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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10.08.2018

\+ W.P.(C) 3118/2018

MRF LTD. ..... Petitioner

Through: Sh. Tarun Gulati, Sh. Shashi Mathews, Sh. Vasu Nigam, Ms. Rachana Yadav and Sh. Abeer Kumar, for petitioner, in Item Nos. 4 and 5.

versus

THE COMMISSIONER OF TRADE AND TAXES & ANR. ..... Respondents

Through : Sh. Satyakam, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

% **ORDER**

S. RAVINDRA BHAT, J.

1. The facts are not in dispute. The petitioner succeeded partly in an appeal, which resulted in its claim for exclusion of certain amounts in its taxable turnover. Its appeal was allowed by a detailed judgment and order of this Court on 14.05.2015 - *MRF v. Commissioner of T&T* (Sales Tax Appeal Nos. 1 & 2/2015, decided on 14.05.2015). The relevant extract of that decision accepting the petitioner's plea is as follows:

"33. On facts, the Revenue does not refute that in the scheme of turnover discount applied by the assessee here each of its dealers would be entitled to 1% rebate in the sale price irrespective of any particular sales target. It makes no difference, as held in the case of Madras Rubber Factory Ltd. (supra), that the discount was calculated at quarterly basis and accorded through "credit notes". The credit notes, issued pursuant to the understanding indicated in the sale invoices declaring upfront the entitlement of the purchaser for such trade discount, would get effectuated by suitable adjustment in the payment of the sales price collected in their wake. The net effect apparently has been of the price being correspondingly varied, the amount received or receivable, thus, not being inclusive of the discount allowed.

34. The Tribunal having failed to comprehend the law laid down in Advani Oerlikon (supra), fell into error, because it proceeded on the wrong premise that the assessee had been in receipt of the sale price equivalent to the catalogue price from which it would subsequently allow reimbursement on the basis of turnover. Since the said assumption is factually incorrect and the turnover discount occurred "apart from and outside" the calculation of the sale price, rather "prior to it", as in the case of Advani Oerlikon (supra), no question arises for deduction of any trade discount from the sale price.

35. In our view, thus, the turnover for the assessment years in question was correctly

> *computed by the appellant herein after deducting the turnover discount granted to its dealers and rightly so declared in the returns. The assessing authorities have unjustly denied the benefit of deduction on such account. The first question of law, noted in para 2 noted above is, therefore, answered in the affirmative in favour of the assessee."*

2. In this background, the petitioner complains that despite its success, so to say, in the appeal, while accepting the refund plea, the respondent GST authorities did not permit any interest. Relying on the judgment of the Bombay High Court in *Suvidhe Ltd. v. UOI* 1996 (82) ELT 177 (Bom), which was confirmed by the Supreme Court in Civil Appeal proceedings reported as *Union of India v. Suvidhe Ltd.* 1997 94 ELT A 159 (SC), and the later judgment of the Karnataka High Court in *Nestle India Limited v. Assistant Commissioner of Central Excise* 2003 (154) ELT 567. It was submitted that the amounts paid during the interregnum period, i.e. rejection of the turnover discount claimed by the original assessment order resulting in predeposit of the amounts before the appellate authority did not amount to payment of tax as it did not bear such character. It is emphasized that the refund ought to have carried interest. Learned counsel relied upon a 2017 vintage judgment of the Karnataka High Court [*M/s. W.S. Retail Services v. State of Karnataka* W.P.(C) 33176/2017 and connected cases, decided on 14.11.2017].

3. Learned counsel for the Revenue contends that the local sales tax authorities' decision not to grant interest on refund amount is justified because the provision of Section 30 of the Delhi Sales Tax Act, 1975 requires that the assessee who wishes to claim refund of tax paid should approach the authority in a particular manner (by filing form ST 21). It is submitted that the interest amounts would be due only from the time that procedure was followed and not before and that interest would be permissible only in accordance with that provision, i.e. Section 30(4) in the event the 90 days elapse. In this case, the judgment of the Court was delivered on 14.05.2015 and the petitioner approached the Sales Tax Department on 22.07.2015 and 20.11.2015. The Delhi Sales Tax authority's appeal by way of special leave before the Supreme Court was disposed of on 28.11.2016. In this background, the Revenue's burden of the song as it were is that since the 21 form was only filed on 25.05.2018 (as without prejudice measure) by virtue of this Court's order dated 09.05.2018, the interest on the refund can be granted having regard to the express provisions of Section 30 of Delhi Sales Tax Act with reference to the date concerned, i.e. 25.05.2018. The Revenue's contention, in this Court's opinion, is untenable. The judgment in *Suvidhe (supra)* emphasized – although in the context of Section 11B (of the Central Excise Act) where the assessee had to approach and make a pre-deposit to the appellate authority- that such deposit sums would not amount to

depositing or paying excise duty but rather to avail remedy of an appeal. The Bombay High Court observed as follows in *Suvidhe Ltd. v. UOI* 1996 (82) ELT 177 (Bom):

> *1. Rule. By consent rule is made returnable forthwith. Heard parties.*
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> *2. Show cause notice issued by the Superintendent (Tech.) Central Excise to the petitioner to show cause why the refund claim for Excise Duty and Redemption fine paid in a sum of Rs. 14,07,410/- should be denied under Section 11B of the Central Excise Rules and Act, 1944 (sic) is impugned in the present petition. The aforesaid amount is deposited by the Petitioners not towards Excise Duty but by way of deposit under Section 35F for availing the remedy of an appeal. Appeal of the petitioners has been allowed by the Appellate Tribunal by its Judgment and order passed on 30th of November, 1993 with consequential relief. Petitioners' prayer for refund of the amount deposited under Section 35F has not received a favourable response. On the contrary the impugned show cause notice is issued why the amount deposited should not be forfeited. In our judgment, the claim raised by the Department in the show cause notice is thoroughly dishonest and baseless. In respect of a deposit made under Section 35F, provisions of Section 11B can never be applicable. A deposit under Section 35F is not a payment of Duty but only a pre-deposit for availing the right of appeal. Such amount is bound to be refunded when the appeal is allowed with consequential relief.*
>
> *3. In respect of such a deposit the doctrine of unjust enrichment will be inapplicable. In the circumstances, the petition succeeds. The*

> *impugned show cause notice, which is annexed at Exhibit-F to the petition, is quashed and the respondents are directed to forthwith refund the aforesaid amount of Rs. 14,07,410/- along with interest thereon at the rate of 15% p. a. from the date of the order of the Appellate Tribunal i.e. from 30th November, 1993 till payment.*
>
> *4. Rule is made absolute in the aforestated terms. Respondents will pay the petitioners the cost of the petition."*

4. The Supreme Court endorsed the view of the Bombay High Court. In *Nestle India Limited (supra),* the Karnataka High Court following the same thread of reasoning, held that the pre-deposit amount was not towards tax but rather to avail the remedy of an appeal. The subsequent judgment in *W.S. Retail(supra)*was rendered especially in the context of the provisions of the Karnataka VAT Act and other enactments. It relied upon the logic in *Suvidhe (supra)* and *Nestle (supra)* and stated as follows:

> *"42. To the same effect, the Division Bench of the Delhi High Court in Voltas Limited v. Union of India [1999 (112) ELT 34 (Delhi)], also held that the pre-deposit under Section 35F of the Act is a deposit pending appeal and it is not available for appropriation or disbursal by the Revenue Department.*
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> ***Paragraph-7** of the said judgment is also quoted below for ready reference:-*

"7. It cannot be denied that the demand against the petitioner was raised consequent to the order of adjudication. Section 35F of the Act under which the petitioner was required to deposit the amount of ` 50 lakhs speaks of 'deposit pending appeal.' It is clear that the amount so deposited remains a deposit pending appeal and is thereafter available for appropriation or disbursal consistently with the final order maintaining or setting aside the order of adjudication."

43. The learned Single Judge of the Kerala High Court in M/s. Alwaye Sugar Agency v. Commercial Tax Officer, Alwaye and Others 2011 (42) VST 517 also dealt with a similar controversy as is involved in the present case and under the provision of 'Amnesty Scheme' announced in Kerala in the Budget Speech of 2010,the learned Single Judge directed that a sum of ` 75,000/- deposited by the petitioner-assessee under the said Scheme, cannot be adjusted against the interest portion under Section 55C of the Act, which is also akin to Section 42(6) in KVAT Act and the Court allowed the Writ Petition with the following observations:-

> *"More so since, once the Scheme is announced and specified to be commenced from the 1st day of the relevant financial year, for a specified period, it may not be proper for the State/Department to augment the revenue collection by resorting to coercive steps before the defaulters get an opportunity to apply for and obtain the benefit of the Scheme, which otherwise can*

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only defeat or frustrate the Scheme itself and in turn, the 'Policy' of the Government. In the above circumstances, this Court finds that the course pursued by the respondents; issuing Ext. PA rejecting Ext. P2 preferred by the petitioner seeking ***the amount deposited as a token of willingness to clear the liability availing the benefit of the Scheme*** *proposed in Ext. PI* ***and consciously appropriating the said amount against 'interest' portion under the cover of Section 55C, is not correct or sustainable.*** *Accordingly, Ext.P4 is set aside. The respondents are directed to pass fresh orders quantifying the liability of the petitioner, in the application preferred for extending the benefit under the "Amnesty Scheme", giving credit to a sum of ` 75,000/- paid by him vide Ext. P2, as payment towards a portion of the liability under the scheme, and effect appropriation, in tune with the terms of the Scheme."*

5. It is clear from the above discussion that pre-deposit sums which the assessee is compelled to pay to seek recourse to an appellate remedy, do not necessarily bear the stamp or character of tax, especially when it succeeds on the particular plea. That being the case, the insistence upon a procedural step, i.e. filing of a form which is purely for the purpose of administrative convenience cannot in any manner fix the period or periods of limitation when the amounts became due on the question of

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interest. The fact that the amounts were due and payable from the date the appeal was allowed is not in dispute. In these circumstances, the postponement of the period from when interest became calculable is incomprehensive and illogical. For these reasons the petitioner is entitled to interest calculable from the date when its appeal was allowed by this Court by order dated 14.05.2015. The respondents shall ensure that the amounts are processed and credited to the petitioner's account within four weeks. The petition is allowed in these terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

AUGUST 10, 2018/ajk