

2022 LiveLaw (Del) 195

IN THE HIGH COURT OF DELHI AT NEW DELHI

D.N. PATEL (C.J.); JYOTI SINGH, J.

W.P.(C) 1843/2021; 3rd December, 2021

LA MODE FASHIONS PRIVATE LIMITED THROUGH ITS DIRECTOR ASHWANI KUMAR GUPTA

versus

COMMISSIONER, VALUE ADDED TAX THROUGH VALUE ADDED TAX OFFICER

Petitioner Through: Mr. Aseem Mehrotra, Advocate; Respondent Through: Mr. Dhandanjaya Mishra & Ms. A. Reyna Shruti, Advocates

J U D G M E N T

D.N. PATEL, CHIEF JUSTICE

1. This writ petition has been preferred seeking the following reliefs: -

“a) issue an appropriate Writ, direction or order in the nature of mandamus commanding the Respondent to amend the tax period of the challan No. 0510133290920160000156 dated 29th September, 2016 to be reflected as for the 2nd quarter of 2016-17 instead of 2nd quarter of 2015-16;

b) issue an appropriate Writ, direction or order in the nature of mandamus commanding the Respondent to accept the returns for the 2nd quarter of 2016-17;

c) issue any other Writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Learned counsel appearing for 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.

3. It is further submitted that 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 Respondent on 27.03.2018 for correction of the tax period in the challan. Despite reminders thereafter, there has been no response from the Respondent.

4. In support of his contention, learned counsel appearing for the Petitioner has taken this Court to Annexure P-1 to the memo of this petition and submits that the error in the challan is merely an inadvertent error and, therefore, directions be issued to the Respondent to amend the tax period in the challan and accept the returns for the 2nd quarter of 2016-2017.

5. Learned counsel further submits that Respondent also accepts and acknowledges the fact that there was a genuine and bonafide error on the part of the Petitioner. However, perusal of the counter affidavit filed by the Respondent suggests that the Respondent is not willing to permit the correction on account of a technical issue pointed out by the System Branch. It is stated in the counter affidavit that 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. It is submitted that the Petitioner cannot accept the remedy suggested by the Respondent for the reason that if the aforesaid amount of Rs.2,58,912/- is refunded and a fresh challan is issued for the period

01.08.2016 to 31.08.2016, then the same would attract penalty, interest, etc. and cast a stigma on the Petitioner, who is a regular tax payee without a default. It is for this reason that the Petitioner has approached this Court and seeks directions as prayed for, in the writ petition.

6. Learned counsel appearing for the Respondent, per contra, submits that a counter affidavit has been filed highlighting the remedies available to the Petitioner as brought out in paragraphs 6 and 7. Insofar as correction of challan is concerned, Respondent had requested the System Branch to look into the issue. As per the response received on 19.03.2020, system correction of the challan transferred is not possible as at the time of challan transfer, the dealer needs to upload the documents related to challan transfer, which is not possible from the system end. If the request is updated, it may leave the data in an inconsistent state.

7. We have heard learned counsels for the parties.

8. From the facts set out in the writ petition and the counter affidavit as well as having perused Annexure P-1 to the writ petition, 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.

9. The short question that arises for consideration before this Court is the remedial measure by which the inadvertent and bonafide error can be corrected. Respondent has suggested a methodology in paragraphs 5 and 6 of the counter affidavit, as aforementioned. This methodology, however, 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/-. Respondent would be thereafter required to pass an order of refund in favour of the Petitioner. 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, in our view, saddled with the liability of penalty.

10. In view of the aforesaid, the issue can be resolved by issuing a writ of mandamus to the Respondent to treat and read the period '01.08.2015 to 31.08.2015' mentioned in the challan dated 29.09.2016, bearing No. 0510133290920160000156, issued by the HDFC Bank Ltd., as '01.08.2016 to 31.08.2016'. This, in our view, will obviate the lengthy and complicated procedure of applying for refund and deposit on the part of the Petitioner and will also save him from any penalty under the Tax Statute.

11. We, therefore, direct the Respondent to read the period '01.08.2015 to 31.08.2015' mentioned in the challan dated 29.09.2016, bearing No. 0510133290920160000156, issued by the HDFC Bank Ltd., as '01.08.2016 to 31.08.2016'.

12. Accordingly, the second relief sought in the writ petition also deserves to be granted and the Respondent is directed to accept the returns for the 2nd quarter of 2016-2017 in light of the aforesaid directions.

13. Writ petition is accordingly allowed.