(2021) 10 DEL CK 0245

In the Delhi High Court

Case No : Civil Writ Petition No. 11707 Of 2021

M/S V M Industries APPELLANT

Vs

Commissioner Of VAT & Anr. RESPONDENT

Date of Decision : 12-10-2021

Acts Referred:

Delhi Value Added Tax Act, 2004 — Section 42
Delhi Goods And Services Tax Act, 2017 — Section 140(1)
Central Sales Tax Act, 1956 — Section 5(3), 6, 8

Citation : (2021) 10 DEL CK 0245

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;Jyoti Singh, J

Bench : Division Bench

Advocate : Mohit Gautam, Naushad Ahmed Khan, Zahid, Manisha Chauhan

Final Decision : Disposed Of

Judgement

D.N. Patel, CJ

Proceedings have been conducted through video conferencing.

CM APPL. 36193/2021 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 11707/2021

1. Present writ petition has been preferred seeking the following reliefs:-

"(a) Issue a Writ of declaration or any other Writ, Order or directions directing the respondents to issue the refund of Rs. 25,75,818/- along with interest as petitioner is legally entitled for the same as per the provision of law.

(b) Grant interest @ 6% as per Section 42 of DVAT Act on Refund claimed amount as petitioner has been unjustifiably denied the refund as the Respondent acted in complete violation of statutory provision. The petitioner has right to claim interest under section 42 of the Delhi value Added Tax Act, 2004.

(c) Grant exemplary damages to petitioner as the respondents had acted in malafide and colourable exercise of power in with holding the refunds."

2. We have heard learned counsels appearing on behalf of the parties and looked into the facts and circumstances of the case.

3. By way of the present petition, Petitioner seeks a refund of Rs.25,75,818/- along with interest under Section 42 of the Delhi Value Added Tax Act, 2004, for the first quarter of 2017-18, i.e. for the period 01.04.2017 to 30.06.2017. According to the learned counsel for the Petitioner, the Petitioner filed its return of VAT on 27.12.2017 for the tax period 01.04.2017 to 30.06.2017, claiming a refund of Rs.55,04,128/- by carry forward of the same to the next tax period. On 01.07.2017, the DVAT Act was replaced by the Delhi Goods and Service Tax Act, 2017. Petitioner filed the GST Form TRAN-1. As per the provision of Section 140(1) of DGST Act, Petitioner only carried over a refund of Rs.29,28,310/- out of total refund of the aforesaid amount as transitional ITC to the electronic credit ledger of Petitioner firm, which is attributable to a claim under Section 5 (3) and Sections 6 and 8 of the CST Act, 1956 and was duly supported by statutory declaration forms.

4. It is submitted by learned counsel for the Petitioner that two notices dated 10.02.2021 and 11.02.2021, respectively, of default assessment of tax and interest under CST Act were framed for the year 2016 and the period 01.04.2017 to 30.06.2017, respectively, by Respondent No.2. On 18.06.2021, Petitioner filed an application regarding non-issue of pending refund of Rs.25,75,818/- together with interest and followed it up with a reminder application dated 23.07.2021 but no refund has been granted to the Petitioner.

5. Learned Counsel appearing on behalf of the Respondents submits that two notices of default assessment of tax and interest under CST Act have already been issued by the Respondents on 10.02.2021 and 11.02.2021.

6. It is an undisputed case between the parties that the application for refund alongwith interest filed by the Petitioner is pending consideration with the Respondents, despite a reminder application dated 23.07.2021. It is incumbent upon the Respondents to take a decision on the application for refund. We, therefore, direct the concerned Respondent(s) to decide the claim of the Petitioner for refund for the relevant period, in accordance with law and also keeping in mind the principle of "unjust enrichment" as propounded by the Hon'ble Supreme Court in Mafatlal Industries Ltd vs. Union of India etc., (1997) 5 SCC 536, as expeditiously as possible and practicable.

7. With these observations, writ petition is hereby disposed of.

