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

Date of decision: 8th January, 2026

\+ **W.P.(C) 1220/2025**

FAIR DEAL LEATHER SUPPLIERS
3039/37 BEADON PURA KAROL BAGH,
DELHI - 110005,
FY 2008-09
(THROUGH ITS PROPRIETOR KAMAL KISHORE KAIM)

.....PETITIONER

Through: Mr. Mukesh Gupta and Mr. Keshav Rai, Advs.

Versus

1. THE VALUE ADDED TAX OFFICER,
WARD NO. 45
BIKRIKAR BHAWAN
NEW DELHI 110002

.....RESPONDENT NO. 1

2. COMMISSIONER OF DELHI VALUE ADDED TAX,
DEPARTMENT OF TRADE AND TAXES
3RD FLOOR BIKRIKAR BHAWAN, IP ESTATE
NEW DELHI 110002

.....RESPONDENT NO. 2

Through: Mr. Abhinav Sharma and Mr. Shubham, Advs.

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\+ **W.P.(C) 2371/2025**

M/S. NAND LEATHER CO.
3016/A38, BEADON PURA KAROL BAGH,
DELHI - 110005,
F.Y. 2008-09
(THROUGH ITS PROPRIETOR NAND KISHORE KAIM)

.....PETITIONER

Through: Mr. Mukesh Gupta and Mr. Keshav Rai, Advs.

Versus

1. THE VALUE ADDED TAX OFFICER,
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BIKRIKAR BHAWAN
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DEPARTMENT OF TRADE AND TAXES
3RD FLOOR BIKRIKAR BHAWAN, IP ESTATE
NEW DELHI 110002

.....RESPONDENT NO. 2

Through: Mr. Abhinav Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

NITIN WASUDEO SAMBRE, J.

1. Since the issue involved in both these writ petitions is identical and similar, by consent, the same are clubbed and disposed of by this common order.

2. For the sake of convenience, the factual matrix reflected in W.P.(C) 1220/2025 is considered and it is not disputed by the respective counsels that even on facts and in law, the issue involved in both these matters is identical in nature.

3. Heard.

4. The petitioner, in the backdrop of statutory mandate provided under Section 38(3)(a)(ii) and Section 42 of the Delhi Value Added Tax Act, 2004 (hereinafter referred to as "DVAT Act, 2004") has approached this Court seeking interest on the amount refunded for the quarter ending on 31st March 2009.

5. The exact prayer of the petitioner reads thus: -

> "1. To grant interest along with compensation for delayed issue of refund as claimed in the DVAT return for the quarter ending on 31.03.2009 after a delay of more than 15 years and 6 months."

6. The facts which are necessary for deciding the present petition are as under:

7. The petitioner is registered with the respondent and has accordingly filed the return for the quarter ending on 31st March 2009, on 26th April 2009, in which the petitioner claimed that he is entitled for refund of an amount of ₹2,87,538/-.

8. An *ex-parte* default assessment order came to be passed in view of statutory mandate provided under Section 32 of the DVAT Act, 2004, rejecting the claim for refund.

9. Questioning legality of the said order and also claiming that the said order was not served upon the petitioner, the petitioner approached this Court through a writ petition bearing W.P.(C) 8045/2017, wherein this Court passed an order on 11th April 2018 permitting the petitioner to take recourse to the appellate remedy while also keeping open the issue as regards the limitation.

10. For ready reference, the order dated 11th April 2018 passed by the Division Bench of this Court in W.P.(C) 8044/2017 read with W.P.(C) 8045/2017 is reproduced as under: -

> "*Learned counsel for the petitioners states that the petitioners were not aware and were not served with the default assessment orders dated 6.2.2012 [WP(C) No.8044/2017] and 1.9.2011 [WP(C) No. 8045/2017]. Learned counsel for the petitioners states that the said orders were not uploaded on the portal of the petitioners.*
>
> *Learned counsel for the respondents disputes the said version and states that the orders were uploaded.*
>
> *Be that as it may, it will be open to the petitioners to file an appeal, impugning the orders dated 6.2.2012 and 1.9.2011 in accordance with the provisions of the Delhi Value Added Tax Act, 2004. The petitioners would be entitled to raise the contention that the orders were not uploaded on the portal and were not served on the petitioners and hence, the appeal would not be barred by limitation. In case any such contention is raised, the same would be examined by the appellate authority in accordance with law.*
>
> *Recording the above, the writ petitions are disposed of."*

11. As a sequel of above, the petitioner approached before the appellate authority and the appellate authority after entertaining the appeal, remanded the matter back to the respondent no. 1 i.e. the assessing authority *vide* reasoned order dated 8th February 2024. The assessing authority i.e. respondent no. 1, accordingly, passed an order thereby permitting refund of ₹2,87,538/- *vide* order dated 14th August 2024.

12. Based on the mandate provided under Section 38 and Section 42 of the DVAT Act, 2004, it is the case of the petitioner that he is entitled for the interest at the rate of 6% after the expiry of 60 days

from the date of filing return which in this case is 25th June 2009 as the return was submitted on 26th April 2009.

13. According to the learned counsel for petitioner, the order of refund being passed by the respondent is not a fact in dispute as the same is borne out of the record and as such is an admitted position.

14. In such an eventuality, the necessary sequel is that the provisions of Section 38 read with Section 42 of DVAT Act, 2004 are attracted and petitioner is entitled for simple interest at the rate of 6% per annum from the date the refund was due and receivable after the expiry of the period of 60 days provided under Section 38(3)(a)(ii) of the DVAT Act, 2004.

15. For ready reference, Section 38(3)(a)(ii) of the DVAT Act, 2004 is reproduced herein below: -

> *"(3) Subject to [sub-section (4) and sub-section (5)] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either –*
>
> *[(a) refunded to the person, –*
>
> *(i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;*
>
> *(ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is a quarter; or]"*

16. According to learned counsel for the petitioner, the respondents are accordingly duty bound under the aforesaid statutory mandate to provide for the interest.

17. So as to substantiate his contention, he has drawn support from the judgment of the Apex Court in the matter of ***Sandvik Asia Ltd. vs. Commissioner of Income-tax, Pune*** AIR 2006 SC 1223 and of this Court in ***Commissioner of Trade and Taxes vs. Corsan Corviam Construction S.A. Sadbhav Engineering Ltd.*** 2023 SCC OnLine Del 1900.

18. As against above, the learned counsel appearing for the respondent, while strenuously resisting the claim, invited our attention to the events which led to the delay in processing the claim of for refund.

19. Learned counsel has specifically relied on the following events:-

> *"2. That is pertinent to set forth facts related to this case herein-*
>
> *(i) On 26.04.2009, the Petitioner had filed its quarterly sales tax return for tax period for the QE 31.03.2009 (i.e. for the period 01.01.2009 to 31.03.2009)* ***("return")*** *inter alia claiming a refund of Rs 2,87,538.*
>
> *(ii) On 1.09.2011, the Value Added Tax Officer, Ward no. 45 ("Respondent. No 1 ") issued a notice of default assessment of tax and interest under Section 32 of the DVAT Act, 2004 (the "order") rejecting the input tax credit claimed by the Petitioner since it had failed to produce DVAT-30 &31, Sale Purchase Invoices, GR, Bank Statements etc. despite notices and reminders. Hence, the claim of refund of the Petitioner also stood rejected.*
>
> *(iii) After a period of almost 6 years, Petitioner filed a writ petitionbearing W.P.(C) No. 8045/2017 before this Hon'ble Court for directing the Respondents to grant refund as claimed in: the return along with interest.*
>
> *(iv) That the Hon'ble High Court vide order dated 11.04.2018 directed the Petitioner to file a statutory appeal against the order dated 01.09.2011 in accordance with the provisions of the DVAT*

Act, 2004, and further held that the question of limitation was left open for adjudication by the appellate authority.

(v) Accordingly, on 01.05.2018 the Petitioner filed objections under Section 74 of the DVAT Act, 2004 impugning the order dated 01.09.2011 order.

(vi) Thereafter, the Commisioner (Objection Hearing Authority), vide his Order dated 08.02.2024 was pleased to observe that "another opportunity should be provided to the objector to produce relevant records before the Assessing Authority who shall pass a speaking order .... ", and remanded the matter back to Respondent No. 1 with directions to re-examine and reassess the case on the basis of documents submitted by the Petitioner strictly in terms of the provisions under DVAT Act, 2004.

(vii) On 07.05.2024, the Petitioner also filed Form DVAT-21 in terms of Rule 34 of the DVAT Rules, 2005 inter alia seeking refund of the amount of Rs. 2,87,538/-

(viii) On 14.08.2024, the Respondent No. 1 after re-examination of the case and the records produced by the Petitioner, passed an order for refund in Form DVAT-22 on 14.08.2024 resulting into refund of Rs. 2,87,538/- in favour of the Petitioner.

(ix) The refund amount of Rs. 2,87,538/- was credited to the bank account of the Petitioner on 15.01.2025."

20. According to the learned counsel, if the aforesaid events are critically appreciated in backdrop of the very conduct of the petitioner, the respondent cannot be blamed for delay in processing the request for refund of the tax as the petitioner was also not diligent in timely prosecuting his statutory remedy.

21. In addition to the above, it is his contention that the appellate authority, while remanding the matter, made the following observations: -

"5. After having carefully perused the aforesaid impugned orders, as well as documents/written submissions submitted by Sh.

Johri, it is observed that the Ld. Assessing Authority has carried out the Assessment under the DVAT Act only and created the nil demand but disallowed the ITC claimed in the absence of any relevant documents for the period 4th Quarter 2008-09. However, Sh. Johri, Ld. Counsel of the firm has stated that Objector Dealer is in possession of all the relevant documents in support of the claim. It is observed that verification of the purchase and ITC is a question of fact and can be best examined by way of documentary evidences such as DVAT-30, DVAT-31, bank records etc. The claim of the Objector Dealer needs to be examined on the basis of documentary evidence/records. The above claim of the Objector Dealer in the opinion of this Authority can be best examined and decided at the level of Ward Authority on the basis of the above mentioned documents, after affording the Objector Dealer an opportunity of being heard. Needless to mention here that the Assessing Authority may at the time of remand assessment proceedings may call for any other document/ clarification for his satisfaction which enables him to decide the claim of the Objector Dealer on merits."

22. According to the learned counsel for respondent, careful perusal of the aforesaid observation *ex-facie* establishes that the petitioner failed to submit the relevant documents so as to adjudicate the claim for refund of the tax.

23. The sum and substance of the stand taken by the counsel for the respondent, based on the aforesaid submissions is, it is because of petitioner's own conduct that the delay was caused in processing of the request for refund and as such, artificial situation was created by the petitioner. In such an eventuality, the benefit of claiming interest as provided under Section 38 read with Section 42 of the DVAT Act, 2004 is not permissible.

24. In rejoinder, the counsel for the petitioner has invited our attention to the failure of the respondent in issuing the notice as contemplated under sub-section 2 of Section 59 of the DVAT Act,

2004 but also that the order of assessment rejecting the refund was never uploaded on the portal which led to the delay being caused.

25. As such, it is urged by the counsel for the petitioner that for the delay caused in processing the refund, no default can be attributed to the petitioner, particularly when the respondent has not taken recourse to the procedure established by law, as referred above.

26. We have appreciated the aforesaid submissions.

27. If we consider the scheme of Section 38 of DVAT Act, 2004 which provides for refund, the Commissioner is empowered to refund to a person amount of tax, penalty and interest, if any, paid by such person in excess of amount due from him. Such proceedings by the Commissioner are subject to provisions of the rules framed under the DVAT Act, 2004.

28. Further, if we peruse Section 42 of the DVAT Act, 2004, it is a code in itself. The said Section provides for entitlement of a person for interest on refund at the rate of interest to be prescribed by the Government through notification. The interest is to be computed on daily basis.

29. Rule 34 of DVAT Rules, 2005 prescribes the procedure to be adopted in the matter of refund of excess payment. Under Sub-rule 5 of Rule 34, in case, if the Commissioner is satisfied that a refund is admissible, the Commissioner is empowered to determine the amount of refund due and record an order in form DVAT 22 sanctioning the refund and recording the calculations used in the matter of determining the amount of refund ordered.

30. Such order may also contain the adjustment of the amount as prescribed under Subsection (2) of Section 38 of the DVAT Act, 2004.

31. Undisputed facts which are borne out from the record are the filing of the return by the petitioner for the quarter ending on 31st March 2009, on 26th April 2009, and claim of refund of ₹2,87,538/-.

32. The assessment order under Section 32 of the DVAT Act, 2004 rejecting the claim for refund came to be passed on 1st September 2011. Based on the rival claims, we are unable to gather from the record as to whether such assessment order was preceded by the statutory notice as mandated under sub-section 2 of Section 32 of the DVAT Act, 2004.

33. Similarly, the order refusing to grant the refund, which was assessed pursuant to the claim for refund made by the petitioner, appears to have not been uploaded on the portal so as to infer that the petitioner had the knowledge about the order being passed against him refusing the refund.

34. The order refusing to grant the refund promoted the petitioner to prefer a writ petition being W.P.(C) No. 8044/2017 with W.P.(C) No. 8045/2017 before this Court once the said fact came to his knowledge.

35. In *para 10*, we have already reproduced the order dated 11th April 2018 passed by the Division Bench in the above said writ petitions whereby the petitioner was relegated to the appellate authority.

36. This Court in the said order has specifically given liberty to the parties, including the petitioner and the respondent, to raise the

contention that the order of rejection of claim for refund was neither uploaded on the portal nor served to the petitioner.

37. Even the issue of limitation in the matter of appeal to be preferred by the petitioner before the appellate authority was also kept open.

38. In the wake of the authoritative pronouncement *vide* order dated 11th April 2018, referred *supra*, by the Division Bench of this Court, it was expected of the respondent to canvass the issue as regard the limitation. If such issue was canvassed by the respondent, the appellate authority was duty bound to deal with the contention *viz*.

a) Whether the notice of hearing was served on the petitioner pursuant to statutory mandate under Section 32(2) of the DVAT Act, 2004 before refusing the refund and;

b) Whether the order was uploaded on the portal immediately upon being passed, so as to infer that the petitioner has sufficient notice of the order refusing the refund of claim/tax.

39. The appellate authority rather was of the conscious view that such fact was not established by the respondent and as such decided to direct the assessing authority to grant a fresh opportunity of hearing by remanding the matter back.

40. In the wake of aforesaid, it cannot be inferred that there was any attempt on the part of the petitioner to approach at delayed stage either before this Court in writ petition in the earlier round of litigation, or before the Commissioner pursuant to the order passed by

this Court on 11th April 2018 in W.P.(C) 8044/2017 with connected matter.

41. The interest shall be calculated till the tax was refunded to the petitioner which in this case is 15th January 2025.

42. In support of the aforesaid finding recorded by this Court *qua* the entitlement of the petitioner for interest on the refunded amount of Value Added Tax, reliance is rightly placed on the judgment in the matter of the ***Commissioner of Trade and Taxes vs. Corsan Corviam Construction S.A. Sadbhav Engineering Ltd.*** *(supra)* and also in the matter of ***Sandvik Asia Ltd. vs. Commissioner of Income-tax, Pune*** *(supra)*. In our opinion, the issue is covered by the law interpreted and led down by the respective Courts in both these judgments.

43. As such the contentions raised by the counsel for the respondent that there was intentional delay or that the petitioner by his own conduct has created a situation thereby delaying the proceedings in the matter of lodging claim for refund of the VAT, cannot be established or inferred. That being so, the said contentions raised by the counsel for the respondents stands rejected.

44. Since it is not in dispute that, the petitioner in view of the statutory mandate under Section 38(3)(a)(ii) of DVAT Act, 2004 is entitled for refund post 60 days from the date of submission of the return, and since in the present case the return was filed on 26th April 2009, it is held that the petitioner shall be entitled for the interest pursuant to the statutory mandate under the aforesaid provision as

well as under Section 42 of the DVAT Act, 2004 with effect from 25th June 2009 at the rate of 6% per annum.

45. We direct the respondent to calculate the interest on the Value Added Tax which was refunded to the petitioner i.e. an amount of ₹2,87,538/- at the rate of 6% per annum.

46. After the calculation, the accrued interest pursuant to Section 38(3)(a)(ii) of the DVAT Act, 2004 be paid to the petitioner in any case within a period of 12 weeks from today.

47. The petitions are allowed in above terms.

48. Pending applications, if any, also stands disposed of.

49. A copy of this judgment be uploaded on the website of this Court.

NITIN WASUDEO SAMBRE, J

AJAY DIGPAUL, J

JANUARY 8, 2026/*ar/yr/sky/ss*