IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18001 of 2015

Date of Decision: 22.9.2015

Essel Housing Projects Pvt. Ltd., Sukhrali, Sarhaul, Gurgaon
....Petitioner.

Versus

State of Haryana and another
...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. M.P. Devnath, Advocate with
Mr. Amar Pratap Singh, Advocate,
Mr. Amrinder Singh, Advocate and
Mr. Abhishek Sharma, Advocate for the petitioner(s).

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 6 petitions bearing CWP Nos. 16215, 16229, 16248, 16252, 16323 and 18001 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 18001 of 2015.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notice, Annexure P-1, issued by respondent No.2. Further, a writ of mandamus has been sought restraining the respondents from acting in furtherance of the notice, Annexure P-1.

3. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is engaged in the business of development of real estate projects. After completion of necessary formalities, the petitioner commercially launches its properties for sale/ booking and invites applications for allotment from interested parties who make the application for allotment along with the booking amount. It purchases/acquires land for development, gets approval for the projects, its layout drawings etc. from the concerned authorities and then starts developing the project and also marketing the project. The petitioner is a works contractor working on behalf of prospective buyers who book flats/units in the projects being constructed/developed by the petitioner. The petitioner is discharging the tax liability as a works contractor by filing returns (Annexure P-3). Respondent No.2 issued a notice, Annexure P-1, to the petitioner under Section 34 of the Haryana Value Added Tax Act, 2003 (in short "the Act") for the period 2010-11. The assessment order was passed on 28.3.2014 (Annexure P-2) under Section 15(3) of the Act. A circular dated 7.5.2013 was issued by the Excise and Taxation Commissioner, Haryana, to the effect that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction are chargeable to VAT. Further, it was provided therein that where a builder has opted to pay VAT under the composition/lumpsum tax scheme, the total consideration on which the builder is liable to tax would not include the amount received from the customers towards transfer of undivided share in land. Thereafter, another circular dated 10.2.2014 replacing clause 3.1 of the circular dated 7.5.2013 was issued. Both the circulars are attached as Annexure P-4 (Colly) with the writ petition. The petitioner has opted for composition

scheme and pays VAT @ 4.20% including surcharge on all the project related expenses. According to the petitioner, the notice, Annexure P-1, is illegal and without any basis. Hence, the present writ petitions.

4. We have heard learned counsel for the parties.

5. The writ-petitioners have challenged the notice, Annexure P-1, issued by the Deputy Excise and Taxation Commissioner-cum-revisional authority, Gurgaon (East), Gurgaon-respondent No.2 on the ground that the same was beyond limitation. It was urged that the notice having been issued without jurisdiction being beyond limitation, the proceedings pursuant thereto could not continue.

6. From the perusal of the writ petition(s), we find that the petitioner(s) on receipt of the notice, Annexure P-1, had filed the writ petitions in this Court challenging the same to be without jurisdiction. The petitioner(s) had neither filed any objection/reply to the said notice nor raised the pleas as have been raised in the instant writ petitions before the competent authority.

7. At this stage, we do not find any justifiable reason to interfere with the notice under challenge. However, we clarify that the proper course of action for the noticee is to file detailed and comprehensive objection/reply and to raise all the pleas as have been raised in the writ petitions. In case any objection/reply is filed by the petitioner(s) within a period of two weeks from the date of receipt of the certified copy of the order, the revisional authority shall decide the same within a period of six weeks from the date of receipt of the objection/reply in accordance with law after affording an opportunity of hearing to the petitioner(s) and by passing a speaking order before proceeding further in the matter.

8. The writ petitions stand disposed of accordingly.

9. It is, however, made clear that in case the petitioner(s) has any grievance after the order is passed by revisional authority, it shall be open to the petitioner(s) to take recourse to the remedies as may be available to the petitioner(s) in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

September 22, 2015
gbs

(RAMENDRA JAIN)
JUDGE