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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 2536/2017**

ALKA STEELS ..... Petitioner
Through: Mr Sumit Kumar Batra, Advocate

versus

COMMISSIOMER OF TRADE & TAXES & ANR...... Respondent
Through: Mr Rahul Sharma and Mr C.K. Bhatt, Advocates

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **19.04.2017**

CM 10954/2017 (exemption)

1. Allowed, subject to all just exceptions.

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2. It appears that of the Petitioner's refund claim for Rs. 9,64,050 for the first quarter of 2013, only Rs. 7,89,951 has been allowed by an order dated 5th April, 2017 passed by the AVATO of Ward 48. It appears that on the same date i.e. 5th April 2017 a separate Notice of default assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 (DVAT Act) was issued by the same AVATO of Ward 48 creating a demand on the Petitioner for the same period viz., first quarter of 2013, for a sum of Rs.52,232/-, constituting the sum of refund that has been disallowed, on the

ground that the seller had paid tax only to the extent of Rs.14,090/-.

3. Learned counsel for the Respondent sought to explain that the said order has been passed with reference to Section 9(2) (g) of the DVAT Act. However, it is not in dispute that the order has been passed without any notice to the Petitioner and without seeking any explanation or ascertaining as to whether the latter part of Section 9(2)(g) has in fact been satisfied. Mr Sumit Kumar Batra, learned counsel for the Petitioner is right in pointing out that the provisions envisages adjustment of the tax deposited by the selling dealer against the output tax liability and need not necessarily be deposited in full. He further points out no file was in fact available with the AVATO of Ward 48 when the Petitioner sought its inspection.

4. In that view of the matter, the notice of default assessment of tax and interest dated 5th April, 2017 and the subsequent notice dated 11th April, 2017 calling upon the Petitioner to deposit Rs. 52,320/- are hereby set aside. The Petitioner will appear before the AVATO of Ward 48 on 28th April, 2017 at 11:00 am and will be granted inspection of the relevant records. In the event that the AVATO seeks to deny any portion of the refund claimed, then the necessary reasons and the material on the basis of which the said denial is sought to be made will be provided to the Petitioner on that date itself. A fresh order on the refund claim of the Petitioner will thereafter be passed not later than 8th May, 2017. If the Petitioner is still aggrieved by the said order, it will be open to the Petitioner to seek appropriate relief in accordance with law. Meanwhile, the refund to the extent allowed together claim be deposited in the Petitioner's account without delay.

5. The petition is disposed of in above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 19, 2017
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