

2016 (6) TMI 188 - DELHI HIGH COURT**Roshan Lal Lalit Mohan & Another Versus Government of National Capital Territory of Delhi & Others**

W. P. (C) 610/2016, W.P.(C) 1117/2016 & CM No.4884/2016

Dated: - 23 May 2016

Seeking refund of outstanding amount of tax credit - Refund application was already rejected by the respondents many a times even after the directions provided by the Court for refund of tax credit - Held that:- considering that there has been an abject failure by the Respondents to comply with the statutory mandate of Section 38 of the DVAT Act, the Court sees no purpose being served in the Petitioners at this stage producing records of over ten years from 1st April 2005 till 21st January 2016. Since the Respondents in any event do not have the records, it will not be possible for them to verify the correctness of the records to be produced by the Petitioners. Also, the stage for the Department to now question the correctness of the self assessment return filed by the Petitioner No.1 way back on 30th October, 2007 for the year 2006-07 has long been crossed. There is no possibility of the said assessment being reopened. The carry forward of the refund amount in the succeeding returns up to 2012 was also never questioned by the Respondents.

In the circumstances, the production of records at this stage by the Petitioner No. 1 will only delay the refund further. Considering the number of times the Petitioners have had to approach this Court, the request of counsel for the Respondents for yet another opportunity to consider afresh the issue of refund due to Petitioner No. 1 is not justified. The whole object of stipulating a time schedule under Section 38 of the DVAT Act for processing refunds will be defeated if any further indulgence is shown to the Respondents. Therefore, the Respondents are directed to issue in favour of Petitioner No. 1 the refund order in the sum of ₹ 34,62,662 together with 6% interest per annum from 20th February, 2015 till the date of its payment, which shall not be not later than 31st May, 2016. - Decided in favour of petitioner

Judgment / Order**S. Muralidhar And Vibhu Bakhru, JJ.****For the Petitioners : Mr A. Maitri, Ms Radhika Chandrashekar and Mr Naresh Goel, Advocates****For the Respondents : Mr Gautam Narayan, Additional Standing counsel and Mr R. A. Iyer, Advocate along with Mr Ram Avtar Meena and Mr R. S. Ruhil, VATO****ORDER**

1. The challenge in W.P.(C) No.610/2016 is to the letter dated 29th June, 2015 issued by the Assistant Commissioner, Ward-16 rejecting the application of the Petitioner No. 1 proprietary concern, of which Petitioner No. 2 is the Proprietor, seeking refund of a sum of ₹ 34,62,662/- which is outstanding with effect from 1st April, 2005.

2. There is a long history to the present petition. Petitioner No. 1 was registered with the VAT Authorities way back in 2004. By the assessment order dated 30th October, 2007 for the year 2006-07 a refund of tax credit of ₹ 45,32,825/- was determined by the Department of Trade and Taxes (DT&T). Petitioner No. 1 was allowed to carry forward the said amount in the returns for the subsequent years. According to the Petitioners, between 2007 and 2012 it submitted returns under the Delhi Value Added Tax Act, 2004 (DVAT Act) regularly and kept carrying forward the above amount under the column "refund".

3. On 11th May, 2012, the registration of Petitioner No. 1 was cancelled. The objections by the Petitioners to the cancellation were ultimately allowed and the registration was restored on 17th October, 2014.

4. On 20th December, 2014, Petitioner No. 1 filed its return and in the column R-9.2 claimed refundable amount of tax credit of ₹ 34,62,662/-. With the refund not being processed, the Petitioners filed W.P.(C) No. 2524/2015 in this Court. When the writ petition was heard on 13th March 2015, the Respondent pointed out that it had by email dated 7th March 2015 rejected the claim of Petitioner No. 1 on the ground that only a sum of ₹ 1,08,831 was found refundable. Thereafter, on 28th April 2015, Petitioner No. 1 received a letter from the Department again rejecting the refund claimed by stating that the return for August 2006 reflected NIL as carry forward refund, whereas a refund was shown in the subsequent return of September, 2006 onwards. The DT&T observed that the claim was incorrect and, therefore, could not be entertained.

5. On 30th March, 2015, the Petitioners made a detailed representation to the Assistant Commissioner, Ward-16 protesting against the above rejection. Thereafter, W.P.(C) No. 4905/2015 was filed challenging the rejection. By order dated 18th May 2015, the Court allowed the writ petition and set aside the above communications on the ground that they could not be considered as orders in the proper format in terms of Section 38 of the DVAT Act. The Court directed that the refund application of Petitioner No. 1 should be disposed of in terms of Section 38 of the DVAT Act within six weeks.

6. Pursuant to the above direction, on 29th June 2015, the Assistant Commissioner, Ward-16 passed the impugned order, in which, after setting out the brought forward and carry forward figures from April 2006 to March 2007, it was observed as under:

"The above mentioned Chart based on the information of the dealer filed in DVAT-16 clearly reflects that there is no continuity in brought forward and carry forward or refunds. As such the claim of the dealer of refund is not correct and cannot be considered at this stage and the same is hereby rejected."

7. Initially, against the above order the Petitioners filed Contempt Case (C) No.754/2015 which was disposed of 28th September, 2015 after recording that the Petitioners wished to file a writ petition challenging the order. Thereafter, the present writ petition was filed.

8. On 22nd January 2016, this Court directed that "not later than two weeks from today, a decision will be taken by the Respondents on the Petitioner's application and communicated to this Court by the next date". What happened thereafter is recorded in the subsequent order dated 10th February, 2016, the relevant portion of which reads as under:

"4. A counter affidavit has been filed in W.P. (C) 610/2016 stating that a notice was issued to the Petitioner under Section 59 (2) of the Delhi Value Added Tax, 2004 („DVAT Act“) on 22nd January, 2016 requiring the Petitioner to produce documents for the period 1st April, 2005 to 22nd January, 2016. It is further stated that upon failure by the Petitioner to produce the documents, even within the time sought by the Petitioner, an order of notice of default assessment of tax and interest under Section 32 for the 4th quarter was passed on 6th February, 2016 raising a total demand of tax and

interest in the sum of ₹ 1,96,68,525. On the same date a notice of assessment of penalty was also issued under Section 33 of the DVAT Act for the 4th quarter of 2013 levying a penalty of ₹ 84,46,393. The Petitioner has challenged the subsequent notice dated 22nd January, 2016 under Section 59(2) in the second W.P. (C) 1117/2016.

5. When asked what prompted the issuance of notice under Section 59 (2) of the DVAT Act, Mr Gautam Narayan, learned counsel for the Respondent, informs the Court that the records of the Petitioner were unable to be traced and which is why it became necessary to seek information from the Petitioner. Mr Narayan states that the Respondent will file an affidavit at least one week prior to the next date of hearing explaining the circumstances under which the records of the Petitioner's assessment were unable to be traced and why the Petitioner's claim for refund was not processed and a decision taken thereon within the time limit set out under Section 38 of the DVAT Act.

6. The complete records of the case be kept ready for perusal by the Court on the next date. An officer of the Department conversant with the facts of the case will also remain present. Rejoinder, if any, be filed before the next date of hearing.

7. List on 8th April, 2016.

8. Till the next date of the hearing no coercive steps be taken to enforce the demand and penalty in terms of aforementioned orders dated 6th February 2016."

9. The Court on 8th April, 2016 granted the Respondents further time to file an affidavit and directed that the complete records of the case be kept ready for perusal of the Court.

10. Today, the Court is informed by Mr Gautam Narayan and Mr. Satyakam, Additional Standing counsel for the Respondents that the records of the case are not traceable. It is stated that during the time when the registration of Petitioner No. 1 stood cancelled, a decision was taken by the Department to weed out records earlier to 2010 and in that process the entire record of Petitioner No. 1 was destroyed. The counsel for the respondents made an earnest plea that Petitioner No. 1 should therefore be asked to produce the records that are available with it before the Assistant Commissioner to enable him to verify the record and process the refund application within a period of two weeks from today.

11. If there was no background to the present case, and the long history which has been adverted to, the Court may have been persuaded to consider the aforesaid request of the Respondents. When the Court inquired what records should be asked to be produced, the counsel for the Respondents referred to the notice dated 22nd January 2016 issued under Section 59 (2) of the DVAT Act asking the Petitioner to produce 25 documents for a period of over ten years from 1st April, 2005 to 22nd January, 2016. Some of the documents sought are „GR/RRs," sale register, form DVAT-31, stock register and so on. In other words, documents that are usually sought for making an assessment are now being asked from the Petitioner since the Respondents admittedly have weeded out the record.

12. In the circumstances in which the request is being made, it appears to be wholly unreasonable. In the first place the Respondents were statutorily bound, in terms of Section 38 of the DVAT Act, to process the refund application made by the Petitioner within two months from first receiving it on 20th December 2014. Instead a casual communication, and not even an order, was sent on 7th March 2015 informing the Petitioner that the refund was rejected on the ground that only a sum of ₹ 1,08,831 was found refundable. Thereafter, again on 28th April 2015 a letter, and not an order, was sent again rejecting the refund. This time the ground was different. It was said that the return for August 2006 reflected NIL as carry forward refund whereas a refund was shown in the subsequent return of September, 2006. There was nothing said

in either of the said occasions about the record having gone missing. If the Respondents are now to be believed, then the above rejections were not on the basis of the record of the case. The Court set aside both communications by its order dated 18th May 2015 and directing the Respondents to decide the refund application afresh. For a third time, the refund was rejected by the impugned order dated 29th June 2015, not on the ground that the records were not available but because "there is no continuity in brought forward and carry forward or refunds." For the second time this Court directed the Respondents, by its order dated 22nd January 2016, to decide the refund application within two weeks. However, instead the Respondents issued the above notice under Section 59 (2) of the DVAT Act and followed that up with a notice dated 6th February 2016 of default assessment tax and interest under Section 32 of the DVAT Act for the 4th quarter raising a total demand of ₹ 1,96,68,525 and a notice of the same date of default assessment of penalty of ₹ 84,46,393 under Section 33 of the DVAT Act. The said orders too were passed not on the basis of any record. On this ground itself the said demands are rendered arbitrary and unsustainable in law. To be fair to learned counsel for the Respondents, they made no attempt to defend the said patently illegal default assessments of tax, interest and penalty.

13. Considering that there has been an abject failure by the Respondents to comply with the statutory mandate of Section 38 of the DVAT Act, the Court sees no purpose being served in the Petitioners at this stage producing records of over ten years from 1st April 2005 till 21st January 2016. Since the Respondents in any event do not have the records, it will not be possible for them to verify the correctness of the records to be produced by the Petitioners. Also, the stage for the Department to now question the correctness of the self assessment return filed by the Petitioner No.1 way back on 30th October, 2007 for the year 2006-07 has long been crossed. There is no possibility of the said assessment being reopened. The carry forward of the refund amount in the succeeding returns up to 2012 was also never questioned by the Respondents. In the circumstances, the production of records at this stage by the Petitioner No. 1 will only delay the refund further. Considering the number of times the Petitioners have had to approach this Court, the request of counsel for the Respondents for yet another opportunity to consider afresh the issue of refund due to Petitioner No. 1 is not justified. The whole object of stipulating a time schedule under Section 38 of the DVAT Act for processing refunds will be defeated if any further indulgence is shown to the Respondents.

14. In the circumstances, for the aforementioned reasons the Court sets aside

(i) the impugned order dated 29th June 2015 issued by the Assistant Commissioner Ward-16 rejecting the application of the Petitioner No. 1 for refund of ₹ 34,62,662

(ii) the notice dated 22nd January 2016 issued to Petitioner No. 1;

(iii) the notice dated 6th February 2016 of default assessment tax and interest under Section 32 of the DVAT Act for the 4th quarter in the sum of ₹ 1,96,68,525 and

(iv) the notice dated 6th February 2016 of assessment of penalty of ₹ 84,46,393 under Section 33 of the DVAT Act.

15. The Court directs the Respondents to issue in favour of Petitioner No. 1 the refund order in the sum of ₹ 34,62,662 together with 6% interest per annum from 20th February, 2015 till the date of its payment, which shall not be later than 31st May, 2016.

16. Given the history of the case which has witnessed the Petitioners coming to this Court time and again for relief, the Court makes it clear to the Respondents that this order, which is being passed in the presence of with Mr Ram Avtar Meena, VATO and Mr R. S. Ruhil, VATO, should be complied with by the

next date of hearing failing which the said officers will be made liable in law for disobedience of the order of the Court.

17. List on 2nd June 2016. In the event that the refund along with interest is not issued to the Petitioner No. 1 by 31st May 2016, Mr Ram Avtar Meena, VATO and Mr R. S. Ruhil, VATO shall remain personally present in Court.

18. Dasti under the signature of the Court Master.

Citations: in 2016 (6) TMI 188 - DELHI HIGH COURT

1. [Roshan Lal Lalit Mohan & Anr Versus Government Of National Capital Territory Of Delhi & Anr - 2015 \(5\) TMI 1045 - DELHI HIGH COURT](#)
2. [Roshan Lal Lalit Mohan & Anr Versus RS RUHIL Government Of National Capital Territory Of Delhi & Anr - 2015 \(5\) TMI 1046 - DELHI HIGH COURT](#)
3. [Roshan Lal Lalit Mohan & Anr Versus Government Of National Capital Territory Of Delhi & Anr - 2015 \(3\) TMI 1191 - DELHI HIGH COURT](#)