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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ W.P.(C) 4768/2017

M/S MADAN JEE DISTRIBUTORS ..... Petitioner
Through: Mr. Puneet Rai, Advocate

versus

COMMISSIONER OF TRADE & TAXES & ANR. ..... Respondents
Through: Mr. Ankur Chhibber, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **30.05.2017**

1. Despite several orders of the Court including 25th April, 2017 in W.P. (C) 3502 of 2017 (***I Smart Mobile Technology Private Limited vs. Commissioner of VAT***) holding that the pendency of a refund application should not be viewed by the DVAT Department as an opportunity to create a further demand, that is precisely what the Assistant Value Added Tax Officer (AVATO) has done in the present case.

2. In the present case, the Petitioner is engaged in the business of trading in Aluminium and is registered with the DVAT Department. The Petitioner filed its return for the period 1st January 2014 to 31st March 2014 on 26th November 2014 claiming a refund of Rs. 7,91,585. In terms of Section 38 (3) (a) (ii) of the Delhi Value Added Tax 2004 (DVAT Act) the refund together with interest became due on 25th January 2015.

3. The assessment order under the CST Act was passed on 20th January 2017. With the refund not forthcoming, the present petition was filed on 24th may 2017 and was listed fro hearing first before the Court on 26th May 2017. Notice was issued on that date and accepted by learned counsel for the DVAT Department.

4. Today Mr Ankur Chibber, learned counsel for the DVAT Department informs the Court that on 22nd May, 2017 the AVATO, issued a notice of default assessment of tax and interest under Section 32 of the DVAT Act creating a demand of Rs.1,66,625/- by invoking Section 9(2)(g) of the DVAT Act. Creation of such a demand when refund is overdue is clearly contrary to the aforementioned order of this Court in ***I Smart Mobile Technology Private Limited vs. Commissioner of VAT*** *(supra)* which in turn follows the earlier judgement of this Court in ***M/s Prime Papers & Packers v. Commissioner of VAT (2016) 94 VST 367 (Del).***

5. Learned counsel for the Petitioners states that the fact of the order dated 22nd May, 2017 have been placed online came to the knowledge of the Petitioner only after the present petition was filed.

6. For the aforementioned reasons, the notice dated 22nd May, 2017 of default assessment of tax and interest under Section 32 of the DVAT Act issued by the AVATO is hereby set aside. However, without in any manner delaying any further the grant of the refund that is overdue for the period in question, it will be open to the DVAT Department to proceed in the matter in accordance with law.

7. The refund order be issued by the DVAT Department in respect of the

Petitioner's claim for the period in question within four weeks from today. Within one week thereafter, the refund amount together with interest payable thereon will be deposited directly in the Petitioner's account by the DVAT Department.

8. The Court further directs that the DVAT Department will abide by the above timeline. In the event that the Petitioner has any grievance either on account of non-payment of the refund amount together with interest as directed or non-compliance with any of the above directions, it would be open to it to seek appropriate remedies in accordance with law.

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

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 30, 2017
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