$~
*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**
32.
\+   **W.P.(C) 6705/2016 & CM No. 27444/2016**

VERMA ROADWAYS ..... Petitioner
Through: Mr. Akarsh Garg, Mr. Pawanshree Agrawal, Advocates.

versus

GOVERMENT OF NCT DELHI & ORS. ..... Respondents
Through: Mr. Ramji Srinivasan, Senior Advocate with Mr. P. Roy Chaudhuri, Advocate with Mr. Vivek Paul Oriel, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R
% **04.08.2016**

Dr. S. Muralidhar, J.:

1. The Petitioner, a partnership firm, carries on the business of transportation goods of dealers registered under the Delhi Value Added Tax Act, 2004 ('DVAT Act') as well as registered dealers of other States. The Petitioner, whose registered office appears to be in Kanpur Uttar Pradesh, has one of its godowns at Gali No. 8, Swaroop Nagar, Delhi - 110042.

2. The case of the Petitioner is that at around 12 midnight on 2nd /3rd July 2016, the Assistant Commissioner ('AC')/Value Added Tax Officer ('VATO') Ward-208 along with other officers visited the abovesaid godown/premises of the Petitioner in Swaroop Nagar and finding that the premises was locked, sealed the premises. The Petitioner states that on 8th July 2016, it moved an application before the AC for de-sealing the

premises, pointing out that the Petitioner is a transporter and not a dealer. The Petitioner stated that the goods lying at its premises are value added tax ('VAT') paid goods and traceable to *bona fide* dealers registered under the DVAT Act.

3. The Petitioner states that on 11th July 2016, the premises was de-sealed for a few hours. The statement of the Branch Manager of the Petitioner was recorded. The original invoices and other relevant documents relating to the stocks in the premises were seized. The original documents lying in the premises were taken into custody by the AC. On the same day, a notice under Section 59 of the DVAT Act was issued, requiring the Petitioner to produce the complete books of accounts before 3.30 pm which was within a few minutes of the issuance of the notice, and which was drawn up in the premises itself. Immediately thereafter, the premises was re-sealed under Section 60 of the DVAT Act for alleged non-compliance and failure to produce the books of accounts.

4. The Petitioner states that thereafter it sent a letter on 12th July 2016 by speed post and visited the office of the AC on 13th July 2016 seeking de-sealing of the premises. An application was filed on 19th July 2016 for de-sealing of the premises. When no action was taken, the present petition was filed on 29th July 2016.

5. When the petition was listed first for hearing on 1st August 2016, notice was issued and the VATO concerned was asked to remain in Court along with records on the following date. On 2nd August 2016, the following order was passed:

"1. Mr. Yogesh Pal Singh, Assistant. Commissioner (AC)/ VATO, Ward- 208 is present with the relevant file.

2. The Court has perused the file. There are only two orders sheets in the file. The first is dated 13th July 2016 recording the presence of the Mr. Rajiv Tripathi, Manager of the Petitioner and the Power of Attorney ('POA') holder. The order requires the Manager to produce a set of documents and adjourns the case for 4pm on 14th July, 2016. However, there is no record of proceedings drawn up for 14th July 2016. The next order is of 18th July 2016, which records the presence of a Chartered Accountant representing A.H. Products Ltd., one of the dealers whose goods have been detained in the godown of the Petitioner. The order notes that the said person did not have a POA but had submitted the purchase register up to July, 2016. The case is then adjourned to 11am on 20th July, 2016.

3. The file contains a copy of a letter received on 19th July, 2016 from Mr. Rajiv Tripathi of the Petitioner seeking one week's time to produce the necessary documents. Significantly, there is no noting in the file regarding the visit to the Petitioner's premises around midnight on 2nd July 2016; on moving an application by the Petitioner on 8th July 2016 for de-sealing; the de-sealing that took place for a brief while on 11th July 2016; and the re-sealing that took place on the same date.

4. The Petitioner states that it was served a notice under Section 59 of the Delhi Value Added Tax Act, 2004 ('DVAT') on 11th July, 2016, requiring the Petitioner to produce complete books of accounts of the firm before 3.30 p.m. on that very date failing which the action under Section 60 of the DVAT Act for sealing of the business premises will be taken "in the interest of government revenue". The file contains a copy of an order dated 2nd July, 2016 signed by Mr. P.R. Meena, Spl. Commissioner, Enforcement Branch, authorizing a team of four officials, led by Mr. Mr Ajay Arora, SDM, Mayur Vihar, and including Mr. Yogesh Pal Singh, AC, to enter and search the premises of the Petitioner, to inspect the accounts and other documents, seize any records, goods etc. and "take action under Section 60 of the DVAT Act, 2004, as may be necessary".

5. The Court also notices that there is a carbon copy of the notice dated 2nd July, 2016 under Section 60 of the DVAT Act and is signed by Mr. Yogesh Pal Singh, AC, which appears to have been issued at the time of sealing of the premises on that date. The said notice reads as: "*....Whereas, Shri ____ the Director/ Proprietor/ Partner/ Authority signatory of the said Firm was present at the time of visit of the team who was directed to produce the books of accounts of the firm. However, he has failed to produce the books of account till ____ p.m. inspite of issue of notice u/s 59 of DVAT Act, 2004....*". When the Court inquired from Mr. Yogesh Pal Singh about the notice under Section 59 of the DVAT Act referred to in the above notice under Section 60 of the DVAT Act, he was candid enough to state that no such notice was issued prior to 2nd July, 2016. When he was asked about the hand-written remarks "... *Inspite of lots of efforts no authorized resp./ person responded*", he stated that inquiries were made with neighbours since the premises was found locked. In other words, there was no effort made by issuing any notice to the Petitioner under Section 59 of the DVAT Act requiring it to produce any record or documents.

6. Consequently, the notice under Section 60 of the DVAT Act and the action of sealing of the premises in terms of the said notice in the midnight of 2nd July 2016 was plainly illegal, arbitrary and without the authority of law.

7. For a second time, consequent, upon the same illegal order dated 2nd July, 2016 of Mr. Meena, the same team proceeded to again seal the premises of the Petitioner on 11th July, 2016. A copy of the sealing notice has been placed on record. The only reason stated therein is that the Petitioner has failed to produce its books of accounts despite notice under Section 59 of the DVAT Act.

8. The above action, on the face of it, is wholly illegal. Section 60 of the DVAT Act, which gives the power to enter premises and seize goods and records makes it explicit that the Commissioner should have either "information in his possession" or otherwise have "reasonable grounds to believe that any person or dealer is attempting

to avoid or evade tax or is concealing his tax liability". It is only thereafter that the Commissioner can proceed with any of the steps under Section 60(2) (a) to (f) of the DVAT Act.

9. The Court has on numerous occasions in the past dealt with the misuse by the officers of the Department of Trade and Taxes of the powers under Section 59 of the DVAT Act (for inspection of records) and Section 60 of the DVAT Act to enter premises and seize the goods. In its order dated 27.01.2016, in WP(C) No. 714/2016 (***Shree Ashtvinayak Gems & Stone Pvt. Ltd. v Commissioner, Trade and Taxes, Delhi***) the Court observed 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.
>
> 6. The facts as set out in the petition that the decision 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...."

10. In the said order, the Court directed the immediate de-sealing of business premises of that Petitioner. In ***Larsen & Toubro Ltd. v. Govt. (NCT of Delhi) (2016) SCC OnLine Del. 664***, a detailed order was passed by the Court in similar circumstances. In paras 13 to 15 of the said order, it was noted as under:

> "13. As far as the present case is concerned, there is nothing in the file which shows what reasons weighed with the Commissioner to order a survey under Section 59 of the DVAT Act and subsequently order sealing of the premises under Section 60 of the DVAT Act. The deployment order sets out three addresses of the Petitioner: at Shivaji Marg, at Okhla Estate and at H-45 Udyog Vihar. The Petitioner was at the time of inspection on 15th March 2013 not functioning at H-45 but from D-4 Udyog Vihar. It had recently shifted from the address at Okhla Estate to Nehru Place. The deployment order was not in respect of the aforementioned two addresses and yet those were sealed. How this was possible without a fresh deployment order being issued is unexplained.
>
> 14. Further, there is no indication as to what prompted the extreme step of sealing of the three premises. The order in that behalf has been passed not by the Commissioner but by the VATO. There is nothing to indicate that the VATO was authorised to do so by an order issued in Form DVAT 50 as on 15th March 2013.
>
> 15. With the sealing order bristling with so many illegalities, there can be no manner of doubt that the sealing action was undertaken mechanically and only for the reason of failure to produce records as sought by the notice under Section 59 of the Act. There was no satisfaction arrived at by the Commissioner, as

> mandatorily required by Section 60 (1) of the DVAT Act, that there was any deliberate attempt by the Petitioner to avoid or evade tax W.P. (C) Nos. 1820/2013, 1821/2013 & 1822/2013 Page 11 of 12 or to conceal its tax liability in any manner.....”

11. The Court then directed de-sealing of the three premises of the said Petitioner which had been wrongfully sealed without following the mandate of the law. Again in ***Capri Bathaid Private Limited v. Commissioner of Trade & Taxes (2016) 155 DRJ 526 (DB)*** the Court reiterated the legal position regarding the powers of survey under Section 59 of the DVAT Act and search and seizure under Section 60 of the DVAT Act., the Court noted that “there is a basic misconception that the VAT Authorities are to mechanically exercise the power of survey under Section 59 of the Act followed immediately by a search and seizure operation under Section 60 of the DVAT Act”.

12. It is unfortunate that despite the above judgments of the Court, which are in the knowledge of not only the Commissioner (VAT), but also the Spl. Commissioner Mr. R.P. Meena, who appears to have issued the order in a printed format on 2nd July 2016, no real effort has been made to comply with the requirement of law. The order dated 2nd July, 2016 signed by Mr. P.R. Meena is in a pre-printed format and casually states that it would be open to the raiding party to “take action under Section 60 of the DVAT Act, 2004, as may be necessary”.

13. The above actions of sealing of the business premises of the Petitioner have been undertaken in ignorance of the law and contrary to the judgments pronounced by the Court time and again. The sealing of the Petitioner’s premises is hereby declared to be illegal.

14. The Court directs immediate de-sealing of the Petitioner’s premises at Gali No.8, Swaroop Nagar, Delhi by the Respondents. Mr. Yogesh Pal Singh, AC, shall remain present at the said premises of the Petitioner at 5.00 p.m. today and the premises shall be de-sealed in the presence of an authorized representative of the

Petitioner. It is stated that an inventory has already been taken of the goods, articles, documents etc. that have been seized. The possession of the premises will be handed over to the authorized representative of the Petitioner and an acknowledgement be kept on the file of the Respondent.

15. The Court requires Mr. P.R. Meena, Spl. Commissioner, Enforcement Branch, who issued the order dated 2nd July, 2016 to remain personally present in court on 4th August, 2016 at 10.30 a.m. Mr. P.R. Meena will bring to court the set of circulars that have been issued on the question of the powers under Section 59 and 60 of the DVAT Act following the orders passed by this court in the matters referred above.

16. Mr. Yogesh Pal Singh, Asstt. Commissioner shall also remain present in court on the next date of hearing. The Court will also be informed with the compliance of the above order.

17. A certified copy of this order shall be delivered by the Registry forthwith by a Special Messenger to Mr. P.R. Meena, Spl. Commissioner, Enforcement Branch, for compliance.

18. List on 4th August, 2016.

19. Order *dasti* under the Signature of the Court Master."

6. Pursuant to the order dated 2nd August 2016, Mr. P.R. Meena, Spl. Commissioner, Enforcement Branch appeared in the Court. On enquiry by the Court, Mr Akarsh Garg, learned counsel for the Petitioner confirmed that pursuant to the order dated 2nd August 2016 the premises has been de-sealed at 5 pm on that date itself as directed by the Court. However, he pointed out that the originals of the documents that had been seized during the sealing had not yet been returned to the Petitioner. The Court then kept the matter at 2.15 pm and requested the Commissioner, VAT to remain present.

7. At 2.15 pm when the matter was called out, Mr. S.S. Yadav, Commissioner, VAT was also present in the Court. Mr Akarsh Garg confirmed that the originals of the documents seized were returned to the Petitioner.

8. Mr. Ramji Srinivasan, learned Senior Advocate appearing for the Respondent Department of Trade and Taxes (DT&T) stated at the outset that what had been shown to the Court on 2nd August 2016 was only one of the relevant file and that there was another file in which a note had been recorded prior to the action taken in the present case and which according to him satisfied the requirement of law under Section 60(2) of the DVAT Act.

9. The file produced today was perused by the Court. It contains a note prepared on 2nd July 2016 which talks of a complaint received in the office of the Chief Minister through the PGMS portal stating that pan masala, bidi, cigarettes, plastic goods, hardware, medical goods etc. "are being supplied through Rajasthan to Delhi without tax invoices by certain transporters". The note then refers to a list of transporters provided by the Special Commissioner (E-II) prepared on the basis of information received by him from various complainants/informers during his public interactions about the transporters "who are transporting/stocking goods without invoices in contravention to the provisions of DVAT Act". It then states that senior officers had worked on the said information and a list of twenty six probable suspected transporters had been prepared and "proposed for conducting survey u/s 60 of DVAT Act, 2004 by the teams headed by SDMs who have been appointed as Value Added Tax Authorities vide notification dated

6.11.2015". The note seeks permission to survey the premises of the transporters.

10. The note sets out in a tabular form the team number, the name of the officers, the ward/branch and the contact numbers of the officers. It proposes that survey of the godowns should be conducted under the supervision of Sub-Divisional Magistrate and the whole survey to be videographed. It further proposes that the Zonal In-charge of the Department will be in continuous touch with the team In-charge and coordinate at the time of survey of the godowns.

11. This note appears to have been placed before the Commissioner, VAT, who appended his signature thereto on the same day i.e. 2nd July 2016. The name of the Petitioner is found included in the list of the twenty six transporters referred to in the said note.

12. Another note appears to have been prepared on 4th July 2016, setting out the action taken/status in respect of 'special drive' initiated against the transporters on 2nd July 2016. In tabular columns the name of the Zonal In-Charge, Team No., name of the Officers/AC and the action/status have been set out. In the last column, where the sealing operation on a particular transporter/travel agent did not succeed, the name is mentioned. In respect of all others it is simply stated: "Godown Sealed". It appears that twenty six godowns were sealed and four were not identified/traced. The note also mentions that 8-10 applications had been received from the transporters for de-sealing of their business premises/godowns. The note then proposes that since the teams are large in number "it would be appropriate that the teams

who had sealed the Godowns may prepare their inventory and also make necessary action of de-sealing after following the due process under the DVAT Act, 2004."

13. What the note fails to acknowledge is that in the first place there was no authorisation for the 'sealing' of any of the premises. What had been permitted to be undertaken on 2nd July 2016 was only a 'survey' under Section 60 of the DVAT Act. There is a substantive difference between a 'survey' operation undertaken under Section 59 of the DVAT Act, an inspection under Section 60 (1) of the DVAT Act and a 'sealing' operation under Section 60 (2) of the DVAT Act.

14. Below the note dated 4th July 2016, a superior officer of the DT&T before whom the file was placed posed a question on 5th July 2016 whether the assessing and de-sealing team "may be different as per current practice or the same team may complete the process as proposed by the branch." The note also proposed that the sealing team may prepare the inventory which may be co-signed/countersigned by the SDM "under complete videography". The Special Commissioner to whom the file was next sent proposed that the same team should "prepare the inventory and de-seal and assess the cases." This note was approved by the Commissioner, VAT on the same day i.e. 5th July 2016.

15. Each of the above officers appear to have overlooked the fact that there was no authorisation in the first place for the 'sealing' of the premises of the transporters. The last note in the file produced today is dated 29th July 2016 and it states *inter alia* that: “survey of 24 godowns were conducted out of

which 23 godowns have been de-sealed after assessment and realising of tax and penalty of Rs. 1,06,74,689”.

16. From the file produced today, it is clear that that what was proposed on 2nd July 2016 was only a ‘survey’. The note did not propose, and the Commissioner, VAT did not authorise, the sealing of any of the premises of the transporters. The note of 4th July 2016 proposed de-sealing of the premises and preparation of inventory "under complete videography". Neither note satisfies the mandatory requirement under Section 60 (2) of the DVAT Act of recording the Commissioner’s 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”.

17. The Court repeatedly asked Mr. Ramji Srinivasan, whether there was such a note in any of the files satisfying the requirement of the law for sealing the Petitioner's premises in terms of Section 60(2) of the DVAT Act, 2004. Apart from referring to the above two notes dated 2nd and 4th July 2016, Mr. Srinivasan was unable to point out any noting on file authorising the sealing of the premises of the 26 transporters, which included the Petitioner. The officers present in the Court, including Mr. Yogesh Pal Singh AC, Mr. Meena, Special Commissioner, and Mr. S. S. Yadav, Commissioner VAT, also were unable to point out to any other note justifying the sealing that took place of the Petitioner's premises first on 2nd July and then again on 11th July 2016.

18. It is plain to the Court that sealing which took place of the Petitioner's godown in Swaroop Nagar on 2nd July 2016, with the AC issuing a sealing

order on that date, which was extracted in full in para 5 of this Court's order dated 2nd August 2016, was wholly without the authority of law. This Court's order dated 2nd August 2016 records the further reasons for concluding that the sealing action on 2nd July was illegal. The re-sealing of the Petitioner's godown on 11th July 2016 was also not supported by any such note in terms of Section 60 (2) of the DVAT Act. Therefore, that sealing too was without the authority of law.

19. It was then volunteered by Mr. Srinivasan that the mention in the note dated 2nd July 2016 that there was a complaint about goods being transported from Rajasthan to Delhi by ‘certain transporters’ without tax invoices was enough to justify the sealing of the Petitioner's godown.

20. The Court is unable to agree with the above submission. A reference may be made at this stage to Section 60 of the DVAT Act which reads thus:

> "60. Power to enter premises and seize records and goods
>
> (1) All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open to inspection by the Commissioner.
>
> (2) Where the Commissioner, upon information in his possession or otherwise has 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 and for the purposes of administration of this Act, it is necessary so to do, the Commissioner may-
>
> (a) enter and search any business premises or any other place or building;
>
> (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the

keys thereof are not readily available;

(c) seize and remove any records, books of account, registers, other documents or goods;

(d) place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;

(e) make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and

(f) seal the premises including the office, shop, godown, box, locker, safe, almirah or other receptacle.

(3) Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner.

(4) Where any premises have been sealed under clause (f) of sub-section (2), of this section or an order made under sub-section (3) of this section, the Commissioner may, on an application made by the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or other receptacle, permit the de-sealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manners as may be prescribed.

(5) The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified in subsection (2) of this section.

(6) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in

> accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.
>
> Explanation.- The powers under this section may also be exercised in respect of a dealer or a third party for the purposes of undertaking an audit or to assist in recovery."

21. This Court has in its decisions in ***Capri Bathaid Private Limited v. Commissioner of Trade & Taxes (2016) 155 DRJ 526 (DB)*** and ***Larsen & Toubro Ltd. v. Govt. NCT of Delhi (2016) SCC OnLine Del. 664*** discussed in some detail the legal position as regards the powers of survey and search and seizure under Sections 59 and 60 of the DVAT Act. These have been adverted to in the order dated 2nd August 2016 extracted in full hereinbefore and therefore need not be repeated.

22. Section 60 (2) of the DVAT Act presupposes that when it is proposed to seal the premises of a particular transporter, there must be some concrete information and some material *qua* that transporter justifying the sealing of that transporter's premises/godown. There must be a recording of the reasonable ground of belief of the Commissioner or his duly authorised delegate that "any person or dealer is attempting to avoid or evade tax or is concealing his tax liability" and that there is some material to believe that the goods of such a person or dealer are in the godown of the transporter whose premises are proposed to be sealed.

23. The legislature has made a conscious distinction between an 'inspection' under Section 60 (1) of the DVAT Act, which could be of the any premises or warehouse of any dealer, transporter or operator and Section 60(2) of the

DVAT Act only talks of evasion or avoidance of tax or concealment of tax liability by “any person or dealer”. Therefore, *qua* the person whose premises is sought to be sealed under Section 60 (2) (f) or any of the steps contemplated under Section 60 (2) (a) to (e) of the Act, the requirement of the Commissioner having to record reasonable ground to believe that a person or dealer is attempting to avoid or evade tax is a *sine qua non.* Where the premises belongs to a transporter the Commissioner or his delegate should record his reasonable grounds to believe that the goods of such person or dealer who is attempting to avoid or evade tax is kept in the godown of such transporter. A general note about 'certain transporters' being involved in transportation of goods from Rajasthan to Delhi with a view to evading taxes is insufficient to take the extreme step of sealing the premises of any and every transporter merely on suspicion without anything more. The 'sealing' of a premises from which business is conducted has serious consequences and should not be lightly undertaken. The file should contain the decision of the Commissioner or his delegate which reflects an application of mind and the recording of the reasonable grounds to believe that that a person or dealer is attempting to avoid or evade tax, that the goods of such dealer are believed to be stored in a godown which therefore requires to be proceeded against.

24. There is no such noting in the file *qua* the Petitioner. To overcome this difficulty, Mr. Srinivasan attempted to advance an argument based on Section 3(9) of the DVAT Act which reads as under:

"**Section 3 Imposition of Tax**
......

(9) If any person who transports goods or holds goods in custody for delivery to or on behalf of any person, on being required by the Commissioner so to do, fails

(a) to furnish any information in his possession in respect of the goods; or

(b) fails to permit inspection thereof; then without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, are owned by him and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly."

25. When asked whether any attempt had been made, prior to the sealing action taken on 2nd July 2016, to seek information from the Petitioner in respect of any goods or documents in his possession, the answer was in the negative. This re-confirmed what was recorded by this Court in para 5 of its order dated 2nd August 2016 that no notice had been issued to the Petitioner prior to 2nd July 2016, calling for any information or document. The question therefore of straightway presuming that the Petitioner was a transporter who fell within the description of Section 3(9) of the DVAT Act, and should be deemed to be a person liable to pay tax, simply did not arise on 2nd July 2016, when the first sealing took place.

26. In any event, the notes dated 2nd and 4th July 2016 make no reference to Section 3(9) of the DVAT Act. The notes do not describe the Petitioner as a person who should be taken to be a deemed evader of tax in terms of Section 3 (9) of the DVAT Act. They do not record that the Petitioner either

failed to furnish any information in his possession or failed to permit inspection of the premises. Therefore, the Court does not see how on the strength of the two notes on the file, the action under Section 60(2) of the DVAT Act could have been taken against the Petitioner.

27. The de-sealing memo of 11th July 2016 written by the AC states that the premises of the Petitioner at Swaroop Nagar were "sealed due to non-production of books of accounts inspite of issuance of notice under Section 59 of DVAT Act, 2004/nobody responded o the date of sealing i.e. 02.07.2016." This was an untenable ground for sealing the premises as explained in ***Capri Bathaid Private Limited v. Commissioner of Trade & Taxes*** (*supra*). In other words the mere non-production of documents or books of accounts cannot justify the sealing of the premises under Section 60 (2) of the DVAT Act. Further the action under Section 60 (2) of the DVAT cannot be seen as a continuation of a survey action under Section 59 of the DVAT Act.

28. The Court is satisfied that the sealing of the premises of the Petitioner on 2nd July 2016 was illegal.

29. Turning to the re-sealing of the Petitioner's premises on 11th July 2016, the Court was told by Mr Akarsh Garg, learned counsel for the Petitioner, that on that date to begin with the premises were de-sealed and an inventory taken of the goods. The original documents were also seized by the DT&T officials. When a query was posed as to why the seized goods could not have been released on *superdari* to the Petitioner and why it was decided to re-seal the premises, Mr Srinivasan volunteered that the officials were

apprehensive of the security of the goods and further that the Petitioner had himself agreed to the release of the goods on the following day. The Court finds this explanation unconvincing.

30. The sealing order dated 11th July 2016 is again in a pre-printed form. It states that the Petitioner's Director/authorised signatory "has failed to produce the books of accounts/records of the firm." Yet, the file contains a list prepared on 11th July 2016 on the letterhead of the Petitioner titled "Seized Documents" which lists out 47 documents, the originals of which were returned today i.e. 4th August 2016. Therefore, the officials did seize the documents found in the premises on 11th July 2016 apart from seizing the goods found therein. There is nothing in the file to indicate why despite this, it was decided to re-seal the premises on 11th July 2016.

31. Mr Srinivasan referred to a statement in writing given by Mr Rajiv Tripathi Branch Manager of the Petitioner undertaking to produce the relevant documents to the AC on 12th July 2016 "for assessment and release of the goods." The Court fails to understand how this could be a reason for re-sealing the premises. The goods and 47 documents had already been seized by this time. How would the re-sealing of the premises thereafter be of any help to the DT&T? The premises appear to have been re-sealed only because the DT&T needed the Petitioner to produce 'relevant documents' without specifying what relevant documents were required. This was not a valid reason for re-sealing the premises. In any event, the reasons for re-sealing, consistent with the requirements of Section 60 (2) of the DVAT Act, had to be found in the form of a note in the file by the Commissioner

or his authorised delegate. There is no such note.

32. The Court is therefore satisfied that the re-sealing that took place of the Petitioner's premises at Swaroop Nagar on 11th July 2016 was also illegal. It is clarified, however, that it will be open to the Respondent DT&T to proceed in accordance with law as far the goods and documents seized by its officials from the Petitioner's premises.

33. The Court enquired from Mr. Srinivasan, how Mr P R Meena, the Special Commissioner could have issued a blanket order on 2nd July 2016 authorising the team led by Mr. Ajay Arora, SDM Mayur Vihar to proceed to take action under Section 60 of the DVAT Act "as may be necessary" without noticing the difference between an inspection under Section 60 (1) and a sealing under Section 60 (2) of the DVAT Act. The Special Commissioner's order dated 2nd July 2016 authorises inspection of the accounts and other documents which was perhaps permissible under Section 60(1) of the DVAT Act. However, in the same breath it authorises the team to "seize any records, goods etc. , and take action under Section 60 of the DVAT Act".

34. It is plain to the Court that Mr. P. R Meena, Spl. Commissioner, who issued the above order did not understand or was not aware of the legal requirement. This despite several judgments of this Court emphasising that the action under Section 59 of the DVAT for a survey of the premises and for seeking information, records etc. could not automatically permit the coercive actions, including sealing of the premises, under Section 60 (2) (a) to (f) of the DVAT Act. The Court reiterates that the mere failure to produce

documents cannot constitute a sufficient ground to take any of the coercive actions under Section 60(2) (a) to (f) of the DVAT Act. Every such action has to be preceded by a justification in the file recording that the Commissioner has 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." Further, as underscored by Section 60 (6) of the DVAT Act, "every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code." These provisions have more often than not been observed in the breach.

35. The Court is of the considered view that there has been a wilful violation of the statutory provisions by the officers concerned and in this case in particular by Mr. P.R. Meena, Spl. Commissioner as well as the team of the officers authorized by him to take the action. They have acted not only in ignorance of the law but in violation of the statutory requirements.

36. The Court is constrained to observe that in the past one year several judgments have been pronounced by this Court on the limitation of powers under Section 59 and 60 of the DVAT Act. Despite this, the Court finds that a person holding a responsible position like Mr. P. R. Meena, Spl. Commissioner, Enforcement Branch is continuing to issue orders in mechanical and irresponsible manner authorising officers to take any action which they may like under Section 60 of the DVAT Act. It is disconcerting to note that Mr. Meena did not make a distinction between an inspection under Section 60(1) of the DVAT Act and a 'sealing' Section 60 (2) (f) of the

DVAT Act.

37. The Court, therefore, directs Mr S.S. Yadav the Commissioner, VAT who is present in the Court to call for an explanation from Mr. P.R. Meena, Spl. Commissioner, as well each member of the team of officers who proceeded to act under Mr Meena's directions issued under his signature in the form of the order dated 2nd July 2016 (under Section 60 of the DVAT Act), as to why disciplinary action should not be taken against each of them for dereliction of duty and for acting in violation of the law. The Commissioner VAT will himself proceed to consider their replies and after giving them a hearing pass appropriate orders. The Commissioner, VAT will while passing such orders take into account the observations contained in the Court's order dated 2nd August 2016 as well as this order. The Commissioner, VAT shall file an affidavit of compliance in the Registry of this Court within a period of four weeks from today.

38. Inconvenience, hardship and prejudice has been caused to the Petitioner on account of the illegal actions of sealing of its premises on two occasions by the officials of the DT&T. While reserving the right of the Petitioner to seek other appropriate remedies for such loss, hardship and prejudice in accordance with law, the Court awards the Petitioner costs of Rs. 20,000 in this petition which will be paid by the Respondent to the Petitioner within two weeks.

39. In the event there is a failure to comply with the directions issued in this order, it will be open to the Petitioner to apply to the Court for directions. The Registry will also bring to the notice of the Court if the report of

compliance as directed in para 37 of this order is not filed within the stipulated time.

40. The writ petition and application are disposed of in the above terms. Order *dasti.* A certified copy of this order be delivered by the Registry through a Special Messenger forthwith on the Commissioner, VAT for compliance.

S.MURALIDHAR, J

NAJMI WAZIRI, J

AUGUST 04, 2016
mg