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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
57.
\+ **W.P.(C) 759/2016**

BHUPINDER AUTO INTERNATIONAL ..... Petitioner
Through: Mr. Ruchir Bhatia, Advocate.

versus

COMMISSIONER,TRADE & TAXES & ORS. ..... Respondents
Through: Mr. Gautam Narayan, ASC with Mr. R.A. Iyer, Advocate and Mr. Debasis Biswal, VATO.

**CORAM:**
**JUSTICE S. MURALIDHAR**
**JUSTICE VIBHU BAKHRU**

**O R D E R**
% **29.01.2016**

**CM No. 3287/2016 (for exemption)**

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

**W.P.(C) 759/2016 & CM No. 3286/2016 (for stay)**

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

4. This is a writ petition by Bhupinder Auto International through its Sole Popreitor praying for de-sealing of its business premises at 1/510, Ganda Nala Bazar, Kashmere Gate, Delhi-06.

5. It is stated that on 14th January 2016 at about 6.30 pm a team of officers of

the Value Added Tax (VAT) Department reached the aforementioned premises of the Petitioner and handed over a copy of a notice under Section 59 of the Delhi Value Added Tax Act, 2004 ('DVAT Act') requiring the Petitioner to produce complete up-to-date statement of accounts within half an hour i.e. by 7 pm. The Petitioner states that the survey team insisted on Petitioner handing over two cheques of Rs.13 lakhs each else face dire consequences of sealing of the business premises. It is stated that since the Petitioner refused to do so, the survey team proceeded to seal the premises exercising the powers under Section 60 of the DVAT Act.

6. The copy of the sealing order dated 14th January 2016 which has been enclosed with the paper book shows that it is a pre-printed form which states that the dealer in question failed to produce the books of accounts in spite of the notice under Section 59 of the DVAT Act. Therefore, the Assistant Commissioner (Enforcement) proceeded to seal the premises.

7. The Court is at this stage not required to examine the correctness of the allegations in the petition as far as what transpired during the visit of the survey team. What, however, concerns the Court is the action taken to seal the premises almost in continuation of the action under Section 59 of the Act. The Court notes that there have been other such instances which have been brought to the notice of the Court recently where the Respondents have been invoking the powers under Section 60 of the DVAT Act indiscriminately and routinely.

8. Recently this Court, in similar circumstances, passed an order on 27th January 2016 in W.P.(C) No. 714/2016 (***Shree Ashtvinayak Gems & Stone***

***Pvt. Ltd. v. Commissioner, Trade & Taxes, Delhi***) invalidating the sealing of the business premises. Two paragraphs of that order, which are relevant for the present case, read as under:

> "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.
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> 6. The facts as set out in the petition 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."

9. The present circumstances appear to be no different from one that the Court noticed in the aforementioned writ petition. The Court, therefore, has no hesitation in holding the action of the Respondents in proceeding to seal the premises of the Petitioner, almost in continuation of the action under Section 59 of the DVAT Act, and only for the failure to produce books of accounts, without anything more, is unsustainable in law.

10. Accordingly, the Court directs that the business premises of the Petitioner at 1/510, Ganda Nala Bazar, Kashmere Gate, Delhi-06 be de-sealed forthwith and in any event not later than 4 pm on 30th January 2016 in the presence of the authorised representative (AR) of the Petitioner. Proceedings be drawn up for de-sealing and signed both by the VATO concerned and AR.

11. Learned counsel for the Petitioner states that the Petitioner is prepared to produce the records and accounts before the concerned VATO on any date as may be directed.

12. The AR of the Petitioner will appear before Mr. Debasis Biswal, VATO, Ward 16 on 1st February 2016 at 11 am and produce the accounts and books required to be maintained by it and provide whatever information sought by the VATO.

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

14. A copy of this order be given *dasti* under the signature of Court Master.

**S. MURALIDHAR, J**

**VIBHU BAKHRU, J**

**JANUARY 29, 2016**/dn