

(2017) 01 DEL CK 0189
In the Delhi High Court
Case No : W.P.(C) 10701 of 2016

Vizien Organics

APPELLANT

Vs

Commissioner, Trade and Taxes

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Central Sales Tax Act, 1956 — Section 6A(1)
Central Sales Tax Rules, 1957 — Rule 12(1), Rule 12(4)(5)
Delhi Value Added Tax Act, 2004 — Section 38, Section 38(3), Section 38(7)(d),
Section 59, Section 70

Citation : (2017) 237 DLT 213 : (2017) 60 GST 226

Hon'ble Judges : Mr. S. Ravindra Bhat and Mr. Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Sh. Ruchir Bhatia, Advocate, for the Petitioner in Item Nos. 1, 3, 4, 5, 19, 21, 31, 32, 33, 35, 46, 48, 49, 53, 54, 56, 65, 68, 69, 71, 75, 76, 85, 98, 99, 103, 104, 105, 110; Sh. Virag Tiwari, Sh. K.J. Bhat and Sh. Nitin Gulati, Advocates, for the Petitioner in Item Nos. 6, 13, 96; Sh. Gajanand Kirodiwal and Sh. Saarthak Bansal, Advocates, for the Petitioner in Item No. 14; Sh. Nitin Gulati, Advocate, for the Petitioner in Item Nos. 18, 20, 47, 58, 59, 67, 79; Sh. Vasdev Lalwani, Sh. S.C. Jain and Sh. Rohit Gautam, Advocates, for the Petitioner in Item Nos. 22, 27, 28, 77, 78, 80, 81, 83; Sh. Raj. K. Batra, Sh. Rajesh Jain and Sh. Kapil Chaudhary, Advocates, for the Petitioner in Item Nos. 29, 34, 39, 41, 45, 52, 57, 61, 62, 64, 70; Sh. Vineet Bhatia, Sh. Chanderkant and Sh. Saket Grover, Advocates, for the Petitioner in Item Nos. 55, 66, 72, 73, 74 & 92; Sh. S.K. Khurana, Advocate, for the Petitioner in Item No. 63; Sh. Biswajeet, Advocate, for the Petitioner in Item No. 82; Sh. Vardaan Dhawan, Advocate, for the Petitioner in Item No. 84; Sh. S.K. Khurana, Advocate, for the Petitioner in Item Nos. 86, 87; Sh. Gautam Narayan, ASC with Sh. R.K. Iyer, Advocates, for the Respondent in Item Nos. 1-2, 6, 9, 16, 19, 20, 21, 22, 24, 25, 26, 32, 33, 34, 35, 39, 44, 45, 46, 49, 53, 54, 56, 58, 59, 65, 66, 67, 68, 71; Sh. Satyakam, ASC, GNCTD, for the Respondent in Item Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22-38, 40-43, 47-48, 50-52, 57, 60-64, 69-70, 72-73, 75-76, 79, 84-85, 87, 96, 98, 99, 101 & 102; Sh. Anuj Aggarwal, ASC with Ms. Deboshree Mukherjee, Advocate, for the Respondent in Item No.3-5, 13-14, 31, 55, 74, 77-78, 80-83, 86, 91 & 93; Sh. A.K. Babbar, Sh. Surinder Kumar, Sh. Atul Babbar, Ms. Ruchi Babbar, Ms. Amita Babbar, Sh. Bharat Tripathi, Sh. Sushil Gaba, Sh. Bharat Tripathi and Sh. Promod Kumar Jain, Advocates, for the Petitioner in Item Nos. 2, 7-9, 10, 11, 12, 13, 15, 16, 17, 23,

24-26, 30, 36-38, 40, 42-44, 50-51, 60, 97; Sh. Peeyosh Kalra, ASC with Sh. Shiva Sharma, Advocate, for the VAT Dept. in Item Nos. 88, 89, 94 & 95, 97, 100; Sh. Peeyosh Kalra, ASC with Ms. Sona Babbar, Advocate, for the Respondent in Item Nos. 105, 110; Sh. Gautam Narayan, ASC with Sh. R.A. Iyer, Advocate, for the Respondent in Item Nos. 90 and 92; Sh. Sumit Kumar Batra, Advocate, for the Petitioner in Item Nos. 100, 101; Sh. Bharat Kumar Tripathi, Advocate, for the Petitioner in Item No. 102; Sh. Siddhartha Shankar Ray, Advocate, for the Respondent in Item No. 103; Sh. Nitin Gulati, Advocate, for the Petitioner in Item No. 106; Sh. Shadan Farasat and Sh. Ahmed Said, Advocates, for the Respondent in Item No. 106; Sh. S.K. Khurana, Advocate, for the Petitioner in Item No. 107; Sh. Siddharth Dutta, Advocate, for the Respondent in Item Nos. 107 and 108; Sh. A.K. Babbar, Sh. Surendra Kumar, Sh. Atul Babbar, Sh. Bharat Tripathi and Ms. Amita Babbar, Advocates, for the Petitioner in Item No. 108; Sh. Varun Nishchal, Advocate, for the Respondent in Item No. 109

Final Decision : Allowed

Judgement

Mr. S. Ravindra Bhat, J.—The present batch of writ petitions seek reliefs that have a familiar ring about them: Delhi Value Added Tax (DVAT) excess amount refunds. All the petitioners seek directions that their refund claims, pending for long periods, should be processed and monies disbursed in a time-bound manner; the revenue's contentions, in all these cases, is that the obligation to process refund claims and to pay interest would arise, only after all the necessary details - including Central Sales Tax (CST) documents are furnished; it also argues that after introduction of Section 38 (7) (d) - to the DVAT Act, in 2012, the assessee/dealers' refund claims cannot be said to be complete in case any amounts are due and owing under the CST regime. Two earlier decisions of this court, i.e. *Swarn Darshan Impex (P) Ltd. v. Commissioner, Value Added Tax (2010) 31 VST 475 (Del)* and *Prime Papers & Packers v. Commissioner of VAT & Anr. (2016) 94 VST 347 (Delhi)* had elaborately considered the relevant provisions and given rulings about the obligatory nature of the time limit within which refund claims had to be processed. The respondent/revenue, i.e. the DVAT department, however, urges that the ratio in *Swarn Darshan Impex (supra)* is not applicable any longer, due to the amendment in 2012 and that *Prime Papers & Packers (supra)* did not properly consider the impact of the said amendment and other relevant provisions of the CST and Rules. Therefore, these petitions were heard on the issue of refunds by DVAT authorities and their obligations, in the specific context of the requirement to furnish documents relating to CST provisions.

2. For clarity and understanding, it would be appropriate to notice the relevant provision, which deals with refunds. It is Section 38 of the DVAT Act; it reads as follows:

"38. Refunds

(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.

(2) Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).

(3) Subject to sub-section (4) and sub-section (5) of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either -

(a) refunded to the person, -

(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;

(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or

(b) carried forward to the next tax period as a tax credit in that period.

(4) Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken or sought additional information under section 59 of this Act, the amount shall be carried forward to the next tax period as a tax credit in that period.

(5) The Commissioner may, as a condition of the payment of a refund, demand security from the person pursuant to the powers conferred in section 25 of this Act within fifteen days from the date on which the return was furnished or claim for the refund was made.

(6) The Commissioner shall grant refund within fifteen days from the date the dealer furnishes the security to his satisfaction under Sub-section (5).

(7) For calculating the period prescribed in clause (a) of sub-section (3), the time taken to -

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956, shall be excluded.

(8) Notwithstanding anything contained in this section, where -

- (a) a registered dealer has sold goods to an unregistered person; and
- (b) the price charged for the goods includes an amount of tax payable under this Act;
- (c) the dealer is seeking the refund of this amount or to apply this amount under clause (b) of sub-section (3) of this section; no amount shall be refunded to the dealer or may be applied by the dealer under clause (b) of sub-section (3) of this section unless the Commissioner is satisfied that the dealer has refunded the amount to the purchaser.

(9) Where -

- (a) a registered dealer has sold goods to another registered dealer; and
- (b) the price charged for the goods expressly includes an amount of tax payable under this Act, the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section and the Commissioner may reassess the buyer to deny the amount of the corresponding tax credit claimed by such buyer, whether or not the seller refunds the amount to the buyer.

(10) Where a registered dealer sells goods and the price charged for the goods is expressed not to include an amount of tax payable under this Act the amount may be refunded to the seller or may be applied by the seller under clause (b) of sub-section (3) of this section without the seller being required to refund an amount to the purchaser.

(11) Notwithstanding anything contained to the contrary in Sub-section (3) of this section, no refund shall be allowed to a dealer who has not filed any return due under this Act."

Section 59, which finds reference in Section 38 (7), reads as follows:

"(1) All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.

(2) The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require ?

(a) any dealer; or

(b) any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organisation, any officer thereof; to ?

(i) produce before him such records, books of account, registers and other documents;

(ii) answer such questions; and

(iii) prepare and furnish such additional information; relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

(3) The Commissioner may require a person referred to in sub-section (2) above, to -

(a) prepare and provide any documents; and

(b) verify the answer to any question; in the manner specified by him.

(4) The Commissioner may retain, remove, take copies or extracts, or cause copies or extracts to be made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held."

3. The first decision, which grappled with the issue whether the timelines prescribed for refund-under Section 38 (3) were imperative, was Swarn Darshan Impex (supra). The Division Bench's discussion in that judgment is as follows:

"7. A plain reading of Section 38, which deals with refunds, makes it clear that by virtue of Sub-section (3) thereof, in the case where a person is assessed quarterly, the refund is to be made to the dealer within two months after the date on which the return is furnished or the claim for the refund is made. Of course, it is the dealer's option to elect as to whether the refund is to be made in cash or the said amount is to be carried forward to the next tax period as a tax credit in that period. In the present case, the petitioner has elected for the grant of refunds in cash and has not elected for carrying forward the refund amount to the next tax period. The provisions of Section 38 (3) uses the expression "shall" and, therefore, it is clear that the refund has to be made within two months from the date of the return.

8. At this point, it would be appropriate to deal with the submission made by Mr. Taneja that the period prescribed in Section 38 (3) as also the period prescribed in Section 38 (5) of the said Act were merely directory and not mandatory?.."

The court thereafter discussed the revenue's contention that Section 38 (3) was not mandatory, in the context of its reliance on Section 74 and decisions relating to that provision and held as follows:

"13. Such a situation does not arise in the present case inasmuch as the provisions of Section 38 do not contemplate a situation where the Commissioner does not grant a refund within the stipulated period. The decision in Behl Construction (2009) 21 VST 261 (Delhi) : (2009) 162 ECR 110 (Delhi) was in the context of the provisions of Section 74 and those circumstances do not arise in the present case. As pointed out above, what this Court has to determine is: what is the legislative intent behind the provisions of Section 38" It is this intent which shall determine whether the stipulations as to time are merely directory or they are mandatory as suggested by the use of the word "shall". On going

through all the Sub-sections of Section 38 of the said Act, the legislative intent that is clearly discernible is that refunds must be granted to a person entitled within the specific time period stipulated in Sub-section (3) thereof. This intention is further fortified by a look at the provisions of Sub-section (7) of Section 38 which stipulates that for calculating the period prescribed in Clause (a) of Sub-section (3), the time taken to furnish the security under Sub-section (5) to the satisfaction of the Commissioner or to furnish the additional information sought under Section 59 or to furnish returns under Sections 26 and 27, "shall be excluded". This provision as to exclusion of time taken in doing the aforesaid acts, is in itself an indication that the Legislature was dead serious about the stipulation as to time for making refunds under Section 38 (3) of the said Act. For, if the legislative intent were not so, what was the need or necessity for providing for exclusion of time" Thus, not only do the provisions of Section 38 employ the word "shall", which is usual in mandatory provisions, the legislative intent discernible from the said provisions also points towards the mandatory nature of the said provisions. Clearly, subject to the exclusion of time provided under Sub-section (7) of Section 38, in a case falling under Section 38 (3) (a) (ii), the refund has to be made within two months from the date of the return."

4. Another judgment of another Division Bench of this Court in *Prime Papers & Packers* (supra) revisited the same issue. The discussion and operative portion of the said judgment is as follows:

"10. The understanding of the Department regarding the calculation of the time limit under Section 38(3) of the Act being subject to Section 38(7), as was advanced before this Court, does not appear to be consistent with the legislative intent behind the enactment of Section 38 of the Act. It is a time-bound composite scheme which requires, in the first place, the DT&T to take immediate action upon receiving a return in which a refund is claimed. What Section 38(2) expects the Respondent to determine upon examining the claim of refund is whether there is any amount due from the dealer either under the DVAT Act or the CST Act. Such amount should already be found to be due. This is not an occasion, therefore, for the Department to start creating new demands either under the DVAT Act or the CST Act. In any event, even if the Department seeks to initiate the process for creating any fresh demand, that process cannot defeat the time period under Section 38(3)(a)(i) or (ii) for processing the refund claim.

11. Circular No. 6 of 2005 dated 15th June 2005 issued by the Commissioner VAT is binding on the DT&T. It curtails the time limit within which notices have to be issued, either for audit under Section 58 of the DVAT Act or for seeking information under Section 59 (2) of the DVAT Act, to just 15 days from the date of filing of the return claiming refund. The recent instructions issued by the Commissioner, VAT on 21st July 2016 regarding speedy disposal of refund claims also emphasises the mandatory nature of the instructions. There is therefore no question of the DT&T, and in particular the VATO concerned, not responding

immediately to the refund claim made. Where it is felt that more information should be called for then the notice under Section 59(2) DVAT Act has to necessarily be issued within fifteen days thereafter.

12. In the instant case, the return for the fourth quarter of 2010-11 was filed on 28th April, 2011. Yet, the notice under Section 59 (2) of the DVAT Act was issued only on 10th September 2011, well beyond the 15 day time limit in term of Circular No. 6 of 2005. The return for the first quarter of 2011-12 was filed on 27th July, 2011. The notices under section 59 (2) DVAT Act was issued on 10th September, 2011 again beyond the 15 day time limit. In both instances the notices of default assessments were issued on 14th October, 2011. It is another matter that the Petitioner claims not to have received the above notices under Section 59 (2) DVAT Act and the consequent notices of default assessments. The files produced by Mr. Satyakam contain copies thereof but no proof of the said notices having been uploaded on the website in the Petitioner's account soon after they were issued.

13. In any event, the above notices having been issued beyond the time limits set by the Commissioner VAT for processing of refund claims, there is no valid explanation offered by the DT&T for not processing the refund claims for the said two periods within the time period under Section 38 (3) (a) (ii) of the DVAT Act. As has been explained by this Court in *Swarn Darshan Impex (P) Limited v. Commissioner, Value Added Tax (supra)*, proceedings initiated by issuing a notice under Section 59(2) of the DVAT would be independent of the requirement of processing and issuing the refund within the time limit under Section 38 of the DVAT Act. It will not constitute an excuse to postpone the issuing of the refund claimed.

14. Consequently, the Court finds no valid explanation for the failure by the DT&T to process and issue to the Petitioner the refunds for the fourth quarter of 2010-11 and first quarter of 2011-12 within the time frame set out under Section 38 of the DVAT Act.

15. On the question of the Petitioner not uploading the requisite Form 9 under the CST Act till 9th February 2015, learned counsel for the Petitioner is right in his contention that Section 38 (7) has to be read with Section 38 (3) of the DVAT Act and not in isolation. Section 38 (3) opens with the words "Subject to sub-section (4) and sub-section (5) of this Section" and proceeds to refer to any amount remaining due "after the application referred to in sub-section (2) of this Section". If Section 38(7) is read in the context of Section 38(3) of the Act, it becomes clear that those time limit will have to be calculated in the context of the Commissioner determining that some other amount is due under the DVAT Act or the CST Act against which the refund claimed requires to be adjusted. In the present case, there was nothing found due from the Petitioner whether under the DVAT Act or the CST Act at the time the Petitioner's return for the said periods claiming refund were picked up for scrutiny. Had the DT&T responded promptly as was envisaged, then the Petitioner could have been asked to furnish

the information or particulars as envisaged under section 38 (7). If there was a failure by the Petitioner thereafter to provide the information or documents then possibly the question of the time limit under Section 38 (3) being correspondingly postponed might arise.

16. As regards the other periods for which refunds have been claimed, viz., the third and fourth quarters of 2011-12 and the second and fourth quarters of 2012-13 and the fourth quarters of 2013-14 and 2014-15, it is not disputed even by the Respondent, that the claims were not processed within the time limit set out under Section 38 of the DVAT Act. It appears that in relation to the return filed for the second quarter of 2012-13, a notice under Section 59(2) was issued on 25th July, 2016. Clearly, therefore it is way beyond the two months period envisaged under Section 38(3)(a)(ii) within which refund had to be processed and issued.

17. Mr. Satyakam urged the Court to grant the Respondent sufficient time so that entire exercise pursuant to the notices issued under Section 59 of the DVAT could be completed. The Court is not, in these petitions, concerned with the outcome of the proceedings sought to be initiated by the Respondent by issuing notices under Section 59 of the DVAT Act. The issue that is before the Court is the failure of the DT&T to issue refunds within the time limits envisaged under Section 38 of the DVAT Act. These refunds need not and should not await the outcome of those proceedings under Section 59 of the DVAT Act which in any event have been initiated beyond the stipulated time limits. The refunds are long overdue and interest on the refund amounts are mounting.

18. The Court is constrained to observe that there have been a large number of petitions filed in this Court by dealers awaiting the processing of their refund claims. Despite numerous judgments of this Court and circulars issued by the Commissioner VAT, including Circular No. 6 of 2005 and recently the Order dated 21st July 2016, the problem of delayed refunds persists. The frequent transfers of VATOs and the lack of any orientation and training as regards their statutory responsibilities cannot constitute a valid justification for delaying the refunds due to the dealers. The Court would urge the Commissioner VAT to review the issue of grant of refunds on priority basis so that the process is streamlined and his instructions regarding speedy disposal of refunds is strictly followed. He must initiate disciplinary action against those officers of the DT&T who are found disobeying the instructions issued by the Commissioner from time to time in this regard. The Commissioner should undertake a periodic review, at least once in two weeks, as to how many refund applications have been processed and within what time. Responsibility should be fixed on derelict officers and disciplinary proceedings initiated where there is a clear breach of the statutory duties. The collective failure of such officers is imposing a huge interest burden on the exchequer which is clearly avoidable."

Petitioners" contentions

5. The petitioners argue that the DVAT authorities' contentions with regard to the time-frame under Section 38(3) being suspended as it were wherever dealers do not furnish statutory documents, such as C-Forms, F-Forms and H-Forms under the Central Sales Tax Rules, is misplaced. They urge that the DVAT Act was enacted pursuant to Entry 54 of the List 2 to the Seventh Schedule to the Constitution of India whereas CST was enacted in furtherance to the power traceable to Entry 92A of the Union List (List 1) of the Seventh Schedule of the Constitution of India. Both operate in separate fields and are independent of each other. It was contended that applicability of the local or State mechanisms in the adjudication and enforcement of Central Sales Tax liabilities does not in any manner detract from the independent nature of these enactments and their distinct levies. The Central Sales Tax brings to tax inter-State transactions; the State/local Acts such as the VAT prevail only in respect of intrastate sales. Learned counsel rely upon the judgment of this Court reported as *Navbharat Enterprises v. Sales Tax Officer* 1987 (66) STC 252 (Del) and *R.H. Enterprises v. Commissioner Sales Tax* 1992 (85) STC 251. It is urged that while adjudicating refund applications under the DVAT Act, recourse to provisions of Central Sales Tax Act and demands made thereunder are not only inapt, but unwarranted. It is further highlighted that under the Central Sales Tax regime, if some forms are not received by the date of assessment, a very high rate of 15% is charged. Learned counsel emphasized that if the interpretation by the DVAT authorities is accepted, no refund can be issued till receipt of the CST forms and no interest would also be payable by the revenue till such forms are furnished and 15% of such Central Sales Tax would be charged against forms not received, which is completely untenable.

6. It was submitted that inter-State sales are defined under Section 3 of the Central Sales Tax Act whereas sales outside the State are defined in Section 4. Section 5 deals with sales in the course of import of goods and export of goods outside the territory of India. Central Sales Tax Act envisions levy of tax in the course of inter-State trade and commerce under Section 6 whereas Section 8 fixes the rate. Section 8(1) provides for concessional rate of tax subject to the condition that declarations in the prescribed format under Section 8(4) are made. In this context, Sections 13(3) and (4) of the Central Sales Tax Act empower the State Government to frame rules. One such power is under Section 13(4)(e)-framing of rule prescribing authorities from whom and the conditions subject to which and the fee subject to payment of which any form or certificate under proviso to Section 6(2)(a) or a declaration under Section 6(A)(1) or Section 8(4) may be obtained. Learned counsel submitted that pursuant to this power, Rule 4 of the Central Sales Tax (Delhi) Rules, 2005 prescribe the manner of furnishing the forms which is as follows:

"in addition to returns required under Rule 3, every dealer shall also furnish to the Commissioner a reconciliation return for a year in form-9 relating to the receipt of declarations/certificates (statutory forms) within a period of 6 months from the end of the year to which it relates. The return shall be filed

electronically."

7. It is argued by learned counsel that in view of the above Rule which was brought into force from 05.03.2014, furnishing of declarations in Forms-C, F, J, I etc. is dispensed with and these forms are to be furnished in original if the Commissioner directs the dealer to furnish them during the seven years from the end of the year to which they relate. Learned counsel especially relied upon the proviso to the Rule. Learned counsel also emphasized that under Rule 4(1) instead of a declaration, only a reconciliation return within six months from the end of the concerned year is required. This period for furnishing reconciliation return can be extended by the Commissioner under proviso to Rule 4(3) of the Central Sales Tax (Delhi) Rules, 2005. Learned counsel highlighted that the Commissioner had been extending the time for furnishing reconciliation return from time to time and rely upon the various extensions granted on 28.11.2014, 09.01.2015, 05.02.2015, 31.03.2015, 31.10.2015, 15.12.2015, 15.01.2016 and 29.02.2016 which continued till 30.09.2016. This meant that the period for furnishing the forms for the year 2012 till date was available to all dealers.

8. Learned counsel next rely upon various circulars issued by the Commissioner DVAT (Circular Nos.6 of 2014-15; 8, 12, 37 and 38 of 2015-16). Each of these emphasize that firstly the concerned VAT officers were under an obligation to adhere to the timelines and that filing of hard copy of the CST forms is no longer essential and thirdly that statutory central forms could be verified from TINXSYS mode for authentication of the claims. It was thus emphasized that the legislature in its wisdom did not subordinate the provision for refund under Section 38 (3) to the requirement of forms under Sections 38(7) (c) and (d) and consequently the timeline within which the refunds had to be processed under Section 38(3) remained unchanged. The petitioners argue that the Revenue's contentions about the timelines being subject to fulfilment of conditions under section 38(7) is misconceived and would result in anomalous consequences. Section 38(3) requires refunds to be made within one month from the date of furnishing of return if tax period is one month and within two months if the tax return is quarterly. As reconciliation returns are to be filed within six months from the end of the year, Section 38(3) would in effect be rendered otiose. It is stated that as a matter of fact, the assessing authorities never picked-up the refund applications within the prescribed time they were allowed and as and when the VAT authorities felt it appropriate, the processing began. In these circumstances, the entire period till which they chose to pick-up the applications - ranging between 6 months to 4-5 years, could not be attributed to the petitioners or dealers. Had such dealers been intimated at the appropriate time, i.e. within the limitation period prescribed under Section 38(3) about any deficiency and they had defaulted, or had consumed some time to file relevant details, only such time could be excluded for the purposes of calculating the interest. Wherever the processing took place after the lapse of the period prescribed under Section 38(3), the question of denying any interest for any period did not arise.

9. Learned counsel relied upon the judgment of the SC in *Commissioner Sales Tax v. Indira Industries*, 2001 (122) STC 100 (SC) for the proposition that an interpretation adopted by the taxing authority on the law is binding on it and that it cannot be heard to advance arguments which is contrary to its own understanding. It was stated that such being the case, the consistent trend of circulars issued by the DVAT authorities belie and undermine its contentions in these proceedings, i.e. that the timelines prescribed under Section 38(3) would not apply where statutory forms and declarations under the Central Sales Tax Act are not furnished by the dealers concerned.

Contentions on behalf of the DVAT authorities

10. Learned counsel for the revenue submit that by virtue of Sections 3 and 7 of the DVAT Act, certain provisions of the CST Act would not apply to determine whether or not a particular taxable sale takes place. These are relevant for the purpose of granting exemptions or deductions from the sales tax by a dealer. Section 11 of the DVAT Act also provides for calculation of net VAT liability for every dealer. Section 11(2) enacts that if the net tax of the dealer calculated under the DVAT Act is negative, then he is to adjust the amount in the same tax period against the tax payable under the CST Act, if any, and be entitled to either carry forward balance or claim refund. The Commissioner is obliged to deal with the refund thereafter in the manner prescribed under Section 38 of the DVAT Act. Learned counsel states that majority of refund claims arising are on account of the CST transactions either at a concessional rate of 2% under Section 3 or at NIL rate under Sections 4, 5 or 6A of the CST Act. In respect of these, various documents such as Forms-C, E1, E2, F, H and I have been prescribed in connection with different kinds of transactions. Form-C relates to inter-State sales for which accounting provisions are Section 8(4) of the CST Act and Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules. Form-C as well as Forms E-1 and E-2 relate to Section 3 and Section 6(2) read with Rule 12(4). Whereas Form-F relates to the rates and claims under Section 6A read with Rule 12(5) of the Central Sales Tax Rules, Forms-H and I relate to export sales under Section 5(4) read with Rule 12(10) and for sales units under SEZ under relevant sections, i.e. Sections 8(6), 8(8) read with Rule 12(11) respectively. These sales are not taxable under DVAT.

11. Learned counsel argues that the State DVAT authorities are empowered to implement and enforce the provisions of the Central Sales Tax Act; by virtue of Section 11(2) of the DVAT Act, any refund claim has to be dealt with in the manner specified by the State law, which in the present case is Section 38 of the DVAT Act. Placing particular reliance on Section 38(7)(d), learned counsel underlines that this provision has the effect of excluding the time taken in furnishing declarations or certificates or forms mandated under the Central Sales Tax Act, 1956. It is stated that Sections 38(7)(c) and (d) were introduced by way of an amendment to the DVAT Act, 2012. The Statement of Objects and Reasons, in this context, contemplated linkage of the time period under Section 38 for

processing refunds with the filing of statutory forms under the CST Rules. It was, therefore, argued that by virtue of Rule 4 of the Central Sales Tax (Delhi) Rules, every dealer necessarily should furnish reconciliation returns for any year in Form-9 relating to receipt of applications/certificate within six months from the end of the year to which they relate. This document, Form-9 contains details on account of the total Central Sales made under various provisions of the CST Act and total number of statutory forms received against those and value of pending statutory forms against total central sales made. Nevertheless, this form is not in substitution of the original declaration forms, i.e. C, E1, F, H etc, which have to be necessarily provided - in original to the concerned authority. Highlighting this as an important imperative, learned counsel states that the original forms contained the seal and stamp of the issuing authority and it would authenticate the veracity of transactions claims under the Central Sales Tax Act by the dealer. Unless such forms are furnished physically, it is not possible to verify the credentials and authenticity of the refund claims.

12. It is submitted that from a conjoint reading of Section 3(3), Section 7, Section 11(2) and Section 38(3) read with Section 38(7) of DVAT Act, 2004 along with Section 3, Section 4, Section 5, Section 6A and Section 8 of the Central Sales Tax Act, 1956 read with CST (Registration and Turnover) Rules, 1957 and in particular Rule 12, what emerges is that the time limit prescribed under Section 38(3)(a) is subject to the exclusion of time taken by the dealer in furnishing the declaration or certificate forms as required under Central Sales Tax Act, 1956 (which the dealer is obligated under Central Sales Tax Act, 1956 and Central Sales Tax Rules, 1957) by virtue of Section 38(7)(d). Elaborating on this, it is argued that Section 8 (4) of the CST Act provides that the rate of tax (concessional rate of 2%) in Section 8 (1) of the Act is applicable only upon furnishing of the said Declaration(s)/certificate(s) in statutory forms to the prescribed authority within a specified period. In other words, no concession in the rate of the tax shall be applicable to the dealer/s who fail to furnish such prescribed form obtained from prescribed authority. The tenor of other provisions: Section 6 (2), Section 6 (4), Section 6A (1), Section 8 (4) of the CST Act inter alia mandate furnishing of the said declaration(s)/ certificate(s) in the statutory Forms to the prescribed authority within a specified period. Section 5 (4) of the CST Act, also makes the provision under Section 5 (3) conditional inasmuch as the dealer selling the goods is required to furnish to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

13. Rule 12(1), 12(4) and 12(5) of CST (Registration and Turnover) Rules, 1957 prescribe Form C, D, E-I, E-II and Form F under sub-section (4) of Section 8, sub-section (2) of Section 6 and sub-section (1) of Section 6A respectively of the CST Act, 1956. The said forms, thus, explicitly provide, among other things, in the very format itself, that the original form of declaration(s)/certificate(s) are to be furnished to the prescribed authority, duplicate is to be retained by the selling

dealer, counterfoil to be retained by the purchasing dealer. Rule 12(7) CST (Registration and Turnover) Rules, 1957 reads as follows, "the declaration in Form-C or Form-F or the certificate in Form E-I or Form E-II shall be furnished to the prescribed authority within 3 months after the end of the period to which the declaration or the certificate relates." It is submitted that Rule 12(7) of CST (Registration and Turnover) Rules, 1957 inter alia mandates furnishing of the said declaration(s)/certificate(s) in statutory Forms to the prescribed authority within a specified period.

14. Learned counsel relied upon the judgment of this Court in *Anand Traders v. Commissioner of Sales Tax* (2014) 202 ECR 273; *Khemka & Co. (Agencies) Pvt. Ltd. v. State of Maharashtra* 1975 (35) STC 571 (SC) and *India Carbon Ltd. v. State of Assam* (1997) 106 STC 460 (SC) to say that the State mechanisms are to prevail in respect of levy and collection of Central Sales Tax dues. Thus, when it came to refunds under both Central Sales Tax Act and DVAT, the provisions of Section 38(7)(d) have to prevail. Learned counsel submitted that the so-called understanding of the Department, in the circulars, to the extent it is contrary to law cannot create any enforceable right.

Analysis and findings:

15. The detailed submissions of the parties notwithstanding, the controversy requiring determination in these cases is a narrow one, which is, does Section 38(7)(d) - introduced on 18.06.2012 prevail over, and carve out an exception in respect of the binding period prescribed by Section 38(3) for processing refunds in completed VAT assessments. The interpretation in *Swarn Darshan Impex* (supra) is not denied. But the Revenue's submission is that the judgment was rendered before introduction of Section 38(7)(d) and that the later judgment in *Prime Papers & Packers* (supra) did not consider the interface between Sections 8(1) and 8(4) of the CST Act with the obligation to furnish declarations under Rule 12 of the Central Sales Tax Rules, and the refund provisions of Sections 11(2) and 38(3) of the DVAT Act.

16. To recapitulate - both *Swarn Darshan Impex* (supra) and *Prime Papers & Packers* (supra) authoritatively ruled that the 1-2 months" period provided for examining and granting refunds is absolute and that the transgression of these time limits means that the Revenue has to bear interest liability as long as the refund claims are not fully settled. At the outset, this court notices that the *Prime Papers & Packers* (supra) did consider Section 38(4) and Section 59(3).

Now Section 38(7)(c) and (d) were introduced by the DVAT (Amendment) Act, 2012 with effect from 18.06.2012. An isolated reading of that provision does support the Revenue's contention that the dealer is under an obligation to furnish "the declaration or certificate forms" required by the CST Act. Undoubtedly - again seen in an isolated manner, this obligation is an effectuation of Sections 8 and 11(2) (CST Act) and Rule 12 that prescribe preconditions for grant of concessional or NIL CST levies. The question is - are Sections 38(7)(c)

and (d) "game changers" which disrupt or suspend the time-frame under Section 38(3)" This court"s considered view is in the negative, and that there is no change, in the time-periods.

17. Firstly, Section 38(7)(c) and (d) nowhere state that the original paper declarations in CST Forms C, E1, E2, F, H, I etc. are to be furnished. Concernedly, the DVAT asseessing authority has to examine the claims under the local law as well as CST claims (and refunds). Again, the mechanism for assessments, adjudication, etc. has to be in terms of the local law. In the present instance, the local law is the DVAT Act and Rules framed thereunder. Pursuant to these provisions, dealers provide returns through forms. The amendment to the CST (Delhi) Rules, w.e.f. 05.03.2014, altered Rule 4 and a new Form 9 (Reconciliation Form) had to be furnished by dealers. This form is both comprehensive - and, at the same time, cumbersome. It requires dealers to provide exhaustive details of their turn-overs; including CST turnovers and the types of central forms (C, E-1, E-2, H, I & J). The forms require four years" details (2010-11, 2011-12, 2012-13 and 2013-14) that dealers were to furnish.

18. The Commissioner of DVAT, by various circulars (13 of 2014-15 dated 29.09.2014; 30 of 2014-15 dated 31.03.2015; 21 of 2014-15 dated 08.11.2015 and 26 of 2014-15 dated 16.02.2016) extended the period for furnishing returns in Form-9. Even more importantly, by Circular No.10 of 2012-13 dated 13.07.2012, all registered dealers who had made stock transfer or central sales on concessional rates of tax during 2009-10 and 2010-11 were asked to file requisite information online, to avoid inconvenience, "adverse assessment and penalty at a later date." This is evident from a notification issued under Sections 70(2) and (3) of the DVAT Act. The said statutory notification is in the following terms:

"No.F.7(450)/Policy/VAT/2012/336-347 Dated: 12-7-2012

Notification

Whereas, I, Rajendra Kumar, Commissioner, Value Added Tax, Government of National Capital Territory of Delhi, consider it necessary that quarter wise details relating to Central Declaration Forms received against the stock transfer or central sales made on concessional rates, Central Declaration Forms missing and tax deposited on account of missing forms are submitted online by the dealers.

Now, therefore, in exercise of the powers conferred on me by sub-section (1) read with subsection (2) and sub-section (3) of section 70 of Delhi Value Added Tax Act, 2004,I direct that the details relating to Central Declaration Forms received against the stock transfer or central sales made on concessional rates, Central Declaration Forms missing and tax deposited on account of missing forms shall be submitted by the dealers quarter wise, online using his login id and password, for all quarters beginning 01.04.2011 onwards. For this purpose, Form CD-1 annexed with this Notification shall be used. The detailed method of access and use of Form CD-1 is available at the web site of the Department. The last

date for filing of information online in Form CD-1 for every quarter shall be the same as the last date for submission of reconciliation return in form DVAT-51 for the quarter.

It may be noted that financial year 2011-12 onwards, credit for central declaration forms shall be allowed only on the basis of the information received online; and the physical central declaration forms physically received shall be considered only as collateral evidence. In cases where no information is furnished online, it will be presumed that no Central Declaration Forms have been submitted for the entire stock transfer or central sale made on concessional rate of tax and such cases will be assessed accordingly.

This notification shall come into force with immediate effect."

19. Section 70 of the DVAT Act reads as follows:

"70 Power of Commissioner to make notifications

(1) The Commissioner may notify and publish any forms which may be necessary for the reporting of information to the Value Added Tax authorities.

(2) Where the Commissioner has notified a form for a particular purpose, all persons using the form, in such manner as may be notified by him].

(3) Where in his opinion it is necessary or convenient to do so, the Commissioner may issue notifications for carrying out the purposes of this Act:"

Thus, it is clear that the above notification, in the wake of amendment to Section 38 (on 18.06.2012) had to be read together with it.

Circular No.10 dated 13.07.2012 issued in this regard, also clarified the department's understanding and is in the following terms:

"Circular No. 10 of 2012-13

Subject: Online submission of information regarding Central Declaration forms

The Department of Trade and Taxes has introduced the facility for online filing of information regarding Central Declaration Forms submitted, Central Declaration Forms missing and tax deposited on account of missing forms. This application can be accessed through the link titled "Central Forms" on dealer login page on the website of the Department www.dvat.gov.in.

All registered dealers, who have made stock transfer or central sales on concessional rate of tax during 2009-10 and 2010-11, have been requested to file the requisite information online so as to avoid inconvenience, adverse assessment and penalty at a later date, vide Circular No.5 of 2012-13 issued on 29/06/2012.

Representatives of various Trade Associations and Market Associations have approached the Department and requested that the last date for online filing of

this information should be extended by ten days so that maximum number of dealers may benefit from this initiative of the Department.

Keeping this in view, the last date for online filing of information regarding Central Declaration Forms for the years 2009-10 and 2010-11 is extended up to 31/07/2012."

Similar circulars and notifications were issued - on 06.11.2013 and 12.12.2013. The Circular No.31 of 2013-14 in fact stated as follows:

"Circular No. 31 of 2013-14

Sub: Filing of information in block R.10 of CST return Form 1.

Block R.10 of CST return Form 1 pertains to filing of the information for receipt and pendency of central statutory forms/declarations in lieu of concessional sale/stock transfer for the preceding 4 years. The block has been inserted in the return through recent amendment in Central Sales Tax (Delhi) Rules, 2005. Second quarter return of the year 2013-14 was the first return to be filed after the amendment.

2. On the request of Sales Tax Bar Association and dealers, the filing of the said block was de-linked from the return and a facility was created to file the information on pending statutory forms separately. The date of filing of the said block as well as return was also extended upto 31st December, 2013.

3. Many dealers have availed of the facility and filed the above said information online. But, some dealers have still not been able to compile and file the information till date, although their returns have been otherwise submitted. Now, the third quarter return also becomes due from 1st January 2014, wherein the same information is to be filed upto date.

4. In view of the above, as a facility to the dealers who could not file the information in block R.10 of CST return Form 1, they are allowed to file the same as part of the third quarter return of the year 2013-14.

5. Further, in exercise of the powers conferred on me by Rule 49A of Delhi Value Added Tax Rules, 2005, I, Prashant Goyal, Commissioner, Value Added Tax hereby extend the date of filing of third quarter return of 2013-14 to 31st January, 2014."

20. It is thus evident from the above factual discussion, especially with respect to various notifications and circulars issued by the DVAT Department that even though the amendment to Section 38(7) was made in June 2012, within three weeks, a statutory notification followed by circulars was issued advising all dealers to furnish requisite details online and to not file the original copies of the declarations. The language of Section 38(7)(d) nowhere specifies that actual physical or hard copy of the original certificate is required. Moreover, the necessary form, i.e. Form-9 elicits exhaustive details in respect of CST and concessional duties with regard to receipt and pendency of declarations in Form

E1, E2, F, H etc. Each of these relate to specific quarters for all the previous four years and are to be furnished by the dealers. Such being the case, the Revenue's contention that the mandate of Sections 11(2) of the DVAT Act and Rule 12 of the CST Rules, overriding all other concerns and suspending as it were, the obligation to frame the assessments and process refunds within the time frame prescribed under Section 38(3) is misplaced and rejected as unacceptable. There is nothing in the language of these provisions compelling the dealers to provide original certificates in the physical format. Once both the parties agree that the DVAT mechanism through the provisions of the Act and the Rules would prevail and apply for assessments in regard to both DVAT and CST liabilities and obligations, there is no warrant for the submission that the regime in CST has to be read in a manner different from the one understood in DVAT. Khemka (supra) and India Carbon (supra) are authorities for the proposition that although the principles of taxation and the rate of tax are dictated by the Central enactment, the mechanism for adjudication, assessment, recovery, refund etc. and all other related acts are to be found in the local law. So seen, the understanding of the Revenue, which has issued a statutory notification under Section 70 stating that online certificates alone and none others would be entertained effective from 12.07.2012, i.e. after introduction of Section 38(7)(d) and further details that Form 9 itself comprehends four years" details the time for the submission of which was extended repeatedly, undermines and negates the Revenue's arguments.

21. During the course of hearing, it emerged that with the introduction of online registration regime, in fact papers and documents are not entertained at all and that only in the event of doubts and queries, the concerned assessing authority - VATO/AVATO issues notice to the dealer calling for the necessary specific documents, and verifies and returns them. In other words, the revenue does not even provide any longer for the storage and archiving of original documents submitted by the dealers. Another important aspect which cannot be lost sight of is that whilst the central statutory forms are intended to enable the dealer concerned to claim concessional duty or exemption, as the case may be, and its verification is an important element, at the same time, the mechanisms evolved by the State (which prevail even for CST assessments etc.) should be pragmatic and simple. What the authorities argue today is contrary to their consistent understanding after the introduction of Section 38(7)(d). With the amendment of Rule 4 of the Central Sales Tax (Delhi) Rules with effect from 05.03.2014 and the introduction of the reconciliation form, which in fact includes four years" details, the entire argument of the revenue as to the necessity and obligation for furnishing original certificates as a principal condition for processing refund claims, fails.

22. Indira Industries (supra) is authority for the proposition that whilst circulars are not per se binding and cannot override express provisions of law, nevertheless, if they are not inconsistent with law, they bind the statutory authorities. In the present instance, there is no conflict of the kind which the

Revenue projects, between the circulars which it issued and pursuant to which dealers furnished online particulars, on the one hand, and Section 38(7) of the DVAT Act or other provisions of the CST Act.

23. In view of the above discussion, it is held that in all these cases, the ratio in Prime Papers & Packers (supra) is good law and does not call for a review. Furthermore, the declaration in Swarn Darshan Impex (supra) and Prime Papers & Packers (supra) would mean that for the period beyond what is stipulated under Section 38(3), the Revenue would be under an obligation to pay interest till the point of time the refund claim is adjudicated and allowed. If, for any reason, during the processing of the refund claim (but after the two month period), the assessee is called upon to furnish particulars relating to any inter-state transactions for the purposes of verification of any of the central forms, that time would stand excluded. It is however, clarified that only such time as is consumed by the dealer beyond the period given in the notice (say 15 days or so) in regard to details of specific transactions would be excluded. In other words, a general notice calling for documents relating to transactions would not do, having regard to the fact that the CST forms are also verifiable online. It is only where the Show Cause Notice specifies a particular transaction or transactions in relation to specific quarters and provides the time limits within which the dealer has to furnish details and where such dealer exceeds the time limit would the actual time (taken by the dealer in excess of the time provided) be excluded from the calculation. Thus, if a dealer is issued a notice to provide C-forms for the first quarter of 2012-13 and given 15 days for the purpose, and he does provide those details, which can be verified within 15 days, the time will not be excluded. If on the other hand, the dealer takes additional 15 days, only those 15 days would be excluded for the purpose of calculation of interest.

24. The Court visualizes the following situations in this regard:

(a) If the period of two months is to expire on 31.03.2017, in a given case, and the officer seeks explanation on 15.03.2017, which is answered on 15.04.2017, the time after 31.03.2017 would not qualify for interest.

(b) If the period expires on 31.03.2017 and the query or verification is sought through notice on 01.05.2017, which is replied within 15 days (before 14.05.2017), the entire interest after 31.03.2017 is payable. If the query is answered on 30.06.2017, the time taken, i.e. between 01.05.2017 to 30.06.2017 shall be excluded for payment of interest. At the same time, if documents are offered for scrutiny but are in fact not examined, the interest would be payable from the date the documents are offered, not when they are examined. To eliminate abuse on both sides, whenever information is sought it must be specific and relate to particular periods, and particular documents; the assessee should, in turn, provide an index of all documents supplied, with particulars and date of submission. The DVAT Department should facilitate the uploading of scanned documents/forms by the dealers, in addition to physical verification.

(c) Once verification of documents is completed, and it is found that they are in order, while calculating interest on refund, the exclusion (of payment of interest) would be only for the period and the amounts relatable to such forms. In other words, interest for other amounts cannot be withheld.

25. Accordingly, a direction is issued to the respondents to process all the pending refund claims of the petitioners in respect of the documents by calling specific details within reasonable time and dispose of the refund claims within four weeks from today. The respondents/DVAT shall ensure that the dealers shall also be entitled to applicable interest in accordance with law up to the date of payment in terms of the above directions. All the writ petitions are allowed in the above terms.