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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 714/2016**

SHREE ASHTVINAYAK GEMS & STONE PVT. LTD. ..... Petitioner

Through: Mr Rajiv Mahna, Mr Ruchir Bhatia and Mr Ramanand Ray, Advocates.

versus

COMMISSIONER, TRADE & TAXES, DELHI & ORS. ..... Respondents

Through: Mr Gautam Narayan, Additional Standing Counsel with Mr R. A. Iyer, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **27.01.2016**

<u>CM No.3041/2016</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 714/2016 & CM No.3040/2016</u>

3. Notice. Mr Gautam Narayan, learned Additional Standing Counsel for the Respondents accepts notice.

4. The Respondent, Commissioner, Trade and Taxes appears to have invoked the powers under Section 60 of the Delhi Value Added Tax Act, 2004 (‘Act’) and sealed the business premises of the Petitioner only on the

ground that when the premises were inspected on 19th January 2016 at about 5:30 pm, the accounts and other documents were not produced by the Petitioner.

5. Section 60 of the Act sets out the jurisdictional requirement for invocation of the power under Section 60(2)(f). It mandates that the Commissioner must have reasonable grounds to believe that "any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner". This satisfaction of the Commissioner has to be based on materials that are available on record. It ought not to be mechanically exercised, using a cyclostyled form, as has been done in the present case. The notice dated 19th January 2016, the date of the sealing, sets out only one the ground, in a pre-printed form, that the dealer "failed to produce the books of accounts till 7:30 PM in spite of issue of notice under Section 59 of the DVAT Act 2004". This obviously does not satisfy the statutory requirement under Section 60(2)(f) of the Act.

6. The facts as set out in the petition that the decision reveal that the decision to invoke the powers under Section 60(2)(f) of the Act was taken in undue haste virtually in continuation of invocation of the power under Section 59 of the Act to search the premises for information and documents. Sufficient opportunity was not afforded to the Petitioner to explain why, if at all, it was unable to produce the documents and information sought by the Department. Also, there could not be an automatic presumption that since the Petitioner failed to produce the documents at once it was attempting to avoid or evade tax or was concealing its tax liability.

7. For the aforesaid reasons, the Court directs that the business premises of the Petitioner at1157/1139, Balaji Plaza, Kucha Mahajani, Chandni Chowk, Delhi be de-sealed forthwith and in any event not later than 4pm on 28th January, 2016 in the presence of the authorized representative of the Petitioner. The proceedings drawn up for the de-sealing will be signed by both the VATO concerned and the authorized representative of the Petitioner.

8. Counsel for the Petitioner states that it is prepared to produce the records it has before the Respondent on any date as may be directed. It is accordingly directed that the Petitioner will appear before Mr R. S. Ruhil, Assistant Commissioner, W-16 on 29th January, 2016 at 11am and produce the accounts and books required to be maintained by it and provide the information sought.

9. The petition and the pending application are disposed of in the above terms.

10. Order *dasti* under the signature of the Court Master.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 27, 2016
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