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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **W.P.(C) 4352/2017**
M/S INDUSTRIAL DISTRIBUTORS ..... Petitioner
Through: Mr Puneet Rai, Advocate

versus

COMMISSIONER OF TRADE & TAXES, & ANR..... Respondent
Through: Mr Siddharth Dutta, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **19.05.2017**

CM 18987/2017 (exemption)
1. Allowed, subject to all just exceptions.

W.P.(C) 4352/2017
2. As far as the challenge in this petition to the validity of Section 9 (2) (g) of the Delhi Value Added Tax, 2004 ('DVAT Act') is concerned, it is already pending consideration before this Court in a large batch of matters. Therefore, the Court does not propose to add one more petition to that batch.

3. The grievance of the Petitioner is regarding the denial of refund. Despite the law explained by this Court in several decisions including ***Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 347*** that the pendency of a claim for refund should not be viewed by the Respondent DVAT Department as an opportunity to create a fresh demand by issuing notice of

default assessment of tax and interest under Section 32 of the DVAT Act, that is precisely what the VATO has done in the present case on 11th and 24th January, 2017. The demand is far more than the refund amount. The above demand order has been passed in 2017, more than five years after the filing of the return. This a plainly an abuse of the process of law.

4. A similar demand created by the Respondent DVAT Department long after the filing of the refund claim was quashed by this Court by an order dated 25th April, 2017 challenged in W.P.(C) No.3502/2017 (***I Smart Mobile Technology Private Limited v. Commissioner of VAT***).

5. The Court hereby sets aside the notices of default assessment of tax and interest dated 11th January 2017 and 24th January 2017 under Section 32 of DVAT Act for the second, third and fourth quarters of 2012 respectively.

6. It is directed that not later than two weeks from today, the refund amount together with interest thereon will be credited directly to the Petitioner's account within two weeks after the passing of the refund order. If there is any non-compliance, it would be open to the Petitioner to seek appropriate remedies in accordance with law.

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

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 19, 2017/*rd*