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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on: 20.05.2022

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W.P.(C.) 7280/2022

B.K.S. MOTORS (P) LTD.

..... Petitioner

Through: Mr Rajesh Jain, Mr Virag Tiwari and
Mr Ramashish, Advs.

versus

COMMISSIONER OF DELHI GOODS AND SERVICES TAX

..... Respondent

Through: Mr Satyakam, Advocate.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. The substantive prayers made in the writ petition read as follows:

*“(a) direct the respondent to grant refund of
Rs.10,91,642/- for the fourth quarter of 2016-17;
(b) direct the respondent to grant interest on that
refund in accordance with Section 42(1) of the Act;”*

2. Notice in this writ petition was issued on 10.05.2022. Mr Satyakam, who appears on behalf of the respondent/revenue, has returned with instructions.

2.1. In fact, Mr Satyakam has drawn our attention to the documents filed in the instant case on behalf of the respondent/revenue, which show that a refund order dated 11.05.2022 has been passed in favour of the petitioner.

2.2. The principal amount of Rs.11,57,679/- has been approved for

payment. Insofar as interest is concerned, the sum quantified is Rs.66,037/-.

2.3. Besides this, a speaking order passed on the very same date i.e., 11.05.2022, has also been filed. The calculations set forth in the said order *qua* interest on the principal refund amount read as follows:

- “a) Refund Amount Rs. 10,91,642/-.*
- b) Period/ days: 16.05.2021 to 20-05-2022 i.e. 368 days.*
- c) Rate of interest: 6% per annum;*
- d) Amount of interest per day: Rs. 179.44/-*
- e) Total amount of interest issued: Rs. 66,037/-“*

3. According to Mr Satyakam, the assessment order in the petitioner’s case concerning financial year 2016-17 was passed on 16.03.2021 and, therefore, the calculation of interest has been triggered two months henceforth i.e., from 16.05.2021, as per the provisions of Section 42 of the Delhi Value Added Tax Act 2004 [in short ‘DVAT Act’]

3.1. Mr Rajesh Jain, who appears on behalf of the petitioner, however, contends that in terms of Section 38(3)(a)(ii) read with Section 42 of the DVAT Act, interest should have run from the expiry of two months from the date when the return was furnished.

4. What is not in dispute in this case is that the return was filed by the petitioner on 02.05.2017. It is on account of this that there is a difference in the interest, as claimed by the petitioner and that which is approved by the respondents/revenue. According to the petitioner, it is entitled to Rs.3,18,161/- towards interest.

4.1. We may note that it is Mr Satyakam’s contention that in terms of the provisions of Section 38(7)(d) of the DVAT Act the delay in furnishing the declaration i.e. C-Forms, will have to be factored in while calculating interest.

4.2. Mr Jain, on the other hand, contests this position. He has drawn our attention to the explanation appended to the second proviso to Section 42(1) of the DVAT Act. According to Mr Jain, interest would run from the date adverted to in Section 38(3)(a)(ii) of the DVAT Act.

4.3. Mr Jain says that all that the respondent/revenue can do is to exclude that period of delay which is wholly or in part attributable to the assessee i.e., the petitioner.

5. Counsel for the parties, however, are agreed on one aspect of the matter, which is, that these were issues that were raised before the coordinate bench of this Court in a bunch of writ petitions, the lead petition being W.P.(C.) No.10701/2016, titled *Vizien Organics vs Commissioner Trade and Taxes & Anr.*, and that the judgment in these matters was rendered on 19.01.2017.

5.1. We are informed that the respondent/revenue has carried the matter in appeal to the Supreme Court. The Supreme Court, *via* order dated 01.02.2017, passed in Special Leave Petition (Civil) No. 3496/2017, titled *Commissioner, Trade and Taxes & Anr. vs. Vizien Organics* has stayed the operation of the aforementioned judgment rendered by the coordinate bench.

6. Therefore, as was the methodology adopted by another coordinate bench of this Court *via* order dated 27.02.2019, passed in W.P.(C.) No.13929/2018, titled *Turbo Tapes Industries vs. Commissioner of Value Added Tax*, and order dated 18.09.2017, passed in W.P.(C.) No.8290/2017, titled *Dhanpati Packaging vs. Commissioner of Value Added Tax & Anr.*, we are inclined to dispose of the present writ petition, with the caveat that the petitioner's claim concerning the remaining interest would be processed and shall be paid, in case the respondent/revenue was to fail in the aforementioned SLP (now, Civil Appeal No.242/2018).

- 6.1. It is ordered accordingly.
7. The case file shall stand consigned to record.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MAY 20, 2022/rb

[Click here to check corrigendum, if any](#)

