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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 1145/2016**

JATALIA GLOBAL VENTURES LTD. ..... Petitioner
Through: Mr. Rajesh Jain, Mr. Virag Tiwari and Mr.K.J. Bhat, Advocates.

versus

COMMISSIONER OF TRADE & TAXES, DELHI & ANR. ..... Respondents
Through: Mr Shubhanshu Gupta for Mr. Anuj Aggarwal, Additional Standing Counsel.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **10.02.2016**

<u>CM No. 5043/2016</u>

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) No. 1145/2016 & CM No. 5042/2016 (for de-sealing of premises)</u>

3. Notice. Mr. Shubhanshu Gupta for Mr. Anuj Aggarwal, 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 after a visit

by the Enforcement Team on 22nd January 2016 at about 3:30 pm on the ground that the Petitioner "has evaded tax to the tune of Rs. 3 Crore" and "liability to pay this, which he has failed to do."

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 pre-printed form, as has been done in the present case. The notice of sealing under Section 60 of the Act dated 22nd January 2016sets out only one ground which is handwritten after striking out certain portions of a pre-printed form, that the dealer “has evaded the tax to the tune of Rs. 3 crores (Three Crores only) and liability to pay this, which he has failed to do.” 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 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 the premises should not be sealed by the Department. With there being no assessment made and communicated to the Petitioner , that there is an outstanding tax demand of Rs. 3 crore, there could not be a presumption that the Petitioner has avoided

or evaded the said tax demand.

7. For the aforesaid reasons, the Court directs that the business premises of the Petitioner i.e. M/s. Jatalia Global Ventures Ltd. situated at 308, Lusa Tower, Azadpur, Delhi-33 be de-sealed forthwith and in any event not later than 4 pm on 12th February, 2016 in the presence of the authorized representative of the Petitioner. The documents/records seized at the time of the sealing will be returned to 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 the concerned officer on 15th February, 2016 at 11 am 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. Order *dasti* under the signature of the Court Master.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 10, 2016/dn