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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 2767/2016**

ARJ EXIM (INDIA) ..... Petitioner
Through: Mr Ruchir Bhatia, Advocate.

versus

COMMISSIONER,TRADE & TAXES, & ANR. ..... Respondents
Through: Mr Shubhanshu Gupta, Advocate for Mr Anuj Aggarwal, ASC, GNCTD.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R
% **29.03.2016**

CM No.11635/2016

1. Allowed, subject to all just exceptions.

W.P.(C) 2767/2016 & CM No.11634/2016

2. Notice. Mr. Shubhanshu Gupta for Mr. Anuj Aggarwal, learned Additional Standing Counsel for the Respondents accepts notice.

3. The Assistant Commissioner, Department of Trade and Taxes (Respondent No. 2) 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 at D-100, 1st, 2nd and 3rd floors, Mayapuri, Phase-2, New Delhi-110064 after a visit by the Enforcement Team on 7th

March, 2016 at about 9:00 pm on the ground that the Petitioner "even after being given the reasonable time & opportunity to produce the said documents, has failed to produce the documents till 9.00pm"."

4. 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 59 of the Act dated 7th March, 2016 sets out only one ground which directed the Petitioner to "produce the following records/books of account of the firm before 7:00 pm, failing which appropriate action as per DVAT Act 2004 will be taken in the interest of Government Revenue." This obviously does not satisfy the statutory requirement under Section 60(2)(f) of the Act.

5. 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 sufficient opportunity given to the Petitioner to explain the difference between the data regarding the quantum of imports received from DRI and the books of accounts, there

could not be a presumption that the Petitioner has avoided or evaded the said tax demand.

6. For the aforesaid reasons, the Court directs that the business premises of the Petitioner i.e. M/s.ARJ Exim (India) situated at D-100, 1st, 2nd and 3rd floors, Mayapuri, Phase-2, New Delhi-110064 be de-sealed forthwith and in any event not later than 4 pm on 31st March 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.

7. 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 1st April, 2016 at 11 am and produce the accounts and books required to be maintained by it and provide the information sought.

8. 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

MARCH 29, 2016
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