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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ **W.P.(C) 3146/2016**

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

versus

COMMISSIONER, TRADE & TAXES, & ANR ..... Respondents
Through: Mr. Satyakam, Additional Standing counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **08.04.2016**

<u>CM APPL No. 13481/2016 (for exemption)</u>

1. Exemption allowed subject to all just exceptions.

<u>W.P. (C) 3146/2016 & CM APPL No. 13480/2016 (stay)</u>

2. Notice. Mr. Satyakam, learned Additional Standing counsel accepts notice on behalf of the Respondents.

3. The short question in this writ petition concerns the validity of the notices of default assessment of tax and interest and the notice of default assessment of penalty issued by the Additional Value Added Tax Officer, Ward No. 40, Delhi on 14th and 15th March 2016 under Sections 32 and 33 of the Delhi Value Added Tax Act, 2004 ('DVAT Act').

4. The background to the present writ petition has been set out in some detail in the earlier orders passed by this Court on 24th February 2016 and

14th March 2016 in Writ Petition (Civil) No. 1566 of 2016 (***M/s. Gullu's v. Commissioner, Trade & Taxes***). Accordingly, they are not being repeated here.

5. By the last mentioned order dated 14th March 2016 this Court had issued directions regarding the scope of the powers of the Value Added Tax Officer ('VATO') under Sections 59 and 60 of the DVAT Act. By the order dated 24th February 2016, the Court had required the authorized representative ('AR') of the Petitioner to appear before the VATO and produce all the documents as sought by the VATO. The AR of the Petitioner appeared before the AVATO on 29th February 2016 and produced the documents and information sought. Thereafter, the AVATO concerned did not call for any further information/clarification or response from the Petitioner.

6. Thereafter this Court by its order dated 14th March 2016 disposed of the petition directing Respondent No. 1 "to issue instructions to all the officers of the DT&T that under no circumstances will any officer of the DT&T, who is a part of 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."

7. It is stated that on the very next day, i.e., 15th March 2016 the Petitioner was shocked to received impugned notices of default assessment of tax, interest and penalty for AYs 2011-12 to 2015-16 without affording the Petitioner an opportunity of explaining the materials produced by it before VATO.

8. In the impugned notices issued by the VATO, certain expressions have been used which betray a certain pre-disposition which does not comport well with the responsible discharge of a quasi judicial function entrusted to an officer under the DVAT Act. Illustratively, the AVATO states that "however in an utterly and bitterly surprise move the dealer approached the Hon'ble High Court, Delhi in the case titled WP (C) No. 1566/2016 titled *Gullu's v. Commissioner (VAT)]*". Another sample is this: "hence by doing the same, dealer is befooling the department and in the process causing huge revenue losses to the Government Exchequer".

9. The Court is constrained to draw the attention of the Commissioner, VAT of such instances that are time and again being brought forth seeking directions to the Respondents to comply with the basic requirements of the law. Although the detailed directions had already been issued by this Court in ***M/s. Gullu's v. Commissioner, Trade & Taxes*** (order dated 14th March 2016 in W.P. (C) No. 1566 of 2016), this Court once again directs that the appropriate orientation and training courses be conducted by the Commissioner, VAT for the officers of the DT&T in the DVAT Act in light of the decisions of this Court including the one in ***Capri Bathaid Private Limited v. Commissioner, Trade & Taxes 2016 (155) DRJ 526 (DB).***

10. In the circumstances, the impugned notices dated 14th and 15th March 2016 of default assessment of tax and interest and of default assessment of penalty issued by the AVATO, Ward No. 40, Delhi are hereby set aside and the matters are remitted to the AVATO concerned for a fresh determination after giving the Petitioner an opportunity of being heard and seeking whatever clarification/verification/information are required. The

Petitioner will appear before the VATO concerned on 2nd May 2016 at 11 am.

11. The petition and application are disposed of in the above terms. Order be given *dasti.*

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 08, 2016
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