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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 2124/2017**

M/S S.K. ENGG. WORKS ..... Petitioner
Through: Mr. A. K. Babbar, Mr. Surendra Kumar, Mr.Bharat Tripathi and Mr. Atul Babbar, Advocates

versus

COMMISSIONER OF DELHI VALUE ADDED TAX & ANR. ..... Respondents
Through: Mr. Siddharth Dutta, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>

% 02.05.2017

1. The Petitioner's refund application for the 4th quarter of 2013-14 has been pending with the Respondent DVAT Department since 24th June, 2014. The present petition was filed on 4th March, 2017 and notice was issued on 7th March, 2017. On that date, this Court was not informed by the counsel for the Respondent that on 3rd February, 2017, the VATO of Ward No. 49 had in fact passed a notice of default under Section 32 of the Delhi Value Added Tax Act, 2004 ('DVAT Act'). On the same date, by a separate 'Adjustment Order' passed by the VATO the entire amount of refund stood adjusted against a fresh demand of Rs. 3,10,526. Thus the refund amount got reduced to Nil.

2. A copy of the notice of the default assessment tax with interest by

the VATO passed on 3rd February, 2017 is placed on record. The reasons for creating a fresh demand reads as under:

> "The dealer has claimed refund in 4th Qtr 2013, to the tune of Rs. 1,97,494/-. The amount has been generated after carry forward of ITC of Rs. 95,700/- from 3rd Qtr 2013. On analyzing 2A of the dealer for 3rd Qtr 2013-14 up to the 4th stage the amount of ITC verified is Rs. 97,239/- allowed. Rest of amount of Rs. 1,28,900/- is disallowed. On analyzing 2A of the dealer for 4th Qtr 2013-14 up to the 4th stage the amount of ITC verified is Rs. 3,217/- allowed. Rest of amount of Rs. 1,81,646/- is disallowed. A part from this registration of M/s Sharda Enterprise (07810471786) was cancelled W.E.F.12-12-2013. Therefore, ITC to tune of Rs. In 2013-14 is disallowed."

3. This court in several judgments including ***Swarn Darshan Impex (P) Ltd. v. Commissioner, Value Added Tax (2010) 31 VST 475 (Del)*** and ***Prime Papers and Packers v. Commissioner VAT (2016)94 VST 347 (Del)*** emphasized that the pendency of a refund application should not be viewed by the Department as an opportunity to create a fresh demand particularly if the time limits not only for making the refund but even for re-opening the assessments of previous years has long been crossed.

4. Yet, that is precisely what the Department has done here. The entire exercise indulged in by the VATO as above at the stage of refund is wholly without the authority of law. The re-opening of the assessments of earlier periods is time-barred and not in accordance with the procedure set out for that purpose under the DVAT Act.

5. The Court, therefore, has no hesitation in hereby setting aside the notice of default assessment of tax, interest and penalty dated 3rd February 2017

under Sections 32 and 33 of the DVAT Act and the consequential 'Adjustment Order' of the same date.

6. The Court therefore directs that the refund amount in the sum of Rs. 1,97,494/- together with interest payable thereon under Section 42 of the DVAT Act shall be directly paid into the account of the Petitioner by the Respondent DVAT Department not later than two weeks from today.

7. The Court further directs that the DVAT Department will abide by the above time lines. In the event that the Petitioner has any grievance either on account of non-payment of the refund amount together with interest as directed or non-compliance with any of the above directions, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

8. The petition is allowed in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 02, 2017
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