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

% **Judgment reserved on: 10 May 2024**
**Judgment pronounced on: 27 May 2024**

W.P.(C) 11463/2023
RASHTRIYA TRANSPORT CORPORATION ..... Petitioner

Through: Mr. Rajesh Mahna, Mr. Ramanand Roy, Mr. Mayank Kouts and Mr. Shiva Narang, Advocates

versus

COMMISSIONER OF DELHI GOODS AND SERVICE TAX & ANR. ..... Respondents

Through: Mr. Rajeev Aggarwal, ASC with Mr. Prateek Badhwar, Ms. Shaguftha H. Badhwar and Ms. Samridhi Vats, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**J U D G M E N T**

**RAVINDER DUDEJA, J.**

1. The Petitioner has preferred this petition seeking the following reliefs:-

*i) issue a writ of certiorari or any other writ, order or direction in the nature thereof, thereby quashing impugned order dated 31.07.2023, where in interest has been provided from the date of decision of Tribunal upto date of passing order of sanctioning refund;*

*ii) issue a writ of mandamus or any other writ, order or direction in the nature thereof, thereby directing the*

*respondents to issue and pay interest on Rs. 10,32,192/- to the Petitioner @ 15% from 27.04.2006 to 09.08.2023 when the amount has been sanctioned and credited to the account of the Petitioner.*

**FACTUAL BACKGROUND**

2. From the facts on which there is no dispute and which so stand disclosed in the writ petition, it would appear that Petitioner was engaged in the business of transporting goods. A survey was conducted at the godowns of the Petitioner by the Officers of the Department on 09.03.2006. A notice was issued calling upon the relevant records stated therein. Default Assessments were framed on 23.03.2006 imposing tax of Rs. 4,91,096/- and penalty under section 86 (19) and under Section 86 (14) amounting to Rs. 4,91,096/- and Rs. 50,000/- respectively.

3. The assessment was challenged before Objections Hearing Authority ["OHA"] which was rejected vide order dated 20.04.2006. After the said order, Petitioner deposited disputed amount of tax penalty vide *challans* dated 27.04.2006.

4. Being aggrieved, Petitioner preferred appeals before the Delhi Value Added Tax ["DVAT"] Appellate Tribunal but the same were partially allowed, whereby, only the penalty imposed under Section 86 (19) was set aside.

5. Petitioner preferred VAT Appeal before this Court. Vide order dated 27.03.2023, the matter was remanded to the Tribunal for deciding afresh.

6. Accordingly, the appeals were reconsidered and decided in favour of the petitioner vide order dated 10.05.2023, whereby, assessments framed by Assessing Authority and the order passed by OHA were set aside.

7. Petitioner preferred Writ Petition (C) No. 8667/2023 before this Court seeking refund of the amount deposited with interest and the same was disposed of vide order dated 03.07.2023, directing the Respondents to decide the claim of petitioner within four weeks. Vide Sanction Order dated 03.07.2023, the entire deposited amount was refunded along with interest of Rs. 10,322/- calculated from the date of order of the Appellate Tribunal i.e. 10.05.2023 at the rate of 6% per annum.

8. Challenging the order dated 03.07.2023, petitioner again approached this Court in W.P. (C) 9409/2023 and this Court vide order dated 18.07.2023, set aside the order dated 03.07.2023 and directed the Authority to reconsider the issue of interest and pass a speaking order thereto.

9. After hearing the Petitioner, Respondents passed a speaking order dated 31.07.2023, rejecting the contentions of the petitioner of higher rate of interest than that mentioned in the Delhi Value Added Tax ["DVAT"] Act as also grant of interest from the date of deposit. The interest on the penalty imposed under Section 86 (19) of Rs. 4,91,096/- was calculated from 26.08.2021 i.e. the date of order by which the said penalty was set aside by the learned Tribunal, while the

interest on the tax and penalty under Section 86 (14) was calculated from 10.05.2023.

**Submissions:-**

10. Learned counsel for petitioner has submitted that Delhi Value Added Tax Act Appellate Tribunal ["DVAT Tribunal"] vide its order dated 10.05.2023 has concluded that petitioner is not a "dealer" in terms of provisions of DVAT Act, 2004 and accordingly the provisions of DVAT Act are not applicable in the present case. That being so, the sum of Rs. 10,32,138/- deposited by the petitioners with the respondents was neither a tax nor a penalty for violation of any provision of DVAT Act. Such amount was illegally retained by the respondents for over a period of 17 years without authority of law, and therefore, respondents are bound to compensate petitioner by way of interest at the market rate.

11. It is submitted that impugned order insofar as it restricts rate of interest as prescribed under the DVAT Act is liable to be set aside/quashed. The learned counsel has placed reliance on the decisions rendered in the following cases:-

a. *Redihot Electricals vs. UOI & Ors*. 1989 SCC OnLine Del 157.
b. *Roadmaster Industries of India P. Ltd. Vs. Commissioner of Income Tax & Ors.* 2009 SCC OnLine P & H 11631
c. *Union of India through Director of Income Tax vs. Tata Chemicals Ltd.* (2014) 6 SCC 335

12. *Per contra*, the learned Standing Counsel for the respondents has argued that the term, employed in Sections 38 and 42 of the DVAT Act is "person" and not "dealer", which would certainly include within its fold any person including the transporter and, therefore, to give a restricted meaning to the word, "person", occurring in Sections 38 and 42 of the DVAT Act would be contrary to the intention of the legislature, which has explicitly and consciously employed the term, "person" and not "dealer" and if the contention of the petitioner is accepted, it would be tantamount to doing damage to the literal meaning of the said provisions as well as intention of legislature in enacting the said provisions. It is argued that Sections 38 and 42 have a larger scope to include persons other than just the dealers and, therefore, as per the said provisions, the rate of interest liable for the refund is annual rate notified by the Government vide notification dated 30.11.2005 at 6% p.a.

13. It is further submitted that amount of tax and penalty was deposited by the petitioner only after the objections filed by him were rejected by the OHA and, therefore, the same are akin to the pre-deposit before filing the appeal. Relying upon the decision of coordinate bench of this Court in *MRF Ltd. Vs. Commissioner of Trade and Taxes & Anr* 2018 SCC OnLine Del 10624, it has been submitted that entitlement of the refund of the amount pre-deposited as a condition of appeal would begin from the date on which the appeal is allowed. Learned Standing Counsel has also placed reliance on decision of Allahabad High Court in *Ebiz.com Pvt. Ltd. Vs. Commissioner of Central Excise, Customs & Service Tax & Ors. MANU/UP/3167/2016*, wherein, it was held that

any amount received by revenue as deposit or pre-deposit i.e. unauthorisedly or under mistaken notion, cannot be retained by revenue since it has no authority in law to retain such amount and it must be refunded with interest, however, the interest was ordered to be refundable from the date after three months of passing of order by Commissioner till the amount is actually paid. Learned Standing Counsel has thus submitted that writ petition is devoid of any merits and is liable to be dismissed.

**ANALYSIS & CONCLUSION**

14. Admittedly, this is third round of litigation before this Court. In the first round, vide W.P. (C) 11463/2023, directions were sought for refund of amount of Rs. 10,32,138/- along with interest and compensation thereof. The said petition was allowed with directions to the competent authority of the respondents to dispose of the prayer for refund within a period of four weeks. It was also directed that competent authority shall consider the contention of the petitioner that it is entitled to interest on the refund at the rate as claimed and notwithstanding the prescription contained in the Act. The Court also issued directions to the competent authority that the prayer as made shall be disposed of by way of a speaking order.

15. The competent authority passed an order of refund but restricted the interest to the rates prescribed under the DVAT Act. Accordingly, second round of litigation started in this Court vide W.P. (C) 9409/2023, wherein this Court has passed the following order dated 18.07.2023:-

"*3. This petition impugns the order of 03 July 2023 in terms of which although the competent authority has granted refund, the interest on alleged delayed disbursal thereof had been fixed and restricted to the rates as prescribed under the Delhi Value Added Tax Act 2004 [DVAT Act].*

*4. It becomes pertinent to note that dealing with the prayer for refund itself, the Court had while entertaining an earlier writ petition preferred by the petitioner passed the following order:-*

> *1. "This writ petition has been preferred seeking the following reliefs:-*
>
> > *a. Issue a writ of mandamus or any other writ, order or direction directing and compelling the respondents to issue the amount of RS. 10,32,138/- illegally and wrongfully extracted from the petitioner forthwith alongwith interest and compensation thereon in accordance with law.*
>
> *2. The claim for refund arises in the backdrop of a final order rendered by the Tribunal on 10 May 2023. Admittedly, the Tribunal has proceeded to hold that the petitioner was not liable to be recognised or treated as a "dealer" under the Delhi Value Added Tax Act, 2004 ["The Act"].*
>
> *3. The Commissioner is not stated to have preferred any appeal against the said order, and consequently, the same has for all purposes attained finality.*
>
> *4. Mr. Aggarwal, learned counsel appearing for the respondents states on instructions that subject to verification of all facts and contentions on merits being kept open, the prayer for refund shall be duly attended to and disposed of within a period of four weeks from today. The statement so made is recorded and accepted.*
>
> *5. The Court additionally takes note of the contention of Mr. Mahana, learned counsel appearing for the petitioner, who submits that once the Tribunal had come to the conclusion that the petitioner was not a "dealer" under the Act, the interest payable on refund cannot be bound or restricted by the provisions made under the Act.*
>
> *6. Since we are proposing to dispose of the petition itself in light of the statement made by Mr. Aggarwal, we keep this issue also open to be addressed by the competent authority of the respondents.*
>
> *7. In view of the above, the petition shall stand disposed with a direction to the competent authority of the respondent to attend to and dispose of the prayer for refund within a period of four weeks from*

*today. While doing so, the competent authority shall also consider the contention of the petitioner that it is entitled to interest on the refund at the rate as claimed and notwithstanding the prescription contained in the Act. The prayers as made shall be disposed of by way of a speaking order.*

*8. Subject to the aforesaid observations, this petition shall stand disposed of on the above terms. The Court reserves the right of the petitioner to assail the order passed by the competent authority, if it be adverse, in accordance with law. ”*

*5. Although it is alleged by the petitioner that the impugned order has been backdated, we do not propose to go into that question since Mr. Aggarwal has fairly submitted that in light of the observations as carried in the order of the Court dated 03 July 2023, the order impugned insofar as it restricts interest on delayed disbursal to rates prescribed under the DVAT Act would have to be necessarily recalled. He, accordingly, submits that the authority shall in consequence to the above be apprised of the obligation to decide the question of interest on delayed disbursal of the refund afresh.*

*6. Accordingly and in light of the statement so made, the impugned order dated 03 July 2023 insofar as it restricts the rate of interest as prescribed under the DVAT Act shall stand set aside and quashed. The concerned authorities shall attend to the claim for interest in accordance with the observations as appearing in the order of the Court dated 03 July 2023. The competent authority shall pass a speaking order in this respect within a period of two weeks from today. The writ petition shall stand allowed and disposed of on the above terms.”*

16. Consequent to the aforesaid order dated 18.07.2023, the impugned order dated 31.07.2023 was passed by GSTO. Based on the High Court orders dated 03.07.2023 and 18.07.2023, the learned counsel for petitioner submits that High Court in such orders has issued directions for grant of interest at the rate as claimed and not at the rate as specified under the DVAT Act. However, we are not convinced with such argument, inasmuch as, it is evident that the Court merely directed the authority to consider the contention of the petitioner by passing a speaking order.

17. On the basis of rival submissions, the limited issues which require determination is as to whether the provisions of DVAT Act with regard to grant of interest would be applicable to the case of the petitioner, who admittedly is not a dealer but a transporter, and was not engaged in trading of goods and what would be the rate of interest and the date from which such interest is payable.

18. The admitted position is that default assessment of tax and penalty was made under Sections 32 and 33 of the DVAT Act against the petitioner on his failure to produce the requisite documents. Petitioner preferred objections before the OHA which were rejected and thereafter petitioner preferred the VAT appeal before the VAT Appellate Tribunal. Thus, process which has culminated into the claim for refund of interest arose by virtue of and under the aegis of DVAT Act. Petitioner himself availed the remedies available under the Act, and therefore, it does not now lie in his mouth to challenge the applicability of the provisions of the DVAT Act. His case is akin to the case of a dealer who is imposed tax and penalty under the provisions of the Act and later succeeds before the Tribunal. Hence, notwithstanding the fact that order of default assessment was set aside, petitioner would still continue to be governed by the provisions of DVAT Act for the purpose of grant of interest.

19. Sections 38 and 42 of the DVAT Act deal with the grant of refund and Interest. It would be apposite to extract the relevant provisions i.e. Sections 38 (1) and 42 (1) (a) and (b) of the DVAT Act:-

"*38. Refunds (Rules 22 (4)& 34)*

*(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.*

*"42 Interest (Rule 34 (6) & 36)*

*(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 therefrom 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.*

*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."*

20. The legislature has employed the word "person" and not "dealer" in Section 38 & 42 of the DVAT Act. The use of word "person" instead of "dealer" reflects that the intention of the legislature is to include the persons other than the dealers for the benefit of grant of refund and interest under Section 38 & 42 of the DVAT Act. Therefore, we are of the opinion that the provisions of Section 38 & 42 of the DVAT Act would be applicable to the petitioner/transporter.

21. With regard to the contention of learned counsel for petitioner regards the payment of interest from the date of deposit, the decisions in the case of *Roadmaster* (supra) and *Tata Chemicals* (supra) are not applicable in the present case inasmuch as the decisions in both the

cases were rendered in the context of Income Tax Act where there is a specific provision under Section 244(1)(A) for the payment of interest from the date of payment of excess tax by the assessee, while there is no corresponding provision in DVAT Act. Similarly, in the case of *Redihot Electricals* (supra), the Excise Authority had collected the amount as tax without authority of law and therefore the Court had granted interest at the rate of 12% per annum from the date of collection of the amount till the date of actual payment. In the Central Excise & Salt Act, 1944, there was no provision for the grant of interest on the refunded amount. However, in the DVAT Act, there is a specific provision under Section 42 for the grant of interest on the refund. Hence, the judgment in the case of *Redihot Electricals* (supra) is also not applicable in the present case.

22. Section 42 of the DVAT Act provides that the interest shall be computed from the date when refund was due to be paid to the person until the date of refund. Admittedly, the refund became payable consequent to the orders passed by the DVAT Appellate Tribunal. The interest therefore shall be computed from the date(s) of the orders passed by the DVAT Appellate Tribunal.

23. Admittedly, statutory rate of interest is 6% by virtue of notification dated 30.11.2005. The Tribunal vide order dated 26.08.2021 had set aside the notice of penalty amounting to Rs. 4,91,096/- under Section 86(19) and, therefore, interest on such amount shall be computed and payable from 26.08.2021 at the rate of 6% p.a. till the date of refund. Vide subsequent order dated 10.05.2023, the

Tribunal had set aside the payment of tax of Rs. 4,91,096/- and penalty of Rs. 50,000/- imposed under Section 86(14). Therefore, interest on such amount shall be payable from 10.05.2023 at the rate of 6% till the date of refund.

24. Hence from the aforesaid, we are of the view that the GSTO has rightly computed the interest vide its order dated 31.07.2023, and therefore, the writ petition is devoid of any merits.

25. The Revenue will pay the interest as per impugned order dated 31.07.2023 within four weeks of receipt of copy of this judgment. Resultantly, W.P. (C) No. 11463/2023 is dismissed.

**RAVINDER DUDEJA, J.**

**SANJEEV SACHDEVA, J.**

**May 27, 2024/***RM*