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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 2283/2017**

SHRI BALAJI POLYMERS .....Petitioner
Through: Mr Rajesh Mahna, Mr Ramanand Roy, Mr Ruchir Bhatia and Mr Rohit Sharma, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS ..... Respondent
Through: Mr Shatrajit Banerji, Advocate for Mr Gautam Narayan, ASC.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>
% **01.05.2017**

<u>CM 9842/2017 (Exemption)</u>

Allowed, subject to all just exceptions.

<u>W.P.(C) 2283/2017 & CM 9843/2017 (Stay)</u>

1.This writ petition filed on 6th March, 2017 challenges *inter alia* the notice of default assessment of tax and interest and penalty under Sections 32 and 33 of the Delhi Value Added Tax Act, 2004 (DVAT Act) passed by the Value Added Tax Officer ('VATO') for the fourth quarter of 2013. Additionally, the petition challenges the validity of Section 9 (2) (g) of the DVAT Act as being unconstitutional.

2. Learned counsel for the Petitioner was asked whether the impugned notices of default assessment of tax interest and penalty dated 26th May,

2015 under Sections 32 and 33 of the DVAT Act are appealable and if so, why appeals had not been preferred. Learned counsel for the Petitioner stated that the Petitioner was unaware of the notices dated 26th May, 2015 and the present writ petition was filed soon after the Petitioner came to learn about the said notices. When enquired whether there is any such averment in the petition, learned counsel sought time to amend the petition to include such averment. The Court is not prepared to grant such indulgence for reasons that will be explained hereafter.

3. The impression that the Court is able to gather is that having missed the opportunity of filing a statutory appeal, the Petitioner is seeking to overcome such default by filing the present writ petition and to justify invoking the writ jurisdiction, has additionally challenged the constitutional validity of Section 9 (2) (g) of the DVAT Act.

4. Considering the considerable time gap between the date of the impugned notices and the Petitioner invoking the writ jurisdiction, the Court is not satisfied that the plea is bonafide. This is not a case where the Court is persuaded to exercise the discretionary jurisdiction under Article 226 of the Constitution to grant relief.

5. The writ petition is, accordingly, dismissed. No orders as to costs.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 01, 2017/*rd*