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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ W.P.(C) 361/2017

DELTA EXPORTS INTERNATIONAL ..... Petitioner
Through: Mr Vasudev Lalwani, Mr Rajeev Bansal and Mr Rohit Gautam, Advocates.

versus

COMMISSIONER OF VAT & ANR. ..... Respondents
Through: Mr Rahul Sharma, Mr C.K. Bhatt, Ms Trisha Kadyan with Mr S. Das, VAT Inspector.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **25.04.2017**

CM 1589/2017 (exemption)

1. Allowed, subject to all just exceptions.

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2. The letter dated 27th December, 2016 has been addressed to learned counsel for the Petitioner giving an explanation as to why the entire amount of refund claimed i.e., Rs. 9,23,706/- is not being allowed and why a sum of Rs.5,83,214/- is being disallowed. The explanation is about the inability on the part of the Department of Trade and Taxes (DT&T) to verify the dealers from whom the purchases were made, as reflected in the returns.

3. In the instant case, the refund claimed on 24th April, 2013 with respect to

the 4th quarter of 2012. As observed by this Court in several judgments including ***Swarn Darshan Impex (P) Ltd. v. Commissioner of VAT (2016) 31 VST 475 (Del)***, the time limit for processing and making refund in terms of Section 38 (3) (ii) of the Delhi Value Added Tax Act 2004 (DVAT Act) is sacrosanct. The refund claim cannot be viewed as providing an opportunity to the DT&T to re-open the assessment or create a fresh demand without resorting to the provisions available in the DVAT Act for that purpose. The Court finds that in a large number of cases, notwithstanding the settled legal position as explained time and again by the Court, the Value Added Tax Officers ('VATOs') invariably delay the processing of the refund claim and much after the time for making refund has elapsed, create fresh demands or reduce the refund claim on the ground of lack of verification of the sales or the identity of the purchasers or sellers as the case may be.

4. Here, the VATO simply proceeded to disallow a substantial amount despite the fact that the Petitioner appeared before him and provided all the information. The Court is unable to sustain the action of the VATO in denying the entire refund claim without following the procedure under the DVAT Act, 2004. The Court sets aside the decision communicated by the VATO by letter dated 27th December, 2016.

5. It appears that by the refund order dated 28th November 2016, of the aforementioned sum of Rs.5,83,214/- which was disallowed, the DT&T has further allowed refund of Rs.2,43,658/- leaving still an amount of Rs.3,39,556/- together with interest.

6. To the extent that the amount of Rs.3,39,556/- has been disallowed, the above order dated 28th November, 2016 is hereby set aside.

7. The DT&T is directed to pay into the account of the Petitioner the said sum of Rs.3,39,556/- together with interest payable on the entire amount of refund not later than four weeks from today.

8. The petition is disposed of in above terms. If there is any non-compliance with the above direction, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 25, 2017
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