

(2014) 01 DEL CK 0166

In the Delhi High Court

Case No : Writ Petition (C) 4220 of 2012 and C.M. Application 2026 of 2013

Ikea Trading (India)

APPELLANT

Vs

The Value Added Tax Officer and Another

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Delhi Value Added Tax Act, 2004 — Section 38 38(3)(a) 38(3)(a)(i) 38(3)(a)(ii) 59

Citation : (2014) 74 VST 73

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Latika Chaudhry, for the Respondent

Judgement

S. Ravindra Bhat, J.—The petitioner's grievance before this Court is that a sum of Rs. 2,55,11,598/- has to be paid to it by the respondents (hereafter referred to as "the VAT Department"). The brief facts are that the petitioner, a registered dealer, was, at the relevant time, exporting home furnishing products, including carpets, durries, fabrics, plastic articles, lamps, soft toys etc. The petitioner had, during the course of VAT proceedings filed objections to the Assessing officer's (AO's) determinations. These objections were not decided in eight months' time as required by the relevant statutory provision. Therefore, the petitioner, basing upon the previous order of the VAT Tribunal in Behl Construction successfully argued that if the objections are not decided by the Objection Hearing Authority (OHA) within eight months they are deemed to have been allowed. The Tribunal accepted that argument and directed refund of amounts claimed. The VAT Department's appeal to this Court was rejected on the ground that it was preferred after the period of limitation and that there was no provision in the Delhi VAT Act, enabling the Court to condone the delay.

2. It is argued that given these circumstances, the VAT Department has to refund the sums claimed by the petitioner since it had succeeded before the Tribunal.

3. The VAT Department points out that the VAT Tribunal's ruling in Behl

Construction was overturned by this Court in its appeal where it was held that the provision requiring decision within eight months is not mandatory but only directory. Learned counsel also submitted that as far as the appeal was concerned, a retrospective amendment has been made enabling this Court to condone the delay. These aspects were not being disputed by the petitioner.

4. On 14.01.2013, this Court made the following directions:

The grievance of the petitioner is that despite the order of the Delhi Value Added Tax Appellate Tribunal, the amounts due to them are not being refunded. Apart from this, the learned counsel for the petitioner also submits that there are other periods for which the refund claims have been made but the refunds are not being granted despite the fact that there are no default assessment orders within the stipulated period of one month from the filing of the return nor is there any show cause notice issued u/s 59 of the DVAT Act, 2004 within the stipulated period of time. The total amount of the refund claims comes to Rs. 2,55,11,598/-. Out of this amount, a sum of Rs. 80,22,477/- is on account of the orders passed by the Tribunal whereas the balance amount is in respect of the refund claims which ought to have been decided within the period of one month as prescribed u/s 38(3)(a)(i) of the said Act.

The learned counsel for the petitioner has placed reliance on a decision of a Division Bench of this court in the case of Swarn Darshan Impex (P) Ltd. v. Commissioner, Value Added Tax & Anr: in W.P. (C) No. 3817/2010 decided on 03.06.2010, wherein it was held as under:-

13. In any event, even if we assume that the said notice was issued by the respondents and that it had been received by the petitioner, it would not change the position in law. Sub-section (4) of Section 38 has to be read with the provisions of sub-section (3) of Section 38. By virtue of the latter provision, the refund had to be paid to the petitioner within two months from the date of the return furnished by him. No such notice u/s 59 requiring additional information had been issued during that period. Consequently, the subsequent purported issuance of notice u/s 59 cannot be taken as a ground for not paying the refund to the petitioner. In this connection, the provisions of subsection (7) of Section 38 also needs to be examined. The said provision stipulates that for calculating the period prescribed in Section 38(3)(a), the time taken to, inter-alia, furnish additional information sought u/s 59 shall be excluded. It is obvious that exclusion can only be when the period of limitation itself has not run out. The consequence of this discussion is that the notice u/s 59 in connection with refund has to be issued within the period of two months stipulated in Section 38(3)(a)(ii). As a result, the submission of the learned counsel for the respondents that because of issuance of notice u/s 59 of the said Act, albeit beyond the prescribed time, the refund was not payable, is not tenable.

The learned counsel for the petitioner submits that in the present case also, no notice u/s 59 was issued during the stipulated period of one month.

Furthermore, in the case which went up to the Tribunal, what the respondent has done was that instead of granting the refund they had raised demands equivalent to the refunds claimed vide four separate default assessment order Nos. 1539-1542, all dated 23.02.2007. According to the petitioner these default assessment orders were time barred. Anyhow, the fact of the matter is that the Tribunal has set aside these demands and has ordered accordingly. The consequence of which would be that the refund claims of the petitioner were to be allowed as prayed for. Despite this the respondents have not paid the refund amounts. Going through the provisions of the statute it becomes clear that the refunds are to be paid promptly and the decisions are to be taken as per the time schedule prescribed in the Act.

Unfortunately, the Revenue has not followed the said time schedule and has in some way or the other managed to delay the payment of refund to the petitioner.

Renotify on 28.02.2013.

In the meanwhile, the respondents shall deposit a sum of Rs. 2,55,11,596/- within a period of three weeks with the Registrar General of this court who shall place the same in a Fixed Deposit initially for a period of three months.

Dasti under the signature of the court master.

It transpired subsequently that the VAT Department's grievance in respect of this Court's order carried by it by way of SLP to the Supreme Court was accepted in part and a remand order was made on 02.01.2014. This in turn would mean that the VAT Department's appeal is at large and has to be decided--both on the question of limitation as well as the merits. Given these set of circumstances, this Court is of the opinion that no useful purpose would be served in retaining the amounts paid by the respondents in this Court. As on date, the order of the VAT Tribunal has not been set aside. At the same time, the setting-aside of the VAT Department's previous determination in Behl Constructions (supra) would mean that the objection would have to be heard and adjudicated on the merits. Consequently, it is hereby directed that the amounts deposited in Court shall be refunded to the petitioner subject to its complying with the following directions:

(a) furnishing bank guarantee to the extent of 35% of the amount so deposited--further to the order of 14.01.2013;

(b) furnishing an indemnity bond and such other acceptable security as may be deemed appropriate by the VAT Department having regard to the entirety of the circumstances;

(c) The petitioner shall comply with the above terms within six weeks from today.