



2026:DHC:8623-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 30.09.2026

CNR No. DLHC010027242024

+ VAT APPEAL 2/2024

COMMISSIONER OF TRADE AND TAXESAppellant

Through: Ms. Urvi Mohan & Ms.
Roshani Agarwal, Adv.

versus

M/S UNO INTERNATIONALRespondent

Through: Mr. Ajit Singh Joher, Adv.

CORAM:**HON'BLE MR. JUSTICE AVNEESH JHINGAN****HON'BLE MS. JUSTICE SHAIL JAIN****AVNEESH JHINGAN, J. (ORAL)**

1. This appeal is filed under Section 81 of the Delhi Value Added Tax Act, 2004 (for short 'DVAT Act') read with Section 45 of the Delhi Sale Tax Act, 1975 challenging the order dated 12.10.2023.

2. The brief facts are that the respondent filed a revised return on 25.12.2014 for the 4th quarter of the assessment year 2013-14 claiming a refund of Rs.15,31,661/-. The demand of Rs.1,836/- raised on 15.06.2015 under DVAT Act was paid by the respondent on 20.02.2016. The assessment under Central Sales Tax Act, 1956 (for short 'CST Act') was finalised on 26.05.2017, with nil demand.

2.1 The respondent filed a petition bearing W.P.(C) 9913/2020 seeking directions for the refund of Rs.15,31,661/- along with interest. *Vide* order dated 07.12.2020, the petition was disposed of with a



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direction to the Assessing Authority to decide the issue of refund expeditiously. The Assessing Authority rejected the claim by order dated 26.08.2021. The writ petition filed by the respondent bearing W.P.(C) 1886/2021 challenging the order dated 26.08.2021 was disposed of on 14.12.2021 with liberty to avail alternative remedy.

2.2 The objections filed by the respondent were rejected by the Objection Hearing Authority (OHA) on 20.04.2022. The W.P.(C) 9118/2022 filed by respondent challenging order of OHA was allowed on 01.05.2023, the impugned order was set aside and the matter was remanded to the OHA for fresh consideration, after providing an opportunity of hearing.

2.3 *Vide* order dated 03.07.2023, OHA upheld the rejection of the refund claim. The Delhi Value Added Tax, Appellate Tribunal (hereinafter 'Tribunal') accepted appeal of the respondent by order dated 12.10.2023 and set aside the rejection of the claim of refund. Hence, the present appeal.

3. The substantial questions of law proposed by the appellant are quoted below:-

- "i. Whether the Order dated 26.08.2021 is barred by limitation under Section 34 of the DVAT Act?
- ii. Whether the findings of the Ld. Tribunal that the provision of section 40A of the DVAT Act do not stand attracted in the present case is correct?
- iii. Whether the decision of this Hon'ble Court in ***On Quest Merchandising India Pvt. Ltd. v. GNCTD***, is applicable to the facts of the present case when there are clear findings of collusion and fraud on the part of the Respondent and other dealers involved in the



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questionable transactions?”

4. Learned counsel for the appellant contends that the refund claimed arises consequent to paper trail transactions without any physical movement of goods. In the entire chain of transactions the tax was not deposited and every dealer adjusted the Input Tax Credit (ITC). It is contended that the limitation prescribed under Section 34 of the DVAT Act was not applicable to rejection of claim for refund.

5. *Per contra*, the respondent was assessed under Section 31 of the DVAT Act and no action was taken under Sections 32 and 58 of the DVAT Act. The respondent was entitled to a refund under Section 38(3)(a)(ii) of the DVAT Act. The argument is that no substantial question of law is involved.

6. Section 31 of the DVAT Act provides for self assessment. The return filed under Section 26 or 27 of the DVAT Act, containing the prescribed information and complying with the requirements of this Act and the Rules, is an assessment by Commissioner of the tax payable on the date of filing of the return. In terms of clause (b) the return is deemed to be a notice of assessment under the hand of the Commissioner. Clause (c) provides that the notice as referred to in clause (b) is deemed to be served on the day the Commissioner is deemed to have made the assessment. Sub-section (2) stipulates that there shall be no deemed assessment under sub-section (1) if an assessment for the same tax period has already been made in another provision of this Act.

6.1 Section 32 of the DVAT Act deals with the default assessment



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of tax payable. In the circumstances specified in the sub-section (1), the Commissioner may, for reasons to be recorded in writing, assess or re-assess on best judgement basis the net tax due for the tax period.

6.2 Section 58 of the DVAT Act provides for audit of business affairs after service of notice in the prescribed manner.

6.3 Section 38 of the DVAT Act deals with refunds. Under sub-section (1), the Commissioner is obligated to refund the amount of tax, penalty and interest paid in excess of the amount due. This clause is subject to other provisions of this section and the rules. Sub-section (2) mandates that before making refund, the excess amount is to be adjusted towards the recovery due under the DVAT Act or the CST Act. Sub-section (3) is subject to sub-sections (4) and (5) and provides that the amount remaining after adjustment under sub-section (2) is to be refunded. Under sub-clause (i) the refund is to be made within one month from furnishing the return or making claim for refund where the tax period is one month. Sub-clause (ii) stipulates that where the tax period is a quarter, the refund is to be made within two months from the date of furnishing the return or making the refund claim.

7. The present case is of self assessment under Section 31 of the DVAT Act and the amount found due was deposited. No proceedings were initiated under Sections 32 and 58 of the DVAT Act. In this backdrop, Section 38 of the DVAT Act came into operation and the appellant was duty bound to refund the amount within two months of furnishing of the return for 4th quarter of the assessment year 2013-14. However, the appellant failed to do so.



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8. While dealing with the prayer for refund, the AVAT officer proceeded as if exercising power under Sections 32 or 58 of the DVAT Act. The relevant factors were that the return filed for 4th quarter of the assessment year 2013-14 had been accepted under Section 31 of the DVAT Act, in the absence of proceedings under Sections 32 and 58 of the DVAT Act a refund was due and it was only to be considered if any other demand to be adjusted was pending on that date. The tribunal rightly held that it was not a case covered under Section 58 or 59 of the DVAT Act.

9. The reliance by the appellant on Section 40A of the DVAT Act, on the ground that the agreement between the parties was entered with an intention to defeat the provisions of the DVAT Act and was therefore void, does not support rejection of the refund. The tribunal recorded the factual finding that the department had not declared arrangement between the parties null and void. It further observed that the department had made no effort to collect evidence of collusion between the seller and the purchaser or to identify any contract between the parties. In absence of inquiry or investigation into the matter, the tribunal concluded that Section 40A of the DVAT Act was not attracted.

10. The first substantial question of law proposed does not arise from the order of the tribunal. Rather tribunal held that Section 34 of the DVAT Act applies to assessment or reassessment proceedings and not to refund application.

11. The conclusion arrived at by the Tribunal is in consonance with



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Section 38(3) of the DVAT Act. It is an admitted fact that the return for the 4th quarter of the assessment year 2013-14 was accepted, there was no outstanding demand and no proceedings were initiated under Sections 32, 58 or 59 of the DVAT Act. There was no basis to reject the refund due in pursuance to 4th quarter return filed by the respondent for the assessment year 2013-14.

12. The third substantial question of law proposed is of applicability of a decision of this Court to the facts of the present case, is a question of fact and not a substantial question of law.

13. No substantial question of law arises in the present appeal.

14. The appeal is dismissed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 30, 2026/Ch

Reportable: Yes