IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 20.07.2023

\+ **W.P.(C) 15685/2022**

RAMKY INFRASTRUCTURE LIMITED ..... Petitioner

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Rajesh Jain and Mr Virag Tiwari, Advocates.
For the Respondent : Mr Satyakam, ASC

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HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioner has filed the present writ petition, *inter alia*, praying that the respondent be directed to refund the amount of

₹54,58,897/-, along with interest with effect from 01.06.2015. The said sum of ₹54,58,897/- as claimed by the petitioner, relates to the fourth quarter of the Financial Year 2013-14 and was included in the

petitioner's claim for refund of ₹2,64,77,458/-, in its revised return of Value Added Tax for the fourth quarter of the Financial Year 2013-14, furnished on 31.03.2015. The petitioner claims that in terms of Section 42 of the Delhi Value added Tax Act, 2004 (hereafter '**the DVAT Act**'), it is entitled to interest on the said amount of ₹54,58,897/- with effect from 01.06.2015, that is, two months after filing the revised return.

FACTUAL CONTEXT

2. The petitioner is a limited company engaged in the business of development of the infrastructural sector and was awarded civil construction works for various projects in Delhi, namely, Mangolpuri DMSW Project, Narela Power Project, DSIIDC Residential Flats Project, Bawana Power Projects, and Najafgarh Drain Project, to name a few.

3. For the purposes of complying with his obligations under the DVAT Act as well as the Central Sales Tax Act, 1956 (hereafter '**the CST Act**'), the petitioner applied for and was registered with the Department of Trade and Taxes, Delhi (hereafter '**the Department**') on 05.03.2007. The petitioner was assigned TIN 07510324123.

4. On 27.05.2014, the petitioner filed its return under the requisite form (Form DVAT 56) for the fourth quarter of the Financial Year

2013-14 claiming a refund of ₹2,59,88,302/-. Thereafter, the petitioner filed a revised return in Form DVAT 56 on 31.03.2015, enhancing its claim of refund to ₹2,64,77,458/-. The petitioner claims that on the date of filing of its return, there were no amounts due for any period either under the DVAT Act or the CST Act.

5. On 07.06.2014, and 15.05.2014 notices (in all twenty-four in number) for default assessments of tax and interest were issued under Sections 32 and 33 of the DVAT Act, for various tax periods falling during the Financial Year 2012-13. On 15.06.2015, notices for default assessments were framed for tax periods falling within the Financial Year 2013-14 by the Department. These default assessments were made alleging mismatch in the Input Tax Credit (ITC), due to mismatch between purchases made by the petitioner and sales shown by the registered selling dealer. The Department raised a demand of additional tax amounting to ₹54,58,897/- on account of the aforesaid count. In addition, the Department also imposed a penalty of ₹32,600/- on the petitioner.

6. The petitioner claims that on 10.10.2015, the petitioner filed its objections in respect of the default assessments for the tax periods falling within the Financial Years 2012-2013 and 2013-2014, under Section 74 of the DVAT Act before the Objection Hearing Authority

(hereafter '**the OHA**'). The petitioner claims that it simultaneously also pursued the Department for release of the refund as claimed by it in its revised return in, respect of the fourth quarter of the Financial Year 2013-14. There is a controversy as to whether the petitioner had filed the objections, on 10.10.2015 as claimed, or later. Although, it is contended on behalf of the Revenue that the objections were filed later; it is conceded that there is no material to substantiate the said contention. Mr Satyakam, learned counsel who appeared for the Revenue, states that the relevant records are not traceable and it is not possible to ascertain the date on which the objections were filed. He also clarified that the date of filing of the objections (30.09.2019) as reflected in the tabular statement set out in paragraph no. 5 of the Revenues application (CM No. 7916/2023) is not the date of filing of the objections but the date of communications issued. We therefore, accept that the Petitioner had filed objections under Section 74 before the OHA on 10.10.2015, as claimed.

7. Since the petitioner's claim for refund was not processed, the petitioner filed a writ petition before this Court (being ***W.P.(C) No. 7324/2017*** captioned ***Ramky Infrastructure Limited v. Commissioner of Trade and Taxes***). The said petition was taken up for hearing on 08.09.2017. On the said date, the statement was made on behalf of the respondent that the petitioner's refund would be processed and the refund order would be issued within a period of four weeks from the said date. The said statement was noted and this Court, by an order dated 08.09.2017, directed that the refund along with interest be paid directly to the account of the petitioner within two weeks, thereafter.

8. The petitioner's claim was not processed within the period as stipulated in the aforementioned order dated 08.09.2017. Resultantly, the petitioner was constrained to file a Contempt Case (being Cont. Cas. 736/2017) under Section 11 read with Section 2(b) of Contempt of Courts Act, 1971. In the aforementioned contempt petition filed on 28.10.2017, the petitioner, *inter alia,* prayed that directions be issued for the refund of ₹2,64,77,458/- along with interest. While the said proceedings were pending, on 30.10.2017, the petitioner's claim for refund was partly processed and the Department granted a refund of ₹2,40,32,088/-, which included interest amounting to

₹30,46,127/-. The refund amount was computed after adjusting an amount of ₹54,91,497/- (₹54,58,897/- on account of additional tax under the default assessment notices and ₹32,600/- on account of penalty). The contempt petition was, thereafter, dismissed by this Court by an order dated 16.07.2018.

9. The petitioner prevailed in its objections before the OHA impugning the additional demands raised pursuant to the default assessment of tax and interest for the various periods falling within the Financial Years 2012-13 and 2013-14. By orders dated 12.07.2022, the OHA set aside the said demands. Copies of the orders dated 12.07.2022 placed on record also indicate that the OHA had reviewed the earlier assessments under Section 74B(5) of the DVAT Act.

10. Thereafter, the petitioner issued a letter dated 12.09.2022 claiming release of the amount of ₹54,58,897/- along with interest that had been withheld on account of the assessments under Sections 32 and 33 of the DVAT Act, as noted above.

11. The petitioner's claim for refund was not processed. Aggrieved by the same, the petitioner has preferred the present writ petition.

12. It is relevant to note that in the meantime, the additional demands aggregating to ₹10,43,918/- have been raised relating to the Financial Year 2013-14 (demand of ₹6,50,434/- on account of tax and interest; and ₹3,93,484/- on account of penalty). These demands were reflected as raised on 04.09.2018. The petitioner claims that on 02.11.2018, it filed objections against the said demands and that the said objections are pending consideration.

13. This petition was listed before this Court on 15.11.2022. This Court had briefly noted the petitioner's grievances and issued notice. Mr Satyakam, learned counsel had appeared on behalf of the Department on advance notice and had accepted the notice. He had sought time to take instructions and also contended that in terms of Rule 57 read with Rule 34 of the Delhi Value Added Tax Rules, 2005 (hereafter '**the DVAT Rules**'), the petitioner was required to apply for the refund in Form DVAT 21. This was contested by the learned counsel for the petitioner. However, without considering the rival contentions, this Court granted liberty to the petitioner to file Form DVAT 21, claiming refund without prejudice to its rights and contentions.

14. In terms of the liberty granted by this Court, the petitioner made an application in Form DVAT 21 seeking refund of the amount of

₹54,58,897/- along with interest, for the fourth quarter of the Financial Year 2013-14.

15. The petitioner's claim for refund was considered and the Joint Commissioner of the Department of Trade and Taxes, passed an order on 01.02.2023 in Form DVAT 22 granting a refund of the amount of ₹44,14,979/- after adjustment of an amount of 10,43,918/-. The petitioner's claim for interest was partly allowed to the extent of

₹7,983/- being the interest on the amount of ₹44,14,979/- computed from 15.01.2023 (that is, two months from the date of filing of Form DVAT 21), till the date of the order.

16. Whilst the petitioner claims that it is entitled to an interest on the refund of tax with effect from 01.06.2015, that is, on expiry of two months from the date of filing of the revised return; the respondent claims that the petitioner is entitled to an interest only with effect from two months, after filing an application for the refund in Form DVAT 21. According to the respondent, no interests were payable on the amounts as adjusted, on account of the outstanding demands, notwithstanding that the same were set aside subsequently.

17. The only controversy, that is, required to be addressed by this Court is whether the petitioner's claim for interest on the refund is

required to be reckoned with reference to the date of filing its revised return.

SUBMISSIONS

18. Mr Rajesh Jain, learned counsel appearing for the petitioner referred to the decision of the Co-ordinate Bench of this Court in ***ITDITD Ltd CEM JV v. Commissioner of Trade and Taxes: 2019 SCC Online Del 9568*** and on the strength of the said decision submitted that the demands raised subsequent to the claim for refund cannot adversely affect the petitioner's claim for refund. He also relied on the decision in the case of ***IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes: (2017) SCC Online Del 11864***. He further submitted that the controversy involved in the present case was covered by the decision of the Co-ordinate Bench of this Court in ***Corsan Corviam Construction S.A-Sadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes: 2021 SCC OnLine Del 3788.***

19. Mr Satyakam, learned counsel appearing for the respondent countered the aforesaid submissions. He submitted that the claim for the refund could be processed only once the petitioner had made an application in Form DVAT 21. He submitted that the default assessment orders would supersede the petitioner's returns and the same could no longer be considered as assessments for the purposes of processing the refund or the interest, thereon. He submitted that the petitioner's claim

for the refund would arise pursuant to the orders setting aside the said default assessments and therefore, in terms of Rule 34(4) of the DVAT Rules, the petitioner would require to claim the refund in Form DVAT 21 along with a certified copy of a judgment of a Court or an order setting aside the default assessments. He also referred to the decision in the case of ***IJM Corporation Berhad & Ors. v. Commissioner of Trade and Taxes*** (*supra*). He submitted that setting aside of the default assessments pursuant to the orders passed by the OHA under Section 74 of the DVAT Act does not revive the returns. He contended that in such cases, the petitioner's claim for refund would arise directly as a result of the orders passed by the OHA under Section 74 of the DVAT Act and not on account of the return furnished by the assessee. He also submitted that similarly, if the petitioner became entitled to the refund on prevailing in the appeals either before the Appellate Tribunal under Section 76 of the DVAT Act or before this Court under Section 81 of the DVAT Act; the petitioner's entitlement to the refund would get instituted pursuant to the said orders. In terms of Rule 57 of the DVAT Rules, the refund so payable, is required to be processed in accordance with Rule 34 of the DVAT Rules.

REASONING AND CONCLUSION

20. At the outset, it would be relevant to refer to Section 38 of the DVAT Act, which contains provisions regarding refunds. The relevant extract of the said Section is set out below:

> "**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.

xxx xxx xxx"

21. In terms of Sub-section (1) of Section 38 of the DVAT Act, the Commissioner is obliged to refund the amount of tax, penalty or interest if paid by a person in excess of the amount due from him. In terms of Sub-section (2) of Section 38 of the DVAT Act, the Commissioner is required to apply the excess amount due to be refunded towards the recovery of any other amount due under the DVAT Act or the CST Act. Sub-section (3) of Section 38 of the DVAT Act requires that the amount remaining after adjustments under Sub-section (2) of Section 38 of the DVAT Act be either refunded to the person in terms of Clause (a) of Sub-section (3) or, at the option of the taxpayer, be carried forward as tax credit, to the next tax period in terms of Clause (b) of Sub-section (3) of Section 38 of the DVAT Act.

22. It is also relevant to refer to Rule 34 of the DVAT Rules, which provides for refund of excess payment. Rule 34 of the DVAT Rules is set out below:

> "**34. Refund of excess payment**
>
> (1) A claim for refund of tax, penalty or interest paid in excess of the amount due under the Act (except claimed in the return) shall be made in Form DVAT21, stating fully and in detail the grounds upon which the claim is being made.
>
> (2) Only such claim shall be made in Form DVAT-21 that has not already been claimed in any previous return. A claim for refund made in Form DVAT-21 shall not be again included in the return for any tax period.
>
> (3) The Commissioner may, for reasons to be recorded in writing, issue notice to any person claiming refund to furnish security under sub-section (5) of section 38, in Form DVAT -21A, of an amount not exceeding the amount of refund claimed, specifying therein the reasons for prescribing the security.
>
> (4) Where the refund is arising out of a judgment of a Court or an order of an authority under the Act, the person claiming the refund shall attach with Form DVAT-21 a certified copy of such judgment or order.
>
> (5) When the Commissioner is satisfied that a refund is admissible, he shall determine the amount of the refund due and record an order in Form DVAT-22

sanctioning the refund and recording the calculation used in determining the amount of refund ordered (including adjustment of any other amount due as provided in subsection (2) of section 38).

(5A) The order for withholding of refund/furnishing security under section 39 shall be issued in Form DVAT-22A.

(6) Where a refund order is issued under sub-rule (5), the Commissioner shall, simultaneously, record and include in the order any amount of interest payable under sub-section (1) of section 42 for any period for which interest is payable.

(7) The Commissioner shall forthwith serve on the person in the manner prescribed in rule 62, a cheque for the amount of tax, interest, penalty or other amount to be refunded along with the refund order in Form DVAT-22:

PROVIDED that the Commissioner may transfer the amount of refund through Electronic Clearance System (ECS) in the bank account of the dealer.

(8) No refund shall be allowed to a person who has not filed return and has not paid any amount due under the Act or an order under section 39 is passed withholding the said refund."

23. In terms of Rule 34(1) of the DVAT Rules, a claim for refund of tax, penalty or interest paid in excess of the amount due under the DVAT Act is required to be made in Form DVAT 21 setting out the grounds for claiming such a refund. Sub-rule (2) of Rule 34 of the

DVAT Rules, expressly provides that a claim in Form DVAT 21 is required to be made only if it is not made in a previous return. Thus, once a person has furnished a return claiming a refund, he is not required to file a fresh Form 21, for making any fresh claim.

24. Rule 34(2) of the DVAT Rules must be read in conjunction with Section 38(3)(a) of the DVAT Act. It is clear from the plain language of Section 38(3)(a) of the DVAT Act that the refund claimed by a person in respect of any tax period is required to be processed within a period of one month or two months as the case may be, from the date of furnishing the return or making the claim of the return. In the event the taxpayer furnishes a return reflecting a refund of tax paid, for any period, he is not required to make further claim for such refund by filing Form DVAT 21. This is clear from the plain language of Rule 34(2) of the DVAT Rules.

25. There are two facets to the controversy in this case. The first relates to the requirement of adjusting the pending dues from the amount of refund due to a tax payer. The question being, whether in cases of such an adjustment, a tax payer is required to make a fresh claim notwithstanding, that he had furnished a return claiming such a refund. The second relates to the date when the amount of refund is payable for the purposes of Section 42 of the DVAT Act.

26. The language of Section 38(2) of the DVAT Act indicates the scheme of application of an amount refundable to a person towards the outstanding dues. It requires the Commissioner to apply the excess amount due to a taxpayer towards recovery of any other amount due under the DVAT Act or under the CST Act. Clearly, if there is a crystalized demand, which is due and payable by any taxpayer, the Commissioner is required to first apply the amount refundable for satisfaction of that liability. If any amount remains after the discharge of such dues, the same is required to be refunded within the stipulated period. In other words, the refund would be made only to the extent of the amount that remains payable after discharge of any other amount due from the taxpayer.

27. It is apparent that the use of the words "*any other amount due*" in Section 38(2) of the DVAT Act refers to the amount due and outstanding at the material time, which is other than that covered under the assessment or quantification resulting in the claim for the refund either made separately or as reflected in the return furnished by the taxpayer.

28. As noted above, if the taxpayer does not elect to carry forward the refund to the next period in terms of Clause (b) of Section 38(3) of the DVAT Act; the refund is required to be processed within the period

as specified under Clause (a) of Section 38(3) of the DVAT Act. The application of the amount of refund payable towards any other amount due is clearly of such outstanding amounts that satisfies the two conditions. First, that the amount is due and payable when the refund is required to be processed, that is, within the period of one month or two months, as specified under Section 38(3)(a) of the DVAT Act. And second, that the dues are other than that covered under the quantification, determination or assessment resulting in the claim of the refund.

29. The other cases where the refund is not required to be disbursed is where the Commissioner has issued a notice under Section 58 of the DVAT Act or has sought additional information under Section 59 of the DVAT Act. In such cases, the refund is required to be carried forward to the next period as tax credit, in terms of Sub-Section (4) of Section 38 of the DVAT Act. In terms of Section 38(5) of the DVAT Act, the Commissioner may demand security from a person pursuant to the powers conferred under Section 25 of the DVAT Act, within the period of fifteen days from the date on which the return was furnished or a claim for refund is made. In terms of Sub-Section (6) of Section 38 of the DVAT Act, the Commissioner is required to grant the refund within 15 days from the date the dealer furnishes such security to the satisfaction.

30. It is clear from the above that the scheme of Section 38 of the DVAT Act requires adherence to strict timelines.

31. By virtue of Section 37 of the DVAT Act if the amount of refund payable or part thereof, is applied for the payment of any other amount due under the DVAT Act, the liability in respect of the said due would stand discharged to the extent that the amount refundable has been so applied. The word 'apply' as used in Section 38(2) of the DVAT Act denotes the payment and discharge of the said liability to the extent that the amount refundable, or part thereof, is so applied. Application of the amount refundable against any other amounts due is in the nature of recovery of the said amount and in a manner of speaking, amounts to set off of the amount due payable to a person against a crystalized debt, recoverable from him.

32. If the taxpayer is aggrieved by the determination or assessment of the amount recoverable from him, it is open for him to avail such remedies as available to call into question such assessment or quantification. But he cannot resist recovery of the amount that is due and payable by him by adjustment, in terms of Section 38(2) of the DVAT Act, from the amounts refundable to him. This is, obviously, subject to the Commissioner making such recovery strictly in compliance with the provisions of Section 38(2) of the DVAT Act.

33. Processing of the refund in terms of Sections 38(2) and 38(3)(a) of the DVAT Act, will exhaust and discharge the taxpayer's claim for the refund in full, which is either made by furnishing a return or otherwise.

34. As stated earlier, if the assessee seeks to dispute the liability against which the amount refundable has been applied; he may avail of such remedies as available but the same shall obviously be on the footing that the amount of liability, to the extent of the amount of refund applied, has been discharged by payment. The taxpayer's claim for consequential refund of the amount recovered in terms of Section 38(2) of the DVAT Act, would necessarily be a separate claim and cannot be considered as subsumed in the earlier claim for the refund by the taxpayer, either by furnishing a return or otherwise. As stated earlier, that claim for the refund (under a return furnished by the taxpayer or made separately by filing Form DVAT 21) will stand discharged and satisfied on being processed in terms of Sections 38(2) and 38(3)(a) of the DVAT Act.

35. Having stated the above, it is also necessary to state that if the application of the amount refundable or any part thereof, is not towards an amount that was outstanding and payable at the material time but towards a demand, which is suspended in terms of Section 35(2) of the

DVAT Act, or is, otherwise not recoverable under the machinery provisions for recovery of tax; the taxpayer's claim for the refund would remain unsatisfied. It would be erroneous to assume that the taxpayer's remedy would be to re-apply for the refund after successfully challenging such an appropriation.

36. In terms of the aforesaid scheme, a claim for refund made by furnishing a return (which is self assessment under Section of 31 of the DVAT Act) would stand satisfied and exhausted only if the same is processed strictly in accordance with Section 38 of the DVAT Act. If the refund is not processed within the stipulated time or if the amount refundable is sought to be appropriated against other amounts that were not due and payable at the material time, the taxpayer would be within its right to pursue its claim for refund, either before the Commissioner or by escalating its grievance to the Appellate Authorities and the Courts.

37. The Revenue's contention that in such cases, the taxpayer's claim for the refund arises out of the appellate orders and therefore does not relate back to the date when it was made, either under a return or otherwise, is erroneous, and we reject the same.

38. The taxpayer's remedies and claim in respect of any amount correctly applied in terms of Section 38(2) of the DVAT Act – that is against other amounts due outside the rubric of the return furnished or

its claim for the refund – would follow a different trajectory. As stated above, in such cases the taxpayer's remedies would proceed on the basis that the amounts due and payable have been paid by the taxpayer. If the taxpayer succeeds in his remedies in setting aside the liability (either partly or in whole) against which the amounts refundable (or part thereof) have been correctly applied in terms of Section 38(2) of the DVAT Act; he would be entitled to the consequential relief of a refund in respect of that amount due, to the extent that the same was satisfied by appropriating an amount refundable to him. In such cases, it follows that the taxpayer's refund would arise from such orders setting aside the cause for the outstanding demand and not from the return furnished by him, which was correctly processed in terms of Section 38 of the DVAT Act. In such cases the assessee would have to apply for a refund in Form DVAT 21. The same would not be covered under the return furnished for the claim made, which was correctly processed under Section 38 of the DVAT Act.

39. The petitioner's remedy against the amounts withheld or appropriated towards dues that arise from the same subject as the petitioner's claim for a refund would follow a different course. The same would, essentially, be in the nature of the Commissioner's decision to decline the payment of the refund on account of a subsequent assessment, and not an appropriation towards "*other*

amount due" as contemplated under Section 38(2) of the DVAT Act. If the petitioner prevails in his remedies against such a decision of the Commissioner to decline the payment of the refund on the basis of his assessment, or to not process the same, the petitioner's entitlement to the refund would obviously relate back to the period as specified under Section 38(3) of the DVAT Act. This has been explained by the Coordinate Bench of this Court in ***Corsan Corviam Construction SASadbhav Engineering Ltd. JV v. Commissioner of Trade and Taxes*** (*supra*) as in a manner of speaking, removing the cause that had eclipsed the taxpayer's claim for refund. In such cases, there is no requirement for a taxpayer to make a separate claim for refund by filing Form DVAT 21. The refund claim as reflected in the return would require to be discharged notwithstanding, that the taxpayer has not filed Form DVAT 21.

40. Mr Satyakam's contended that once an assessment has been framed by the concerned authorities under Sections 32 and 33 of the DVAT Act, the return filed by the taxpayer stands superseded. He contends that, if the taxpayer succeeds in challenging the assessment so framed and prevails in establishing that he is entitled to the refund as claimed in the return, the refund would be payable two months from the date of filing the claim for refund in Form DVAT 21, along with the copies of the order passed by the Appellate Authority. According to him

such refund is payable pursuant to the order setting aside or modifying the assessments under Section 32 or Section 33 of the DVAT Act, and not pursuant to the return filed.

41. We are unable to accept the aforesaid contention. The same runs contrary to the scheme of the DVAT Act. If the refund claimed by the taxpayer in his return is not paid on account of the assessment and reassessment framed under Sections 32 or 33 of the DVAT Act for the same tax period and the petitioner is successful in upsetting the same either pursuant to the objections filed under Section 74 of the DVAT Act, or in an appeal filed before the Appellate Authority under Section 76 of the DVAT Act, the self-assessment (return furnished) would stand confirmed and the assessee's claim would be required to be processed. This is so because, if the petitioner prevails in its objections under Section 74 of the DVAT Act, or appeals under Section 76 of the DVAT Act, that would amount to vindicating its stand that the assessments framed are erroneous and the refund claimed under the return should have rightly been paid within the time as stipulated under Section 38(3)(a) of the DVAT Act. Even in cases where the assessments are reviewed under Section 74B of the DVAT Act and as a consequence, the refund as reflected in the return is required to be made, the refund would be traceable to the return furnished by the taxpayer.

42. There is merit in Mr Satyakam's contention that if a refund arises out of a judgment of a Court or an order of an authority under the DVAT Act, the person claiming the refund is required to attach a certified copy of such a judgment or an order along with Form DVAT 21 in terms of Rule 34(4) of the DVAT Rules. However, Rule 34(4) of the DVAT Rules is applicable in respect of refund claims that arise out of orders passed by the authorities or a judgment passed by a Court do not arise from the return furnished, by a taxpayer. Such cases also include those cases, where a part or whole of the refund claimed in a return filed by the taxpayer has been correctly appropriated towards an existing liability in terms of Section 38(2) of the DVAT Act and the taxpayer succeeds in its challenge relating to the said liability. In addition, the reference to orders of an authority and a judgment or a Court under Rule 34(4) would also include cases, where the amount of tax, penalty and interest are refundable to the taxpayers, but not in terms of the return furnished by the taxpayer. The doctrine of Harmonious Construction requires that provisions of a statute not be read in isolation but in conformity with the scheme of the statute so as to avoid any conflict with the other provisions. This interpretation of Sub-rule (2) and Subrule (4) of Rule 34 of the DVAT Rules is consistent with the said doctrine.

43. The second aspect relates to the date from which interest is required to be computed.

44. Section 42 of the DVAT Act contains provisions regarding the payment of interest. The said Section is set out below:

> "**42. Interest**
>
> (1) A person entitled to a refund under this Act, shall be entitled to receive, in addition to the refund, simple interest at the annual rate notified by the Government from time to time, computed on a daily basis from the later of –
>
> (a)the date that the refund was due to be paid to the person; or
>
> (b) the date that the overpaid amount was paid by the person, until the date on which the refund is given.
>
> PROVIDED that the interest shall be calculated on the amount of refund due after deducting therefrom any tax, interest, penalty or any other dues under this Act, or under the Central Sales Tax Act, 1956 (74 of 1956):
>
> PROVIDED FURTHER that if the amount of such refund is enhanced or reduced, as the case may be, such interest shall be enhanced or reduced accordingly.
>
> *Explanation*: If the delay in granting the refund is attributable to the said person, whether wholly or in

part, the period of the delay attributable to him shall be excluded from the period for which the interest is payable.

(2) When a person is in default in making the payment of any tax, penalty or other amount due under this Act, he shall, in addition to the amount assessed, be liable to pay simple interest on such amount at the annual rate notified by the Government from time to time, computed on a daily basis, from the date of such default for so long as he continues to make default in the payment of the said amount.

(3) Where the amount of tax including any penalty due is wholly reduced, the amount of interest, if any, paid shall be refunded, or if such amount is varied, the interest due shall be calculated accordingly.

(4) Where the collection of any amount is stayed by the order of the Appellate Tribunal or any court or any other authority and the order is subsequently vacated, interest shall be payable for any period during which such order remained in operation.

(5) The interest payable by a person under this Act may be collected as tax due under this Act and shall be due and payable once the obligation to pay interest has arisen."

45. In terms of Section 42(1) of the DVAT Act, a person is entitled to interest from the date that the refund was due to be paid or the

date when the amount was over paid by the person, whichever is later. In the present case, undisputedly, the date on which the refund was due was later. According to the Revenue, the return furnished by a taxpayer, would stand superseded by the subsequent assessments under Sections 32 or 33 of the DVAT Act and, if no refund is due in terms of such assessments, the refund would be payable only after the taxpayer has succeeded in its challenge for setting aside or modifying the assessments framed under Sections 32 and 33 of the DVAT Act. It is contended that if the taxpayer secures the orders for setting aside or modifying the said assessments, the refund would be payable as a consequence of such orders. Thus, in such cases, the taxpayer would have to once again make a claim by filing Form DVAT 21 and the refund would be payable, thereafter. According to the Revenue, interest would be required to be calculated from two months after filing of Form DVAT 21.

46. This aforesaid contention is unmerited. Once the taxpayer has succeeded in upsetting the assessments framed under Sections 32 or 33 of the DVAT Act, which results in vindicating its claim for refund either in part or as a whole, as claimed by furnishing a return, interest under Section 42(1)(a) of the DVAT Act would be payable from such date as the refund was due to be paid to the

taxpayer. The expression, "*the date that refund was due to be paid*" must be construed as the date when such a refund ought to have been paid to the taxpayer. If the taxpayer succeeds in vindicating its stand that its claim for the refund was correct and that the subsequent assessments framed by the concerned authorities for the same tax period were erroneous or unjustified; it would follow that the taxpayer should have been refunded the amount claimed and that interest would be payable from the said date. In cases where the taxpayer partially succeeds and its claim for refund has been upheld, not to the extent of the entire amount but part thereof, the taxpayer would be entitled to interest only for the part of the said amount, which has been sustained, pursuant to the subsequent proceedings. However, it would be erroneous to proceed on the basis that the amount of refund, which has been sustained by the authorities or the Court in the subsequent proceedings, was not payable at the material time when the taxpayer had made a claim.

47. The Revenue's interpretation of Section 42(1)(a) of the DVAT Act would clearly lead to arbitrary and unjustified results. The taxpayer whose return is erroneously rejected and an unjustified assessment has been made, which is subsequently set aside would be placed in a disadvantageous position *viz-a viz* the taxpayer,

whose return is correctly processed. It would accord premium to unjustified action of the concerned authorities in framing erroneous assessments and a corresponding penalty on the taxpayer. Clearly, this is not the legislative intent of Section 42(1) of the DVAT Act. It is also relevant to refer to the second proviso to Section 42(1) of the DVAT Act, which also clarifies that if the amount of refund is enhanced or reduced as the case may be, the interest shall be enhanced or reduced accordingly. The second proviso makes it amply clear that an assessee is entitled to interest from the date when the amount ought to have been paid to him. If the amount of refund is reduced or denied and the taxpayer succeeds in the subsequent proceedings either in part or whole; in terms of the second proviso, the interest is required to be varied accordingly.

48. In the present case, the petitioner had filed its revised return for the fourth quarter of the Financial Year 2013-14 on 31.03.2015. However, prior to that (on 15.05.2014 and 07.06.2014) default assessments under Section 32 and 33 of the DVAT Act were framed for various tax periods falling within the Financial Year 2012-13. The said default assessments were framed on 15.05.2014 and 07.06.2014. The petitioner had not filed any objections to the said assessments at the material time. In terms

of Section 35 of the DVAT Act, the demands that were assessed in respect of the tax periods in the Financial Year 2012-13 were payable and outstanding. However, the refund due to the petitioner was not applied towards the dues pertaining to the amounts due against demands raised in respect of the tax periods in the Financial Year 2012-13, at the material time. Thus, the same were required to be disbursed. Insofar as the demands for assessments for the Financial Year 2013-14 are concerned, the assessments under Sections 32 and 33 of the DVAT Act were framed subsequent to the last date of processing the petitioner's claim for refund and the refund could not have been withheld at the material time.

49. The petitioner had objected to the said assessments framed under Sections 32 and 33 of the DVAT Act by filing objections under Section 74 of the DVAT Act, on 10.10.2015. In terms of Section 35(2) of the DVAT Act the recovery of the said demands, thereafter, were required to be suspended. The petitioner had prevailed in its objections in respect of the said demands and the same were, subsequently, reviewed and set aside by an order dated 12.07.2022.

50. As stated above, there is no dispute that the petitioner's refund was required to be paid within a period of two months from the

date of filing the revised return. The respondent had clearly failed to act in accordance with Section 38 of the DVAT Act as it had not processed the petitioner's claim within the stipulated period of two months.

51. The withholding of the amount due to the petitioner was in breach of Section 38 of the DVAT Act. Thus, interest would be payable to the petitioner on the said amount from 01.06.2015, as claimed.

52. Whilst the Department has processed the petitioner's claim for the refund of ₹44,14,979/-. The Department has withheld a sum of

₹10,43,918/- [₹6,50,434/- as tax and interest and ₹3,93,484/- on account of penalty] for the tax period covered under the Financial Year 201314. The demand for the same was raised on 04.09.2018. However, the said amount is not recoverable as the petitioner had filed its objections against the said demands on 02.11.2018. As stated above, it is impermissible to withhold refund towards demands which are not recoverable.

53. In view of the above, we consider it apposite to direct the concerned authority to refund the remaining withheld amount of amount ₹10,43,918/- along with interest with effect from 01.06.2015 and recompute the interest for the amount of

₹44,14,979/- as refunded in terms of the order dated 01.02.2023 and refund the interest due after adjusting the amount of ₹7,983/- already disbursed.

54. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 20, 2023
RK