

(2019) 07 DEL CK 0111

In the Delhi High Court

Case No : Civil Writ Petition No. 9282 Of 2017

M/S. Mega Media Solutions

APPELLANT

Vs

Commissioner Trade & Taxes & Anr

RESPONDENT

Date of Decision : 17-07-2019

Acts Referred:

Delhi Value Added Tax Act, 2004 — Section 59(2)

Citation : (2019) 6 AD(Delhi) 403

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Varun Nischal, Arif Ahmed Khan, Gaumi Grover, Manoj Kumar, Satyakam

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. This is yet another case where the Respondents are seeking to avoid granting refund to the Petitioner on the basis of "zero demand orders".

2. The practice of passing "zero demand" orders to deny refunds was frowned upon by this Court even earlier. Illustratively, reference may be

made to the orders dated 21st November, 2016 in W.P.(C) No.9252/2016 (Aesthetic Packaging v. Commissioner of VAT) and 6th August, 2018 in

W.P.(C) No.1563/2018 (M/s Arora Enterprises v. Commissioner, Trade & Taxes). Yet, the practice has not stopped.

3. This petition itself has a chequered history. The Petitioner is a proprietorship registered under the Delhi Value Added Tax Act, 2004 ("DVAT

Act") as well as the Central Sales Tax Act, 1957 ("CST Act"). The Court is informed that the Petitioner has since sought cancellation of the

CST registration. The Petitioner filed the present petition aggrieved by the denial

of refund in the total sum of Rs.133,87,364/-, in respect of the tax periods from May to December, 2010 and January, February, March and May, 2011. Paragraph 2 of the writ petition sets out the details of the refund amount claimed for each of the above assessment periods and the dates of the respective returns in which refunds were made. Admittedly, the earliest of those returns is dated 25th June, 2010 and the last of such returns (for May, 2011) is 26th June, 2011.

4. In response to the notice issued in this petition, a reply was filed on 4th January, 2018 by the Respondents alleging suppression of material facts by the Petitioner. It is stated in para 5 of the counter affidavit that the refunds for the periods July, 2010 to March, 2011 and May, 2011 were disallowed

by the then Assessing Authority on the ground that the dealer did not furnish the required information despite time being given to him under Section 59

(2) of the DVAT Act. It was accordingly contended that the Petitioner had not approached the Court with clean hands. It was stated that by 12th

July, 2012, the Petitioner had not furnished any document pertaining to the above period i.e. July, 2010 to March, 2011 and May, 2011 and that the

refund claims for the said periods were rejected by orders passed on 1st August, 2012 and 3rd August, 2012. It was contended that the Petitioner had

not challenged those orders in accordance with law and, therefore, the petition itself was not bonafide.

5. In the meanwhile, the Petitioner had filed CM No.747/2018 to bring on record additional documents in support of its claim for refund.

6. The Court initially passed an order on 5th July, 2018 disposing of the present writ petition, inter alia, observing that if the Petitioner was aggrieved by

the adjudication of its claims for refund and having regard to its assertions that the orders were never received by it, it was open to the

Petitioner to seek copies of such order or orders and prefer appeals. It was observed that in the event that the Petitioner preferred the appeals

within 30 days of receipt of such orders, they would be considered by the Objection Hearing Authority (OHA) on their merits. It was noted in

the order that the copies of the orders rejecting the refunds claims for the periods July, 2010 to March, 2011 are being handed over to the counsel

for the Petitioner.

7. Soon thereafter, the Petitioner filed Review Petition No.274/2018. Inter alia, it

was pointed out by the Petitioner that after going through the documents handed over to the counsel for the Petitioner by the counsel for the Respondent, it was found that there were material facts, statutory provisions and judgments which were not brought to the notice of the Court. The new material documents revealed that for the tax period 2010-11, orders raising 'zero demand' had been passed and since these were not available earlier to the Petitioner and there were no disputed facts, 'nothing survives for the OHA to decide'.

8. A reply was filed to the review petition by the Respondents, inter alia, pointing out that a set of scanned orders were emailed to the counsel for the Petitioner on 26th October, 2017. It is pointed out that from the annexures to the review petition it was plain that the earlier assertions by the Petitioner about not receiving the orders were false. It was pointed out that along with the review petition, the Petitioner itself had submitted copies of some of the orders made available to it in 2014 itself. It was accordingly prayed that the review petition be dismissed.

9. The review petition came up for hearing before this Court on 28th September, 2018. The operative portion of the said order reads as under:

'This Court had merely disposed of the order on the assumption that the petitioner can approach the Objection Hearing Authority (hereafter 'OHA'). It is apparent from the order issued at the relevant time that the so-called assessments were completed without any demand since the VATO indicated 'zero' demand. In these circumstances, the merits of the petition need to be gone into - including as to whether the Court should or should not entertain the question of refund belatedly. Review petition is allowed and disposed of accordingly.'

10. By the same order, the Court also permitted the parties to file further affidavits 'if needed'.

11. Pursuant thereto, the Respondents filed an additional affidavit on 15th December, 2018. This affidavit basically reiterated the earlier stand of the Respondents that the refunds claims already stood rejected. Reference was made to the notices issued to the Petitioner under Section 59 (2) of the DVAT Act to produce documents, to which the Petitioner did not respond. It was contended that the writ petition was barred by laches since the department 'cannot reopen the assessment and rectify the defect in these

ordersâ?. It was reiterated that there is suppression of material facts in the petition and that the claim was barred by laches. Again, copies of the orders sent to the counsel for the Petitioner were enclosed with this affidavit.

12. The Petitioner has on 18th January, 2019 filed a response to the above additional affidavit setting out the history of the present case. It is pointed

out that the Respondent is relying on â??zero demand ordersâ? to deny refund and that in similar instances, this Court had negated such attempts. It is

pointed out further that in another case involving a similar denial of refund on account of a â??zero demand orderâ?, viz., W.P.(C) No. 8849/2018

(Vijiman Electronic Pvt. Ltd. v Commissioner of Trade & Taxes), the Respondents had voluntarily withdrawn the zero demand orders and issued

refunds for the period of 2009-10 along with interest. It is pointed out that an order dated 24th October, 2017 was passed issuing refund to the

Petitioner for the period May, 2010, but in the â??remarks sectionâ?, an assessment was framed in the refund order itself and this was done only to

defeat the refund claim of the Petitioner for that period. For June, 2010, a refund order had been issued without interest on the refund amount. This

was in the teeth of the judgment of this Court in IJM Corporation Berhad v. CT&T (2018) 48 GSTR 102 (Del). It is pointed out that in the refund

order from May, 2010, the Respondents had illegally deducted up-to-date interest @ 15% per annum from 2010 onwards while, at the same time,

denying the Petitioner statutory interest @ 6% on account of delay.

13. This Court has heard the submissions of learned counsel for the parties. Learned counsel for the Petitioner reiterated what has been urged in the

main petition, and the additional affidavit, which has been referred to hereinbefore. He submitted that there was no justification in law for denying

refund on the basis of such â??zero demand ordersâ?.

14. Mr Satyakam, learned Standing Counsel for the Respondents, on the other hand, reiterated the contention regarding suppression of material facts

by the Petitioner and not coming to the Court with â??clean handsâ?. He also brought up the issue of the petition being barred by â??lachesâ?. While

he was not in a position to defend the â??zero demand ordersâ?, his contention was that the conduct of the Petitioner should disentitle it to any relief.

15. The above two aspects raised by the Respondents i.e. the suppression of

material facts by the Petitioner, and â??lachesâ?, were raised by the Respondents even earlier in response to the review petition filed by the Petitioner. Nevertheless, this Court allowed the review petition in the manner indicated hereinbefore, thereby rejecting the above pleas. This Court was of the view that the writ petition had to be heard on merits. The parties were permitted to file additional affidavits. This liberty was utilized by the Respondents to file an additional affidavit reiterating the same pleas, which it did in response to the review petition.

16. The plea of the Respondents that the Petitioner was already aware of these orders in 2014 did not find favour with this Court when it was first raised in the reply to the review petition. In fact, the review petition was allowed and it was directed that the writ petition be heard on merits. That order, allowing the review petition, has attained finality. The plea of laches and suppression of material facts having been impliedly rejected by this Court earlier, cannot be permitted to be raised again in these proceedings.

17. Even otherwise the plea of laches raised by the Respondents seems to be futile. On their own showing, the Respondents have for two periods i.e.

May, 2010 and June, 2010, granted refunds to this very Petitioner by passing separate orders in January 2018. However, the order granting refund for

May, 2010 is strange. While on the one hand, it accepts the plea for refund, it utilizes that opportunity to create a demand in the â??remarks columnâ?

and additionally charges interest on the Petitioner for more than 10 years. The Court can only speculate that this reveals either a total non-application

of mind by the Assessing Officer or that the software is so riddled with errors that it produces orders of that kind. Likewise for the period June, 2010,

refund was granted while denying interest that is due to the Petitioner for the period in question. If for these months of May and June, 2010, refund

orders could be passed on January 2018, then clearly the Respondents were not allowing the plea of â??lachesâ? to come in the way of grant of

refund. In any event, the orders denying refund were never ever communicated to the Petitioner till the filing of the present petition.

18. The fact of the matter is that the only ground on which refund has been refused to the Petitioner is the passing of â??zero demand ordersâ?,

which have been enclosed by the Respondents themselves to the additional affidavit filed by them. The Court is further informed that the copies of

such orders were handed over in Court on the first date of hearing of the writ petition itself.

19. When repeatedly asked as to what is the purpose of passing such “zero demand” orders, and then requiring the dealer to challenge such

orders in accordance with law before the OHA, the learned counsel for the Respondents was unable to give any satisfactory answer. The fact also

remains that the earlier orders of this Court in *Aesthetic Packaging v. Commissioner of VAT* (supra) and *M/s Arora Enterprises v. Commissioner,*

Trade & Taxes (supra) and other similar orders including the order dated 22nd May, 2019 in W.P.(C) No. 8851/2018 (*M/s. Robust Technologies Inc.*

v. Commissioner of Trade & Taxes) are all within the knowledge of the Respondents. There is no purpose served in passing such “zero demand”

orders as they end up only multiplying litigation needlessly and delaying the grant of refunds to which the dealers are legitimately entitled.

20. For all of the aforementioned reasons, the pleas raised by the Respondents to deny the Petitioner the refunds are not sustainable in law and are

hereby rejected.

21. The question now remains as to the consequential orders that are required to be passed. Of the entire period for which refund has been claimed in

the present petition, orders granting refund have been passed only for two months i.e. May and June, 2010, and that too erroneously. Consequently,

even those orders are required to be set aside by this Court.

22. A direction is now issued to the Respondents to process the Petitioner’s claim for refunds, without raising any of the objections that have been

raised before this Court and proceed to issue the refund orders in accordance with law, together with the interest due on the refund amounts, not later

than eight weeks from today. The Court makes it clear that the refund amount together with interest should be credited to the Petitioner’s account

within the above period, failing which the Respondents will be liable for wilful disobedience of this Court’s orders.

23. The writ petition is allowed in the above terms, but in the circumstances, with no orders as to cost.

24. Dasti under the signatures of the Court Master.