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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ W.P.(C) 1566/2016 & CM No. 6780/2016 (for stay)

M/S GULLU'S ..... Petitioner
Through: Mr. Rajesh Mahna with Mr. Ruchir Bhatia and Mr. Ramanand Roy, Advocates.

versus

COMMISSIONER,TRADE & TAXES, & ORS. ..... Respondents
Through: Mr. Satyakam, Additional Standing Counsel for GNCTD.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER
% **14.03.2016**

Dr. S. Muralidhar,J.:

1. The Petitioner which is a sole proprietorship concern, carrying on the business under the name and style of M/s. Gullu's at Shop No.2, Main Road, Malka Ganj, Delhi 110007, is a registered dealer under the Delhi Value Added Tax Act, 2004 ('DVAT Act'). The Additional Value Added Tax Officer ('AVATO') (Respondent No.2) visited the business premises of Petitioner on 12th February 2016 asking for production of the books of accounts including sale invoices. The Petitioner states that at the time of the said inspection, the AVATO expressed the view that the items sold by the Petitioner, in particular 'meat', was chargeable to VAT @ 12.5% and not 5% and further insisted that unless the Petitioner gave a cheque of Rs.12

lakhs in favour of the Department of Trade and Taxes (DT&T) at the spot, the business premises of the Petitioner would be sealed. The Petitioner averred that having no other option, the sole proprietor of the Petitioner, Mrs. Sunita Arora, was compelled to hand over a cheque of Rs.12 lakhs.

2. On 16th February 2016, the authorised representative of the Petitioner appeared before the AVATO and submitted that the proceedings of the previous date, i.e., 12th February 2016 was illegal. On 20th February 2016, the AVATO along with the Assistant Commissioner, Ward-32 again visited the business premises of the Petitioner and informed her that they have worked out a tax demand of Rs. 28.75 lakhs on account of the difference in the rate of tax and that if she did not immediately deposit the said amount, the premises would be sealed. Under such threat the Petitioner states that she was forced to deposit a sum of Rs. 5 lakhs on the spot through the online system, where the challan was printed out from the website of the DT&T.

3. It is in the above background that the writ petition prayed for a direction to the Respondents to return the cheque of Rs.12 lakhs collected from the Petitioner and to restrain them from taking any further coercive action including not sealing the premises of the Petitioner.

4. At the first hearing of this petition on 21st February 2016, notice was accepted by Mr. Satyakam, learned Additional Standing Counsel for GNCTD. The Court had made it clear to Mr. Satyakam on that day itself that it did not approve the action of the AVATO in collecting the cheque from the Petitioner at the time of the alleged inspection of the Petitioner's

premises and that the cheque would have to be immediately returned. At the request of Mr. Satyakam, the matter was then adjourned to the following date, i.e., 23rd February 2016. The concerned AVATO was also required to remain present on the next date.

5. On 24th February 2016 the following order was passed:

> 1. Mr Satyakam, learned Standing counsel for the Respondent informs the Court that the cheque which was collected at the premises of on 12th February, 2016 was returned to the Petitioner yesterday. He further states that in light of the observations of the Court at the hearing of this case yesterday and in light of the orders dated 3rd February 2016 in W.P.(C) No.1820/2013 (***Larsen And Toiibro Ltd. v. Govt. of NCT of Delhi***) and 27th January, 2016 in W.P.(C) No.714/2016 (***Shree Ashtvinayak Gems & Stone Pvt. Ltd. V. Commissioner, Trade & Taxes, Delhi***), the Commissioner of Trade and Taxes is in the process of issuing clear instructions that none of the officers of the Respondent who are associated in a survey or sealing proceedings will collect cheques or cash on the pretext of collecting tax dues from the concerned dealer.
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> 2. Considering the number of instances that have come before this Court in the recent past where dealers have been asked to issue cheques for alleged outstanding tax demands and are stated to have 'voluntarily' handed over such cheques, the Court considers it appropriate to keep the present petition pending till such time the instructions, as assured to this Court, are issued by the Commissioner of Trade and Taxes.
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> 3. As far as the present petition is concerned, it is made clear that no further coercive steps will be taken against the Petitioner pursuant to the survey conducted in its premises on 12th February, 2016. The Petitioner will nevertheless produce all the records before the VATO. The authorized representative of the Petitioner will appear before the VATO concerned on

29th February, 2016 at 11:00 am and provide whatever information and documents are sought by the VATO.

4. List on 14th March, 2016.

5. Order dasti under the signature of the Court Master."

6. Today, Mr. Satyakam produced before the Court copy of a Circular F. No. 7(3)/L&J/Circular/2016/270 dated 11th March 2016 issued by the Special Commissioner (L & J) which reads as under:

> "**Sub: Guide lines for officials/officers of Trade & Taxes Department during conduct of survey/inspection**.
> Recently the Hon'ble High Court of Delhi while delivering the judgment in the matter of *M/s. Gullu's* in Writ Petition No. 1566/2016 and *M/s. Capri Bathaid Pvt. Ltd.* in WPC No. 8913/2014, has taken a very serious view on the issue that while the department officials/officers visit the premises of a dealer for conducting survey or inspection, in some cases, the departmental officials/officers accepted cheques as surety against due tax from the dealers. This has been found to be not in conformity with the mode of collection of VAT receipts by the department.
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> Manner of payment of tax, interest and penalties have been specified in Section 36 of DVAT Act 2004 and Rule 31 of DVAT Rules 2005. All dues are to be paid in appropriate Government Treasury as defined under Rule 4(b) of the DVAT Rules.
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> Presently, a total of 27 banks stand notified for the purpose of collection of Tax. Facility of e-payment mode exists in all the authorised banks. Besides, two banks, viz., State Bank of India and HDFC Bank have also been authorised to accept payment through OTC (Over the Counter). In this mode also, challan is to be got printed from the department's website.
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> Therefore, all the VAT Authorities are directed to comply with

> the above and shall collect tax only through e-payment mode i.e. via internet banking or physical off line payment mode (payment through cash/cheque after printing the challan from the departments website). Further all VAT Authorities are directed to exercise powers and jurisdiction in accordance with the provisions of the DVAT Act 2004 after seeking due approval wherever necessary.
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> Non-compliance of the above instructions shall be viewed seriously and will invite initiation of disciplinary proceedings.
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> This issues with the approval of Commissioner (VAT)."

7. Mr. Satyakam sought to explain to the Court that the above circular is in compliance with the order dated 24th February 2016 and makes it clear that the action of the Respondents in collecting a cheque from the Petitioner at the time of the survey proceeding on 12th February 2016 was not in conformity with the mode of collection of VAT as envisaged under the DVAT Act and the Delhi Value Added Tax Rules, 2005 ('DVAT Rules'). However, the Court is not satisfied with the wording of the above circular. It still leaves it open to VAT Authorities to collect tax either through the e-payment mode or the physical offline mode at the time of conducting a survey or an inspection of the business premises of a dealer.

8. The Court notes that despite its order dated 3rd February 2016 in W.P.(C) No.1820/2013 (***Larsen And Toubro Ltd. v. Govt. of NCT of Delhi***) and judgment 2nd March 2016 in W.P.(C) No. 8913/2014 (***Capri Bathaid Private Limited v. Commissioner of Trade & Taxes***) (both of which have been noted in the above Circular), clear and categorical instructions have not been issued that no dealer would be coerced by the officers of the DT&T to make

payment of any amount either towards alleged tax dues or otherwise either by cheque or cash at the time of a survey or inspection or any other proceeding including proceedings under Section 60 of the DVAT Act. The Court expected a categorical instruction to be issued by the Commissioner, Trade & Taxes (CTT). It is disappointing to note that that has not been done.

9. Consequently, the Court is constrained to again issue the following directions, which it is made clear, will be complied with by the CTT himself. In other words, the CTT will not delegate this task to any other officer including any Special Commissioner who may be otherwise authorised to do so.

10. Within a period of one week from today, and in any event not later than 21st March 2016, the CTT will issue instructions to all the officers of the DT&T that under no circumstances will any officer of the DT&T, who is part of a team or individually tasked with the responsibility of the carrying out a survey or inspection or any sealing, collect any amount by way of any alleged tax dues or security or surety against tax dues either by cheque or cash from any dealer at the time of such survey, inspection or sealing proceedings. Even where a dealer comes forward 'voluntarily' to deposit such cheque or cash towards tax dues at the time of such survey or inspection or sealing, the officers of the DT&T will decline to receive such cheque or cash and advise the dealer to make the payment only in the modes permitted in terms of the DVAT Act and DVAT Rules and at the places/counters designated for that purpose. The CTT will make it clear in the instruction that it is not permissible for an officer of the DT&T to collect

cheque or cash at the time of survey, inspection or sealing proceedings under threat of sealing the premises under Section 60 of the DVAT Act. The CTT shall also make it clear that the said instructions shall be strictly complied with; that any infraction thereof will be strictly dealt with including but not limited to disciplinary action against the concerned officer(s).

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

12. It will be open to the Petitioner to apply to the Court in case of non-compliance with any of the above directions.

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

S. MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 14, 2016
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