

Shree Kripa Agro vs Commissioner Of Delhi Goods And ... on 7 October, 2022

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 2818/2021

SHREE KRIPA AGRO

..... Petition

Through: Mr Virag Tiwari with Mr Ramash
Advocates.

versus

COMMISSIONER OF DELHI GOODS
AND SERVICES TAX

..... Resp

Through: Mr Anuj Aggarwal, ASC with
Ms Ayushi Bansal, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE POONAM A. BAMBA

ORDER

% 07.10.2022 [Physical Hearing/Hybrid Hearing (as per request)]

1. On 08.08.2022, we have passed the following order:

"1. Mr Rajesh Jain, who appears on behalf of the petitioner, says that there is a palpable error in the calculation concerning quantification of interest by the respondent/revenue.

2. To be noted, the respondent/revenue has pegged the interest at Rs. 37,40,019/-.

3. Mr Anuj Aggarwal, who appears on behalf of the respondent/revenue, says that interest has been calculated for the period spanning between 19.11.2018 and 01.08.2022, albeit, @ 6% (simple) per annum.

3.1. Mr Aggarwal stated the commencement date is taken as 19.11.2018, as it falls sixty days from the date of the assessment order i.e., 18.09.2018.

3.2. On the other hand, Mr Jain says that the interest which the petitioner seeks, is

based on the following calculations:

"Total refund claimed in the return filed on 16.2.2017 for the 2nd Qtr. of 2016-2017
Rs. 1,75,09,654/- Less : Amount adjusted against liability 6,68,954/-

Rs. 1,68,40,700/-

A) As per sec 38(7)(d), central transactions of Rs.

3,75,25,728/- were awaiting production of C forms. The total tax after adjusting 2% therefrom works out to be Rs. 39,40,201/-. If this amount is Reduced as the forms were submitted at the time of assessment on 18.09.2018, the balance refund works out to Rs. 1,29,00,499/-

(for the purpose of computation of interest only) Rs. 39,40,201/-

Rs. 1,29,00,499/-

On this balance amount of refund of Rs.1,29,00,499/-, interest started accruing after two months i.e. (16.04.2017 to 03.08.2022) Rs. 41,03,419/-"

3.3. According to Mr Jain, 16.04.2017 has been taken as the date when the interest should commence, bearing in mind the fact that the return was filed on 16.02.2017. Therefore, as per the petitioner, interest would commence sixty days thereafter, i.e., 16.04.2017.

3.4. In other words, Mr Jain says that the respondent/revenue needs to explain why interest on Rs. 1,29,00,499/- has not been paid at the statutory rate i.e., 6% from 16.04.2017.

4. Mr Jain says that clearly, the principal amount as quantified hereinabove, did not factor in the non-availability of C-forms, which, according to the petitioner, were made available on 18.09.2018.

4.1. Mr Jain says that the petitioner for the moment will claim the interest only on Rs 129,00,449, and if necessary, on the rest after judgment is rendered by the Supreme Court in Civil Appeal No. 242/2018, titled Commissioner of Trade & Taxes v. Vizien Organics.

5. To be noted, according to the petitioner, the refund to the extent of Rs. 39,40,201/- was not remitted to it since C-forms were not made available till 18.09.2018.

6. The respondent/revenue will file an affidavit on the aspect referred to in para 4.1 above.

6.1. To lend clarity to the process, the authorized representative of the petitioner will appear before the concerned officer on 16.08.2022, at 11.00 A.M.

7. List the matter before Court on 07.10.2022."

2. Pursuant to our order dated 08.08.2022 an affidavit dated 04.10.2022 has been filed on behalf of the respondent/revenue. The position taken therein is the same as in the order dated 08.08.2022.

2.1. In sum, the stand of the respondent/revenue, according to Mr Anuj Aggarwal, who appears on behalf of the respondent/revenue, is articulated in the following part of paragraphs 9 and 10 of the said affidavit:

"...A conjoint reading of these provision in the context of the present case clearly indicates that the period, within the refund of the excess amount is to be made, is to be counted from the date when the relevant statutory Forms (C, F, H etc. as the case may be) are furnished by the dealer. The nature of the amount due gets converted into refund when it is elected to be so treated by the Applicant in terms of section 38(1) and the various provisions governing the time limit in terms of Section 38(3) as well as the provisions of exclusion of time for calculating the said time-limit as provided u/s 38(7) of the DVAT Act would be applicable to the entire amount of the refund elected to be claimed.

10. That it is submitted that there is no provision under the DVAT Act, which permits the Answering Respondent to grant interest on any specific part of the refund amount due for a particular assessment year. The whole amount of refund due to the assessee is assessed only after all the necessary statutory forms are submitted by him for a particular Assessment Year and the interest is calculated accordingly in terms of Section 38(7)(d) of the DVAT Act."

3. It is obvious that the respondent/revenue seeks to conflate the delay on the part of the petitioner in furnishing the C-forms with the delay in respect of processing the refund for amounts which had nothing to do with the requirement to furnish C-forms. This aspect of the matter is noticed by us while recording the calculation made by the petitioner concerning interest in our order dated 08.08.2022.

4. To be noted, the tax period involved is the second quarter of 2016- 2017. The petitioner had sought refund on account of goods exported by it and unutilized ITC. The controversy with regard to the principal amount of refund got sorted out with the passing of the order dated 06.05.2022.

5. For the reasons given in the order dated 06.05.2022, the orders impugned in the writ petition i.e., orders dated 05.10.2019 were quashed. It is in these circumstances that what remained as part of the petitioner's grievance concerns payment of interest.

6. To be noted, the respondent/revenue in their affidavit dated 04.10.2022 have not questioned the calculations furnished by the petitioner which were extracted in paragraph 3.2 of our order dated 08.08.2022. The respondent's/revenue's contestation is confined to the date from which the petitioner's right to seek interest would get triggered. 6.1. According to the respondent/revenue, the C-forms were not made available till 18.09.2018, and therefore, sixty days for processing the refund

will commence only from that date.

7. The petitioner, on the other hand, has, in our view, correctly, advanced the argument that the statutory interest would get triggered from 16.04.2017 after the expiry of sixty days from the date when the return in issue was filed, which is 16.02.2017.

7.1. The petitioner has taken into account in its calculations, the impact that the delay in filing C-forms would have on the quantum of refund claim. It is on this basis that interest has been claimed on Rs. 1,29,00,499/- @ 6% for the period spanning between 16.04.2017 till 03.08.2022 i.e., the date when the principal amount was credited to the account of the petitioner. 7.2 The attempt of the respondent/revenue to paper over the period for grant of interest spanning between 16.04.2017 and 18.11.2018, in our view, is untenable because the calculations given by the petitioner have factored in the aspect concerning delay in submission of C-forms, and accordingly, the base figure has been reduced from Rs. 1,68,40,700/- to Rs. 1,29,00,499/- (see paragraph 3.2 of the order dated 08.08.2022 which has been extracted hereinabove).

8. Therefore, in our opinion, the petitioner is entitled to grant of interest, albeit, at the statutory rate i.e., 6% per-annum for the period spanning between 16.04.2017 till 03.08.2022 on the base figure quantified at Rs. 1,29,00,499/-.

8.1 It is ordered accordingly.

9. The respondent/revenue will act accordingly and remit the amount towards interest within the next two weeks.

10. List the matter for compliance on 16.11.2022.

RAJIV SHAKDHER, J POONAM A. BAMBA, J OCTOBER 7, 2022 / tr Click here to check corrigendum, if any