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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 6056/2017

M/S ISHWAR ENTERPRISES ..... Petitioner
Through Mr. Rakesh Kumar, Advocate.

versus

COMMISSIONER OF DELHI VALUE ADDED TAX & ANR. ..... Respondents
Through Mr. Shadan Farasat with Mr. Ahmed Said, Advs. and Ms. Trisha Kadyan, Legal Asst., Department of Trade and Taxes, GNCTD.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

O R D E R

% **25.10.2017**

Order dated 12th September, 2017 passed in the present writ petition reads as under:

> "1. A counter affidavit has been handed over by the learned counsel for the Respondent in the Court today. The stand taken is that the decision of this Court in ***Indian Oil Corporation Ltd. v. Commissioner*** of VAT dated 11th April 2017 which in turn followed the earlier order in ***Ingram Micro India Pvt. Ltd. v. Commissioner, Department of Trade & Taxes (2016) 89 VST 312 (Del)*** has been stayed by the Supreme Court in SLP (C) No. 13928/2017 and, therefore, the Petitioner is not entitled to any relief at this stage.
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> 2. It is further submitted by Mr. Shadan Farasat, the learned counsel appearing for the Department, that since the

> Petitioner in the present case is seeking issuance of F-Forms and not C-Forms, the Department is prepared to verify the records and pass a reasoned order in that behalf if a time bound direction is issued by the Court and preferably after giving the Petitioner an opportunity of being heard.
>
> 3. In this view of the matter, it is directed that the Petitioner will appear before the VATO concerned on 26th September 2017 at 3:00 p.m. The VATO concerned will, after giving the Petitioner opportunity of being heard, pass a reasoned order within two weeks thereafter and communicate the same forthwith to the Petitioner. A copy of the said order will also be placed on record in these proceedings.
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> 4. List on 25th October 2017.
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> 5. Order Dasti under the signature of the Court Master."

Pursuant to the direction given in the said order, the Assessing Officer/VATO, Ward 64 has passed order dated 9th October, 2017 which is rather detailed and refers to various factual and legal issues for refusing the refund claimed by the Petitioner. One of the contentions raised by the petitioner is that the order is factually incorrect and also that the decision in the case of ***Ingram Micro India Pvt. Ltd. vs. Commissioner, Dept. of Trade and Taxes*****,** (2016) 89 VST 312 (Del), operation of which has been stayed by the Supreme Court, is not relied upon, as the petitioner had in fact declared the details of Form-F by mistake under the column relating to Form-C.

Be that as it may, it will be proper for the petitioner to file an appeal as per the statutory remedy provided under the Delhi Value Added Tax Act, 2004. The Appellate Authority will have the jurisdiction and power to examine both the factual and legal aspects as have been raised and considered in the order dated 9th October, 2017.

Counsel for the petitioner at this stage submits that the order dated 9th October, 2017 has not been put up on the portal of the petitioner assessee. We direct the respondents to put up the said order online on the portal of the petitioner assessee and thereupon the petitioner would be at liberty to file an appeal within the statutory period.

Learned counsel for the petitioner further submits that he would request the appellate authority for expeditious disposal. We hope and trust that the appellate authority would look into the said request.

The writ petition is disposed of.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

OCTOBER 25, 2017
MR/pk