

2016 (7) TMI 941 - DELHI HIGH COURT

New Age Generators Versus The Commissioner, Value Added Tax

W.P.(C) 5250/2016

Dated: - 12 July 2016

Failure of the Department to make refunds in terms of Section 38 of the DVAT Act - Held that:- Not only is the dealer getting the refund far beyond the time period specified under Section 38 of the DVAT Act but the Department is ending up paying far more interest on the refund amount than what is permissible or contemplated in terms of Section 38 of the DVAT Act. There has to be some accountability fixed within the Department for the lapses on part of those processing refund application resulting in such unnecessary payment of interest beyond what is permissible. This is an additional reason why the Court refuses to countenance the so-called 'fail-safe' system devised by the Department for staggering the release of refund of payment once a refund application has been processed, verified and found to be in order.

As far as the present petition is concerned, Mr. Narayan, on instructions states that the refund amount due together with interest will be released to the Petitioner through ECS on or before 26th July 2016. On the basis of the said assurance, the petition is disposed of with liberty to the Petitioner to revive it if the refund is not received within the time assured.

A copy of this order be delivered through a Special Messenger to the Commissioner, VAT, so that appropriate instructions can be issued to ensure that the processing of refund applications is not delayed and that the time limits specified under Section 38 of the DVAT Act are strictly adhered to

Judgment / Order

S.MURALIDHAR & NAJMI WAZIRI JJ.

Petitioner Through: Mr. Vinod Srivastava, Mr. Ravi Chandok & Mr. Prakash Agarwal, Advocates.

Respondent Through: Mr. Gautam Narayan, Additional Standing Counsel, GNCTD

with Mr. R.A. Iyer, Advocate and Mr. Sunil Kumar VATO (Ward -83)

ORDER

It is pointed out by Mr. Vinod Srivastava, learned counsel for the Petitioner, that although the order for issuance of refund together with interest has been passed, the amount is yet to be released.

2. Mr. Gautam Narayan, learned Additional Standing Counsel states, on instructions from the Commissioner, VAT, that the Department has devised a 'fail safe' system in terms of which only one refund application per Assessee is processed per week. Consequently, although the orders for refund together with interest is issued, the actual disbursement of the entire refund amount together with interest gets spread over several weeks.

3. The Court is unable to appreciate the above submission. There are clear time limits set out for making the refund set out under Section 38 (3) of the Delhi Value Added Tax Act, 2004 ('DVAT Act'). There is nothing therein or in the Delhi Value Added Tax Rules, 2005 that permits staggering of the refund payments due to an Assessee. Once an application is found to be in order and has been duly verified by the concerned authority, there can be no justification for not releasing of the refund amount in terms of Section 38 of the DVAT Act. In any event, the time period within which the refund is to be made cannot possibly exceed that stipulated under Section 38 of the DVAT Act. Whatever be the 'fail-safe' mechanism the Commissioner wishes to devise, unless the statute permits staggering of the refund payments through the devise of administrative instructions, it is not permissible for the Department to delay the release of the amounts of refund and interest beyond the period specified under Section 38 of the DVAT Act.

4. The Court has been receiving a number of writ petitions on account of the failure of the Department to make refunds in terms of Section 38 of the DVAT Act. It is only after several orders are passed by the Court that the refund application is processed and an order issued. Further, even where orders for refund together with interest is passed, the actual release of the principal refund amount is delayed further. The payment of interest is invariably delayed even further. Resultantly, not only is the dealer getting the refund far beyond the time period specified under Section 38 of the DVAT Act but the Department is ending up paying far more interest on the refund amount than what is permissible or contemplated in terms of Section 38 of the DVAT Act. There has to be some accountability fixed within the

Department for the lapses on part of those processing refund application resulting in such unnecessary payment of interest beyond what is permissible. This is an additional reason why the Court refuses to countenance the so-called 'fail-safe' system devised by the Department for staggering the release of refund of payment once a refund application has been processed, verified and found to be in order.

5. As far as the present petition is concerned, Mr. Narayan, on instructions states that the refund amount due together with interest will be released to the Petitioner through ECS on or before 26th July 2016. On the basis of the said assurance, the petition is disposed of with liberty to the Petitioner to revive it if the refund is not received within the time assured.

6. A copy of this order be delivered through a Special Messenger to the Commissioner, VAT, so that appropriate instructions can be issued to ensure that the processing of refund applications is not delayed and that the time limits specified under Section 38 of the DVAT Act are strictly adhered to. The revised administrative instructions should be issued by the Commissioner, VAT consistent with this order not later than ten days from today.