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

\+ W.P.(C) 2280/2017

KUMAR CONSTRUCTION CO. THROUGH ITS PROPRIETOR, SH. BASANT KUMAR ..... Petitioner

Through Mr. K.J. Bhat, Advocate.

versus

COMMISSIONER OF TRADE & TAXES & ANR...... Respondent

Through Mr. Shadan Farasat and Mr. Ahmed Said, Advocates with Mr. Javaid, VATO.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

O R D E R

% **01.12.2017**

The present writ petition seeks refund under the Delhi Value Added Tax Act, 2004 for various periods and amounts below:-

S. No	**Refund Claimed**	**Period**
1.	Rs. 12,817/-	01.10.2006-31.03.2007
2.	Rs. 10,344/-	01.04.2007-30.09.2007.
3.	Rs. 6,715/-	01.10.2008-31.03.2009
4.	Rs. 6,449/-	01.04.2009-30.09.2009
5.	Rs. 2,445/-	01.10.2009-31.03.2010
6.	Rs. 1,559/-	01.04.2010-31.03.2010
	Total	
	Rs. 40,399/-	

2. Refunds for other years/portions have already been issued by the respondents. The total amount involved is 40,399/-.

3. As per the respondents, the petitioner has not filed returns for

the said periods and, therefore, refunds are not payable.

4. The petitioner has not been able to file on record any document or proof that he had filed returns for the aforesaid period.

5. In view of the aforesaid position and to verify whether the petitioner had filed returns, on 19th April, 2017, the following order was passed:-

> "1. It is stated by learned counsel for the Respondents that the Petitioner may inspect its records. The Petitioner will be permitted by the VATO concerned for that purpose on 24th April, 2017 at 11:00 am. A chart has been handed over by the concerned VATO to learned counsel for the Petitioner showing the amounts of refund that have been allowed and rejected and the reasons therefor.
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> 2. List on 17th May, 2017."

6. Thereafter, on 17th May, 2017, the following order was passed:-

> "1. It is stated by learned counsel for the Petitioner that he did inspect the records but copies of the returns filed by the Petitioner were not available there. He states that the Petitioner has furnished copies of the TDS certificates to the VATO but no refund order has yet been issued.
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> 2. List on 7th July 2017. The relevant file be produced y the concerned VATO on the next date."

7. The petitioner was not able to make any headway and show that the returns were filed and on 7th July, 2017 had requested the Court that he would like to verify/inspect the return register with the VATO. In these circumstances, on 7th July, 2017, the Court had passed the

following order:-

> "1. Learned counsel for the Petitioner states that he requires to inspect the return register with the VATO. Learned counsel for the Respondents, on the other hand, points out that for the period of four years, i.e., 2006 to 2010, the proof of the return purportedly filed by the Petitioner is not available in the return register with the VATO. However, learned counsel for the Petitioner states that the register containing the said return should be available in the warehouse of the Respondents and that he has furnished that information to the VATO.
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> 2. If the return register is able to be retrieved from the warehouse, an inspection thereof should be provided to the Petitioner by the VATO concerned at least one week prior to the next date."

8. On the next date of hearing i.e. 20th September, 2017, the Court recorded that the petitioner in spite of inspection allowed has not been able to ascertain and verify the factum of filing of returns for the periods noted above. The respondents had stated that the return register could not be located.

9. However, the respondents had verified details on the online or computer system, which records all returns filed manually during the said period. As per the online/computer details, the petitioner had not filed returns for the said periods.

10. In the aforesaid circumstances, we do not think that any order in favour of the petitioner can be passed on the basis of an assumption that returns must have been filed and refunds as claimed were due and payable. We notice that the period involved is from 1st October, 2010

to 31st March, 2010. The present writ petition was filed in January, 2017. We are therefore closing the present proceedings. However, we make it clear that if the petitioner is able to locate or find any document with regard to filing of returns, he will be entitled to approach the authorities with a prayer for refund. If any application along with documents is filed to show that return was filed and the amount was refundable, the same will be considered in accordance with law.

11. With the aforesaid observations and directions, the writ petition is disposed of. No costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

DECEMBER 01, 2017
NA/VKR