

TAX INFO

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Latest update on GST Law: **Delay in processing pending refund claim causes unnecessary burden of interest on ex-chequer** as given in judgement by **Delhi High Court**.

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Name of Petitioner	Consortium of Sudhir Power Projects Ltd. and Sudhir Gensets Ltd
Name of Respondent	Commissioner of Delhi Goods and Services Tax
Authority	Delhi High Court
Date of Judgement	31.01.2023
Appeal No.	W.P.(C) 15684/2022

Brief Facts of the Case Law:

The petitioner had filed a return claiming a refund of the sum of Rs. 59,59,499/- for the fourth quarter of the year 2013-14 on 09.05.2014. Thereafter, it filed a revised return on 15.01.2015 reducing its claim of refund to Rs. 59,56,772/-. The petitioner's refund claim of Rs. 59,56,772/-, was due for the fourth quarter of the year 2013-14 for several years. However, on 19.10.2015, the concerned VATO issued a notice under Section 59(2) of the DVAT Act, 2004. Thereafter, default assessment was framed on 31.03.2018 on account of some difference in the output tax liability and the input tax credit and a demand for the fourth quarter of the year 2013-14 was framed raising a demand of Rs. 34,582/-. The Department refunded the excess tax and also paid interest for the period of three years. The only question that falls for consideration of this Court is whether the petitioner is entitled to interest for the period prior to the said three years.

Contention of the Petitioner:

The petitioner continued to pursue the concerned authority for seeking the refund which was due within a period of two months from filing of revised return. Even if the additional liability of Rs. 34,582/- is accepted, the petitioner's claim for refund would at best be reduced by the aforesaid amount. And, there is no possible reason for the Department to have withheld the said amount. There is no dispute that the petitioner was entitled to the refund of the excess tax paid. The return filed by the assessee is required to be considered as an application for refund and the Department is required to process the same.

Findings and Decision of the Court:

On a closer examination of the facts of this case, it is unaccepted that the petitioner can be denied interest on the amount of refund which has been unjustifiably withheld, mainly for two reasons. First, that there is no dispute that the petitioner is entitled to the refund and his return was required to be considered as an application for the same. The petitioner was not required to approach or pursue the authorities for its claim for refund of excess tax. Second, that the delay in processing claims for refund is endemic to the DVAT authorities and if the same is considered, the delay on the part of the petitioner approaching this court is not long. This Court is also conscious of the fact that any person would reflect before taking a legal recourse and would approach the courts only as a matter of last resort. In the facts of the present case, the petitioner had received a notice under Section 59(2) on 19.10.2015 and in view of the same, was aware that some proceedings were pending before the DVAT authorities. The default assessment was framed on 31.03.2018. Obviously, the petitioner could not be expected to immediately approach this Court thereafter. Further the period of two years till 28.02.2022 is required to be excluded while calculating any period of limitation pursuant to the orders passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No.3 of 2020 In Re: Cognizance for Extension of Limitation*. Although the petitioner has not approached this Court immediately after the refund of tax became due, but the same does not disentitle the petitioner from claiming what is rightfully due.

In the given circumstances, this Court directed the Department to process the petitioner's claim for interest in accordance with law. The petitioner would be entitled to interest commencing from the period of two months after 15.01.2015 till the date of refund. Such delays on the part of the Department in processing the pending claims for refund result in unnecessary burden of interest on the ex-chequer. The Commissioner, Department of Trade and Taxes was directed to take steps to ensure that all pending refund claims are processed as expeditiously as possible.

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