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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

1 to 3 (SDB)

\+ **W.P.(C) 1820/2013 & CM 3490/2013**

LARSEN AND TOUBRO LTD. & ANR. ..... Petitioners

Through: Mr. Rajesh Jain and Mr Virag Tiwari, Advocates

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Gautam Narayan, ASC with Mr R.A. Iyer, Advocates with Mr Nityanand, VATO to Special Zone and Mr Amit Sharma, LA (VAT) (Special Zone)

\+ **W.P.(C) 1821/2013 & CM 3491/2013**

LARSEN AND TOUBRO LTD. & ANR. ..... Petitioners

Through: Mr. Rajesh Jain and Mr Virag Tiwari, Advocates

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Gautam Narayan, ASC with Mr R.A. Iyer, Advocates with Mr Nityanand, VATO to Special Zone and Mr Amit Sharma, LA (VAT) (Special Zone)

\+ **W.P.(C) 1822/2013 & CM 3492/2013**

LARSEN AND TOUBRO LTD. & ANR. ..... Petitioners

Through: Mr. Rajesh Jain and Mr Virag Tiwari, Advocates

versus

GOVT. OF NCT OF DELHI & ORS. ..... Respondents

Through: Mr. Gautam Narayan, ASC with Mr R.A. Iyer, Advocates with Mr Nityanand, VATO to Special Zone and Mr Amit Sharma, LA (VAT) (Special Zone)

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **28.04.2017**

1. This order is in continuation of the detailed order passed by this Court on 3rd February, 2016.

2. The facts have been set out in detail in the said order and do not require to be repeated. What, however, requires to be noted is that this Court, by the said order, set aside the order dated 16th March 2013 passed by the Value Added Tax Officer sealing the three office premises of the Petitioner: at Shivaji Marg, Nehru Place, and Udyog Vihar. The Court also set aside the de-sealing order dated 18th March, 2013 to the extent that it required the Petitioner to deposit Rs. 600 crores as a condition for de-sealing the aforementioned three premises of the Petitioner. The Court recorded a definite finding that the entire action was taken without the authority of law and in the background of challenge by the Petitioner to assessment proceedings for the year 2008-09 and a challenge to the validity of Section 5(2) of the DVAT Act, 2004. The entire action was found to be *de hors* the DVAT Rules and the Rules thereunder.

3. In the same order, the Court had required the Commissioner to file the

affidavit of compliance of the directions issued in paras 8 and 9 of the order. For the Respondents to report compliance and for deciding the costs that should be awarded to the Petitioner, the case was directed to be listed on 15th March, 2016.

4. Thereafter, the matter was heard on several occasions. An affidavit was filed by the Commissioner pursuant to the directions issued. On 10th February, 2017, this Court passed the following order:

> "1. The Court has heard the submissions of Mr. Sudhir Nandrajog, learned Senior counsel appearing for the Department of Trade & Taxes, Government of National Capital Territory of Delhi.
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> 2. The Court has also perused the affidavit of the present Commissioner, Value Added Tax, Government of National Capital Territory of Delhi, Mr. Rajesh Prasad.
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> 3. Mr. Rajesh Jain, learned counsel for the Petitioner has made submissions on the orders issued by the Commissioner in FormDVAT-50 on 9th August, 29th September, 31st October and 11th November, 2016. The running theme of these orders is that the powers under Sections 58 and 60 of the Delhi Value Added Tax Act, 2004 have been withdrawn from the Assistant Commissioners ATOs. Although Mr. Jain sought to highlight certain inherent contradictions in these orders, the Court does not consider it necessary to examine them in these proceedings. It will be open to any person aggrieved by any of these orders to take recourse to appropriate proceedings in accordance with law.
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> 4. One of the issues that remain to be considered in terms of the orders dated 3rd February 2016 and 15th March 2016

passed by this Court is the costs that should be awarded to the Petitioner. Mr. Jain states that the Petitioner's premises remained sealed for three working days entailing losses in several crores of rupees. The Court directs that an affidavit be filed by the Petitioner, within four weeks with an advance copy to counsel for the DT &T, indicating how many employees of the Petitioner were deployed in the premises that were sealed and what the loss of man hours was as a result thereof. The affidavit should be supported by the relevant documents and preferably a certificate of the statutory auditor.

5. List on 28th April 2017."

5. Pursuant to the above order, the Petitioner has filed an affidavit dated 26th April, 2017 of Mr. Utpal Kumar Ghosh, Manager, Corporate Indirect Taxation of the Petitioner, enclosing therewith a certificate dated 25th April, 2017 issued by the Chartered Accountant. *Inter alia* in the said affidavit it is stated that the strength of the working staff in the three premises was 251. Further, 4943 personnel had been deployed at the various project sites. It is estimated that the loss suffered by the Petitioner as a result of the sealing of its three offices was to the tune of Rs. 2,57,37,002/-. There are several other consequential losses also mentioned in the affidavit. It is stated that the total loss worked out to Rs. 17.80 crores.

6. Mr. Gautam Narayan, learned Additional Standing Counsel appearing for the Respondents sought time to respond to the said affidavit. According to him there were certain factual inaccuracies in the affidavit.

7. This Court does not propose to examine the correctness of the affidavit filed by the Petitioner at this stage. The Court, in view of what has been held

in the order dated 3rd February 2016, proposes that a token amount be awarded to the Petitioner as costs with liberty to the Petitioner to pursue other appropriate remedies as far as the loss allegedly suffered by it is concerned. The Court, therefore, makes it clear that is not examining the correctness of the affidavit dated 26th April, 2017 filed by the Petitioner.

8. Having considered the other affidavits filed thus far in light of the order dated 3rd February 2016, the Court considers it appropriate to direct that the Respondents pay a sum of Rs. 5 lakhs to the Petitioner as costs of these proceedings. The Petitioner is at liberty to pursue other appropriate remedies as far as the loss allegedly suffered by it as a result of the illegal sealing action of the Respondent of its three offices. The costs be paid within four weeks from today.

9. The petitions are disposed of in above terms.

10. Order *Dasti*.

S. MURALIDHAR, J

VIBHU BAKHRU, J

APRIL 28, 2017
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