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

\+ W.P.(C) 1081/2018 & CM Nos.4515-16/2018

COMBINED TRADERS ..... Petitioner
Through: Mr. Rajesh Jain, Advocate

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent
Through: Mr. Satyakam, ASC with Mr. Bikram Ram Meena, VATO & Mr.Amit, Legal Assistant, DTT, GNCTD

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **21.02.2018**

The petitioner herein has challenged the order dated 8.1.2018, i.e., notice of default assessment of tax and interest under CST Act passed by the Department of Trade and Taxes. The petitioner submits that the said order was passed without hearing and invokes Section 74B(5) of the Delhi Value Added Tax Act, 2004 (‘Act’). Referring to the language of the said order, it is submitted, that the petitioner has been directed to deposit a sum of Rs. 3,18,82,488/- and furnish proof of payment on or before 15.1.2018.

Learned ASC for the respondent has submitted that the order dated 8.1.2018 is an order under Section 32 of the Act and the petitioner has a right to file objections under Section 74 of the Act. Thereupon, the petitioner would be heard by the Objections Hearing Authority and a speaking order, dealing with the contentions of the petitioner, would be passed. Objections with regard to invocation of power under Section 74B of the Act would be examined by the Objections Hearing Authority.

After some hearing, learned counsel for the petitioner submits that the Objections Hearing Authority must be an independent person, who was not member of administrative approval committee, i.e., refund committee in the present case. Learned counsel for the respondent states that the Special Commissioner would be the Objections Hearing Authority in the present case. He states that the Special Commissioner, who has not dealt with the case of the petitioner on administrative side, could be appointed as a special case.

We accordingly dispose of the petition in view of the statements made by learned counsel for the parties on the following terms:

(i) The petitioner would file objections within three weeks.

(ii) The Special Commissioner, who is not a part of the Refund Committee, would be, as a special case, appointed to hear and decide the objections raised by the petitioner.

(iii) The Objections Hearing Authority will pass a speaking order within a period of six weeks from the date of filing of objections.

(iv) The petitioner, if aggrieved by the order of the Objections Hearing Authority, will be entitled to challenge the order passed in accordance with law.

(v) In case respondent initiate coercive action for recovery,

> the petitioner would be entitled to ask for stay and, if the request is rejected, can take recourse to appropriate remedy.

At the request of learned counsel for the petitioner, the original file will be shown to learned counsel for the petitioner outside the Court. The petitioner may make an application for supply of documents, which the respondent would supply within a period of three working days.

Dasti.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

FEBRUARY 21, 2018
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