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

\+ W.P.(C) 9521/2016, C.M. APPL.38089/2016

BHUPINDRA AUTO INTERNATIONAL ..... Petitioner

Through : Sh. Ruchir Bhatia, Advocate, for petitioner.

versus

COMMISSIONER, TRADE & TAXES & ANR. ..... Respondents

Through : Sh. Gautam Narayan, ASC with Sh. R.A. Iyer, Advocate, for respondents.

Sh. Brajendra Singh, AVATO, Ward 18.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **10.11.2016**

The petitioner had claimed a direction for refund of excess VAT amounts for certain previous periods. This Court had issued notice and required the respondents to ensure that appropriate orders are made. It is submitted on behalf of the VAT Department and the Govt. of NCT of Delhi that the petitioner is entitled to refund in the first instance but that sometime in January 2016, further liabilities arose on account of the later period. This, according to the VAT authorities, entitled them to adjust the amounts payable. They were accordingly withheld under Section 38(2) of the DVAT Act, 2004 [hereafter "the Act"]. It was in these circumstances that on 27.10.2016, the VAT authorities apparently sought to adjust these amounts. In the meanwhile, it was discovered that the petitioner had preferred a petition to the Objection Hearing Authority (OHA) sometime in March, 2016. By virtue of Section 35(2) of the Act, this automatically suspended the order of adjustment of refund amounts. Consequently, the authorities could not have sought to set-off the refund liability towards the demands created for the later period. The OHA, therefore, would have to proceed independently and decide if the petitioner is liable, and if so, to what extent the petitioner is liable for the later period and proceed independently on that basis.

In these circumstances, a direction is issued to the respondents to process the petitioner's claim for refund and pass appropriate orders and ensure that the amounts together with up-to-date interest (till date of payment) are released to its account within a week from today. In case of any discrepancy or shortfall of interest, it is open to the petitioner to move an application in that regard. The same shall be decided within one month of its receipt by the concerned VATO. The writ petition is allowed in the above terms.

Order *dasti* under the signatures of Court Master.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 10, 2016
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