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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 2959/2017**

GANGA POLYMERS ..... Petitioner
Through: Mr. Ruchir Bhatia, Advocate.

versus

COMMISSIONER, TRADE & TAXES & ANR ..... Respondents
Through: Mr. Satyakam, Additional Standing counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

<u>O R D E R</u>
% **26.04.2017**

1. It is pointed out by learned counsel for the Petitioner that while issuing a recovery certificate and a writ of demand dated 13th February 2017 about the outstanding demands for the years 2013-14 & 2014-15 the Petitioner was required to furnish details of the payments by 20th February 2017.However, on the same date i.e., 13th February 2017 two separate two adjustments orders were placed on the ID of the Petitioner on the website of the Department whereby refunds amounts for the second and fourth quarters of 2013-14 had been adjusted against the outstanding demands.

2. Relying on the order dated 10th November 2016 in Writ Petition (Civil) No. 9521 of 2016 (***Bhupindra Auto International v. Commissioner, Trade & Taxes)*** learned counsel for the Petitioner submits that such adjustment

was impermissible in law.

3. Learned counsel for the Respondent states that the concerned VATO is in election duty and therefore, needs some more time to respond to the notice issued way back on 31st March 2017, i.e., almost one month ago. There was sufficient time for the concerned VATO to either respond to the petition or instruct to the counsel about the stand of the Department.

4. Considering the order passed in ***Bhupindra Auto International v. Commissioner, Trade & Taxes*** (*supra*) the Court has no hesitation in holding that action of the VATO in seeking to make adjustment against the fresh outstanding demand even before the time provided to the Petitioner to the respond had not expired.

5. Accordingly, the adjustment orders dated 13th February 2017 are hereby set aside. As regards the fresh demand there is an objection filed by the Petitioner before the Objection Hearing Authority (OHA) which is pending consideration. There was thus an automatic stay of the order of adjustment of refund amounts in terms of Section 35 (2) of the DVAT Act, 2004.

6. There is no further impediment in issuing the refund order for the second and fourth quarters of 2013-14 which have been pending with the Department since 27th March 2014 and 31st July 2014. Accordingly, a direction is issued to the Respondent to ensure that the refund amount together with interest accrued thereon will be credited to the account of the Petitioner not later than ten days from today.

7. The petition is disposed of in the above terms. If there is any non-compliance with the above direction, it will be open to the Petitioner to seek appropriate remedies in accordance with law.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

APRIL 26, 2017
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