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

Date of Decision: 15th November, 2019

\+ W.P.(C) 12018/2019

ITD-ITD CEM JV ..... Petitioner

Through: Mr. Rajesh Jain, Mr. Virag Tiwari & Mr.Ramashish, Advs.

versus

COMMISSIONER OF TRADE & TAXES ..... Respondent

Through: Mr. Satyakam, ASC (GNCTD) along with Mr. Amit Sharma, L.A.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, Chief Justice *(Oral)*

CM APPL.49211/2019 *(Exemption)*

Allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 12018/2019

1. This writ petition has been preferred challenging the order dated 29th August, 2019 passed by the Additional Commissioner (at page 25 of the paper book).

2. Counsel appearing for the petitioner submitted that the amount of the interest has been wrongly calculated on the VAT refund amount by the respondents. It is also submitted by the counsel appearing for petitioner that

earlier a writ petition was preferred being W.P.(C) 7842/2018 which was allowed by this Court *vide* order dated 7th August, 2019 wherein direction was given to refund the amount under the Delhi Value Added Tax, 2004 (hereinafter referred to as 'the Act, 2004') along with the interest under Section 42 of the Act, 2004.

3. It is also submitted by the counsel for the petitioner that calculation of the interest has already been given in the order dated 7th August, 2019 passed in W.P.(C) 7842/2018. This aspect of the matter has not been properly appreciated by the Additional Commissioner and hence the order dated 29th August, 2019 give by the Additional Commissioner deserves to be quashed and set aside.

4. We have also heard the counsel for the respondent who has submitted that the impugned order dated 29th August, 2019 passed by the Additional Commissioner is an appealable order under Section 42 of the Act, 2004. It is also submitted by the counsel for respondent that there is no direction given by this Court in the judgment and order dated 7th August, 2019 passed in W.P.(C) 7842/2018 to make the payment of specific amount of interest upon the refund amount. The amount of interest on the refund amount has to be calculated by the respondent as per the provisions of law, especially, under Section 42 of the Act, 2004. A detailed speaking order dated 29th August, 2019 has been passed by the Additional Commissioner. The interest on the refund amount has already been directed to be paid @6% for the period 02.03.2015 to 20.08.2019 which comes to ₹1,67,98,822/-

5. Thus, the dispute raised by the petitioner in this petition about the calculation of the interest is an appealable order under Section 42 of the Act,

2004 and as an efficacious remedy is available with the petitioner, we do not deem it fit to exercise our powers under Article 226 of the Constitution of India for the prayer made in this writ petition.

6. With the aforesaid observation, this writ petition is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

NOVEMBER 15, 2019
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