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

\+ W.P.(C) 8385/2017

ESPAN INFRASTRUCTURE LIMITED ..... Petitioner

Through: Mr. M.A. Ansari with Mr. Khursheed Ahmad, Advs.

versus

COMMISSONER OF VAT & ANR. ..... Respondents

Through: Mr. Satyakam, ASC, GNCTD with Ms. Manpreet, LA.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **06.07.2018**

The petitioner's grievance is that despite its approaching the authorities, refund claimed based upon its input credits in line to its account were not processed and the amounts paid. While issuing notice the respondents indicated that a sum of ₹10,93,000/- had been permitted as a refund and that the claim in respect of the balance i.e. ₹37,48,310/- stood rejected. The respondents thereafter filed a reply which indicated that the refund claims were rejected on account of the default notices issued under Section 32 of the DVAT Act, on 14.09.2017.

The petitioner's counsel relied upon a Division Bench ruling of this Court in *I Smart Mobile Technology Private Limited v. Commissioner of VAT & Anr.* [W.P.(C) 3502/2017 decided on

25.04.2017] to say that in the absence of the opportunity the credit could not have been claimed. Counsel also relied upon the judgment in *On Quest Merchandising India Pvt. Ltd. v. Government of NCT of Delhi* [W.P.(C) 6093/2017 decided on 26.10.2017] which stated that in the absence of any mismatch in the transactions relating to credit, the refund claims cannot be refused.

This Court after considering the submissions and the circumstances is of the opinion that the orders refusing refund have to be set aside. The VATO even without referring to any facts has not given any reason to say that any part of the refund sought on account of the credit input is justified or whether there is mismatch in the input credit of the purchasing dealer as compared with the output credit of the selling dealer. In these circumstances, the said orders of 14.09.2017 (produced as 'Annexure 2' at Pages 8 to 10 of the respondent's reply) are hereby set aside. The VATO is directed to process the claims afresh and pass appropriate orders indicating the reasons in accordance with law. If the petitioner is further aggrieved, he may avail appellate remedies.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 06, 2018/kks