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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 2583/2017

PRADEEP ENTERPRISES ..... Petitioner
Through: Mr. S.K. Khurana, Advocate

versus

COMMISSIONER OF TRADE & TAXES & ANR. ..... Respondents
Through: Mr. Siddhartha Shankar Ray, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **19.04.2017**

1. It appears that between the previous date and today, the VATO of Ward No. 71 has utilised the time to issue on 18th April, 2017 to the Petitioner a notice of default assessment of tax and interest under Section 32 of the Delhi Value Added Tax Act, 2004 (DVAT Act) creating a demand in the sum of Rs. 79,804. This pertains to the alleged 'mismatches in 2A/2B for the month of January 2012'.

2. As has been explained by this Court in numerous judgments including ***Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347***, the pendency of a refund claim should not provide an opportunity to the Department to re-open previous assessments, long after the refund has become due. That would be a sheer abuse of statutory powers under the DVAT Act.

3. The demand created by the for a sum of Rs. 79,804/- on 18th April, 2017 is only with a view to somehow delaying or defeating the refund claim which has been pending since 5th April, 2014 pertaining to the four quarters of the year 2013-04. The Court cannot simply countenance this kind of abuse of the process of law. This Court therefore has no hesitation in hereby setting aside the Notice of default assessment of tax and interest dated 18th April, 2017 passed by the VATO Ward 71 under Section 32 of the DVAT Act.

4. The refund due to the Petitioner to the extent it has already been ordered together with interest due thereon will be credited to the Petitioner's account on or before 15th May, 2017. The remaining refund amount that may have been denied as a result of the above Notice of default assessment of tax and interest dated 18th April, 2017 which has now been set aside by this order will also be paid to the Petitioner together with interest due thereon within four weeks from today.

5. If there is any non-compliance with the above direction, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

6. The petition is disposed of in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 19, 2017 / SU