

TAX INFO

Dated 06/05/2022

Latest update on GST Law: **Wrong tax period in the challan is merely an inadvertent error which can be amended while return filing under VAT as given in Judgment by Delhi High Court.**

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Name of Petitioner	La Mode Fashions Private Limited
Name of Respondent	Commissioner, Value Added Tax
Court	Delhi High Court
Date of Judgement	03.12.2021
Appeal No.	W.P.(C) 1843/2021

Brief Facts of the Case Law:

The Petitioner submits that in respect of 2nd quarter of 2015-2016, i.e. 01.07.2015 to 30.09.2015, Petitioner had filed its returns on 31.03.2017. The VAT liability for the said period was Rs.7,87,038/- whereas liability under the CST Act was Rs.37,381/-. Petitioner deposited Rs.10,44,118/- towards DVAT and Rs.37,381/- towards CST, through challans and, therefore, a sum of Rs.2,58,912/- was deposited in excess for the 2nd quarter of 2015-2016. While depositing the challan dated 29.09.2016 for the aforesaid amount, Petitioner inadvertently mentioned in the challan that the amount was being deposited for the 2nd quarter of 2015- 2016 instead of 2nd quarter of 2016-2017, thereby depositing excess amount. While preparing the returns for 2nd quarter of 2016-2017, the error came to light and Petitioner wrote to the authorities on 27.03.2018 for correction of the tax period in the challan. Despite reminders thereafter, there has been no response from the authorities. The error in the challan is merely an inadvertent error and, therefore, directions be issued to the authorities to amend the tax period in the challan and accept the returns for the 2nd quarter of 2016-2017. Department also accepts and acknowledges the fact that there was a genuine and bonafide error on the part of the Petitioner. However, Department is not willing to permit the correction on account of a technical issue pointed out by the System Branch. Alternatively, the Petitioner can claim the refund amount by filing Form DVAT-21 for the excess payment and insofar as filing of returns of 2nd quarter of 2016-2017 is concerned, the same shall be allowed as per provisions of Section 86(9) of DVAT Act, 2005, on payment of due penalty for failing to furnish returns by the due date. The Petitioner cannot accept the remedy suggested by the Department for the reason that if the aforesaid amount of Rs.2,58,912/- is refunded and a fresh challan is issued, then the same would attract penalty, interest, etc. and cast a stigma on the Petitioner, who is a regular tax payee without a default.

Decision of the Court:

It emerges that Petitioner has deposited Rs.2,58,912/- for the period 01.08.2016 to 31.08.2016, whereas, by an inadvertent and bona fide error, the challan bearing No.0510133290920160000156 dated 29.09.2016 reflects the payment for the period 01.08.2015 to 31.08.2015. The alternative methodology suggested by the Department cannot be accepted by the Court as this would entail a complicated procedure requiring the Petitioner to prefer an application for refund of Rs.2,58,912/-. After getting the refund, Petitioner would have to deposit the said amount for the period 01.08.2016 to 31.08.2016, for which the tax stands deposited. This may also entail imposition of penalty under Section 86(9) of the DVAT Act. Imposition of penalty is called for where the assessee fails to furnish returns by the due date, which is not the position in the present case. Admittedly, Petitioner has deposited the requisite tax for the relevant quarter of the assessment period but has inadvertently mentioned the wrong period in the challan and therefore, cannot be burdened with the liability of penalty. The issue can be resolved by issuing a writ of mandamus to the Department to treat and read the period '01.08.2015 to 31.08.2015' as '01.08.2016 to 31.08.2016'.

Therefore, the Court directed the Department to read the period '01.08.2015 to 31.08.2015' mentioned in the challan dated 29.09.2016, bearing No0510133290920160000156, issued by the HDFC Bank Ltd., as '01.08.2016 to 31.08.2016' and also to accept the returns for the 2nd quarter of 2016-2017 in light of the aforesaid directions.

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