales Tax Officer asked the dealer to submit ST-21. The contention is that once the refund was sanctioned, Sales Tax Officer could not call upon the dealer to submit ST-21 and rather the Sales Tax Officer was required to comply with the sanction order and release the amount.

As further pointed out by counsel for the appellant even after the refund was sanctioned, Revenue is said to have constituted a committee and dealt with the matter before release of the refund. The contention is that once the refund was sanctioned,

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there was no question of determination of any point by any such committee on the aspect of refund.

14. As regards **Rule 29 of DST Rules,** the contention is that same was not applicable to the present case and the Special Commissioner erred in placing reliance on the said rule.

In this regard, counsel for the appellant has submitted that decision in MRF Ltd.'s case (supra) supports the dealer – appellant on the point that the amount deposited by an assessee by way of pre-deposit does not amount to deposit of tax.

15. On the other hand, learned counsel for Revenue has pointed out that this is a case where the dealer – appellant submitted application on 30/12/2019 seeking refund, and subsequently on 24/2/2020 and 09/03/2020 submitted certain documents in support of the said application.

Learned counsel has pointed out that the dealer – appellant had not yet filed form ST-21. The said form came to be subsequently submitted by the dealer on 28/7/2020. The contention is that when the application seeking refund submitted on 30/12/2019 was initially incomplete, in absence

of ST-21, the period of 90 days as provided in section 30 of DST Act did not commence to run.

Further the contention is that the dealer – appellant submitted form ST-21 on 28/7/2020 and it was only there-upon that the application submitted by the dealer – appellant was in consonance with rules and that the period of 90 days as provided u/s 30 commenced to run from the said date i.e. 28/7/2020.

The contention further is that the sanction order for refund having been passed on 17/08/2020, i.e. within the prescribed period of 90 days, it cannot be said that the dealer – appellant was entitled to claim any interest as provided sub section (4) of section 3 of the Act.

In support of this submission learned counsel for the Revenue has referred to the provision of sub-rule (1) of Rule 29 of DST Rules.

As regards decision in MRF Ltd.'s case (supra), learned counsel for the Revenue has submitted that its operation has been stayed by the Hon'ble Supreme Court pending Special

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Leave Petition and as such is of no help to the dealer – appellant.

16. Section 30 of DST Act being the relevant provision is reproduced hereunder for ready reference :

> "(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) .....
>
> (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.

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(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."

17. Sub-rule (1) of Rule 29 of DST Rules provides as under :-

"1. An application for refund of any tax or penalty under sub-section (1) and reimbursement of tax under sub-section (8) of section 30 shall be made in forms ST-21 and ST-22 respectively

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while, an application for refund u/s 31 shall be made in form ST-23."

18. While disposing of the application filed by the dealer before learned Special Commissioner seeking interest on refund, learned OHA as regards MRF's case (supra), observed that the same was under challenge before the Hon'ble Supreme Court and implementation of the decision by the Hon'ble High Court has been stayed.

In MRF's case (supra), Hon'ble High Court observed that pre-deposit sum does not necessarily bear the stamp or character of tax, especially when it succeeds on the particular plea. Hon'ble High Court further observed that in such a situation, insistence upon procedural steps i.e. filing of a form, which is purely for the purpose of administrative convenience cannot in any manner fix the period or periods of limitation when the amounts became due.

On the question of interest, Hon'ble High Court further observed that postponement of the period from where interest became calculable is incomprehensive and illogical. Accordingly, the petitioner therein was held entitled to interest

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calculable from the date when the appeal was allowed by the Hon'ble High Court vide order dated 14/5/2015.

Therein, Hon'ble High Court observed that it was not in dispute that the amounts were due and payable from the date the appeal was allowed.

19. Sub-section (4) of Section 30 comes into application where the amount is required to be refunded as a result of any order passed in appeal or in other proceedings but the same is not refunded within 90 days from the date of his claim under sub-section (3). Sub-section (4) does not provide that the period of 90 days is to be calculated from the date of the order passed in appeal or other proceedings under this Act. Liability of the department to pay simple interest, as per sub-section (4) of section 30 commences on the 91st day from the date of filing of claim.

Here, the judgment passed by this Appellate Tribunal is dated 25/09/2019, vide which the appeal was allowed and the demand raised by the department, was set-aside.

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20. Sub-rule (1) of Rule 29 of DST Act provides that an application for refund of any tax and penalty under sub-section (1) of section 30 shall be made in form ST-21.

21. As already observed sub-section (4) of section 30 pertains to "an amount" required to be refunded. The amount deposited by way of pre-deposit is covered by this expression "an amount", but not covered by sub-rule (1) of Rule 29, the reason being that application for such refund would not be for refund of any tax or penalty, and rather only an application for refund of amount deposited by way of pre-deposit.

In view of the above discussion, this Appellate Tribunal finds that form ST-21 was not required to be furnished by the dealer to seek such refund, i.e. of the pre-deposit amount. Therefore, the findings recorded by learned AVTO-Special Commissioner on this point deserve to be set aside.

22. As regards the observations made by learned Special Commissioner to explain the delay in disposal of the refund claim that on 24/02/2020 and 09/03/2020 dealer submitted certain relevant documents.

Documents so submitted by the dealer do not find mention in the impugned order. There is nothing in the impugned order to

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suggest that department had called upon the dealer to submit any such documents subsequently.

Another reason for delay put-forth by learned Special Commissioner is that w.e.f. 23/03/2020 department became non-functional on account of nationwide lockdown imposed due to Covid-19 pandemic and that the department started functioning w.e.f. 14/07/2020.

23. Application seeking refund having been received in the department on 30/12/2019, once the documents were submitted on 24/02/2020 and 09/03/2020, as mentioned in the impugned order, the only step to be taken by the Revenue was to decide the claim of the dealer within the period of 90 days from 30/12/2019 i.e. the date of filing of the claim. In this way the application was to be disposed of up to 29/03/2020, but the same came to be disposed of on 17/08/2021, i.e. when the sanction order was passed.

As claimed by the dealer the amount has been credited to the bank account of the dealer on 20/10/2020. Nothing to the contrary has been submitted by the Revenue in this regard.

24. In the given situation, having regard to the provisions of section 30 (4) of DST Act, this Appellate Tribunal finds that dealer-

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appellant is entitled to simple interest @ 1% per month from 30th of March, 2020, for a period of one month and @1.5% per month thereafter i.e. from 01/05/2020 to 20/10/2020 i.e. the date the amount is stated to have been credited to the account of the dealer.

25. Another contention raised by counsel for the appellant is that this is a case where the dealer – appellant is entitled to interest and also interest on interest by way of compensation on account of delay in payment of the refund amount by the Department, even after it was sanctioned. In this regard, reliance has been placed on decision in **Sandvik Asia Ltd. v. Commissioner of Income Tax-I,** Appeal (Civil) 1337-1340 of 2005 decided on 27/1/2006 by Hon'ble Apex Court of India.
In **Sandvik Asia Ltd.'s** case (supra), Hon'ble Apex Court, while allowing the appeal allowed interest @ 9% p.a. to the petitioner, from the date it became payable till the date it was actually paid.

Therein, Hon'ble Apex Court observed that in the manner as :

> "The facts and the law referred to in paragraph (supra) would clearly go to show that the appellant was undisputably entitled to interest under Sections 214 and 244 of the Act as held by the various High Courts and also of this Court. In the instant case, the

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appellant's money had been unjustifiably withheld by the Department for 17 years without any rhyme or reason. The interest was paid only at the instance and the intervention of this Court in Civil Appeal No. 1887 of 1992 dated 30.04.1997. Interest on delayed payment of refund was not paid to the appellant on 27.03.1981 and 30.04.1986 due to the erroneous view that had been taken by the officials of the respondents. Interest on refund was granted to the appellant after a substantial lapse of time and hence it should be entitled to compensation for this period of delay. The High Court has failed to appreciate that while charging interest from the assesses, the Department first adjusts the amount paid towards interest so that the principle amount of tax payable remain outstanding and they are entitled to charge interest till the entire outstanding is paid. But when it comes to granting of interest on refund of taxes, the refunds are first adjusted towards the taxes and then the balance towards interest. Hence as per the stand that the Department takes they are liable to pay interest only upto the date of refund of tax while they take the benefit of assesses funds by delaying the payment of interest on refunds without incurring any further liability to pay interest. This stand taken by the respondents is discriminatory in nature and thereby causing great prejudice to the lakhs and lakhs of assesses. Very large number of assesses are adversely affected inasmuch as the Income Tax Department can now simply refuse to pay to the assesses amounts of interest lawfully and admittedly due to that as has happened in the instant case. It is a case of the appellant as set out above in the instant case for the assessment year 1978-79, it

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has been deprived of an amount of Rs.40 lakhs for no fault of its own and exclusively because of the admittedly unlawful actions of the Income Tax Department for periods ranging up to 17 years without any compensation whatsoever from the Department. Such actions and consequences, in our opinion, seriously affected the administration of justice and the rule of law.

COMPENSATION:

The word 'Compensation' has been defined in P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition 2005 page 918 as follows:

"An act which a Court orders to be done, or money which a Court orders to be paid, by a person whose acts or omissions have caused loss or injury to another in order that thereby the person damnified may receive equal value for his loss, or be made whole in respect of his injury; the consideration or price of a privilege purchased; something given or obtained as an equivalent; the rendering of an equivalent in value or amount; an equivalent given for property taken or for an injury done to another; the giving back an equivalent in either money which is but the measure of value, or in actual value otherwise conferred; a recompense in value; a recompense given for a thing received recompense for the whole injury suffered; remuneration or satisfaction for injury or damage of every description; remuneration for loss of time, necessary expenditures, and for permanent disability if such be the result; remuneration for the injury directly and proximately caused

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by a breach of contract or duty; remuneration or wages given to an employee or officer."

"There cannot be any doubt that the award of interest on the refunded amount is as per the statute provisions of law as it then stood and on the peculiar facts and circumstances of each case. When a specific provision has been made under the statute, such provision has to govern the field. Therefore, the Court has to take all relevant factors into consideration while awarding the rate of interest on the compensation.

This is the fit and proper case in which action should be initiated against all the officers concerned who were all in charge of this case at the appropriate and relevant point of time and because of whose inaction the appellant was made to suffer both financially and mentally, even though the amount was liable to be refunded in the year 1986 and even prior to. A copy of this judgment will be forwarded to the Hon'ble Minister for Finance for his perusal and further appropriate action against the erring officials on whose lethargic and adamant attitude the Department has to suffer financially.

By allowing this appeal, the Income-tax Department would have to pay a huge sum of money by way of compensation at the rate specified in the Act, varying from 12% to 15% which would be on the high side. Though, we hold that the Department is solely responsible for the delayed payment, we feel that the interest of justice would be amply met if we order payment of simple interest

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@ 9% p.a. from the date it became payable till the date it is actually paid. Even though the appellant is entitled to interest prior to 31.03.1986, learned counsel for the appellant fairly restricted his claim towards interest from 31.03.1986 to 27.03.1998 on which date a sum of Rs.40,84,906/- was refunded.

The assessment years in question in the four appeals are the assessment years 1977-78, 1978-79, 1981-82 and 1982-83. Already the matter was pending for more than two decades. We, therefore, direct the respondents herein to pay the interest on Rs.40,84,906 (rounded of to Rs.40,84,900) simple interest @ 9% p.a. from 31.03.1986 to 27.03.1998 within one month from today failing which the Department shall pay the penal interest @ 15% p.a. for the above said period.

In the result, the appeals stand allowed. We have no hesitation to set aside the impugned judgment of the High Court of Bombay. No costs."

As noticed above, one of the reasons given by learned Special Commissioner for delay in disposal of claim of the dealer for refund is that w.e.f. 23/03/2020 department became non-functional on account of nationwide lockdown imposed due to Covid-19 pandemic and that the department started functioning w.e.f. 14/07/2020. Nothing to the contrary has been brought on record by the dealer-appellant. Keeping in view that prayer of the dealer for grant of interest in view of provisions of section 30

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(4) of DST Act has been accepted and that the department became non-functional on account of nationwide lockdown imposed due to Covid-19 pandemic and that the department started functioning w.e.f. 14/07/2020, I do not find any ground for grant of any compensation to the dealer-appellant.

Result

In view of the above findings, the impugned order passed by learned Special Commissioner rejecting claim for grant of interest is hereby set aside, and while partly allowing the appeal, the dealer is held entitled to interest, as noticed above, u/s 30(4) of DST Act, i.e. simple interest @ 1% per month from 30th of March, 2020, for a period of one month and @1.5% per month thereafter i.e. from 01/05/2020 to 20/10/2020 i.e. the date the amount is stated to have been credited to the account of the dealer.

20. File be consigned to the record room. Copy of the order be supplied 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 : 29/8/2022

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(Narinder Kumar)
Member (J)

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Appeal No. 301/ATVAT/2022/5418-25 Dated: 31/08/2022

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR

APPELLATE TRIBUNAL VAT DELHI