IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19862 of 2015

Date of Decision: 18.9.2015

M/s Infutech Healthcare Limited, Hoshiarpur

....Petitioner.

Versus

State of Punjab and others

...Respondents.

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

PRESENT: Mr. J.S. Bedi, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. 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 mandamus declaring Sections 6(7) and 1-3(1A) of the Punjab Value Added Tax Act, 2005 (in short “the Act”) and notification dated 4.10.2013 (Annexure P-2) to be unconstitutional being violative of Articles 14, 19, 245, 255, 286 and 301 read with Article 304 of the Constitution of India. Further, a direction has been sought to be issued to respondent No.2 not to charge advance tax from the petitioner on the goods being brought in the State on which no tax liability would occur and to issue advance tax exemption certificate.

2. The petitioner is doing the business of manufacturing of Glucose and plastic bottles. It is having a TIN No. 03122161923. For packing of the same, the petitioner need to purchase plastic dana, low density polythene from outside the State of Punjab. By Punjab Act No.

26 of 2011 dated 2.11.2011 (Annexure P-1), Sections 6(7), 6(8) and 12 (1-A) were inserted in the Act. On 4.10.2013, the State Government issued a notification under Section 3A of the Punjab Entry Tax Act granting exemption to all taxable persons from the payment of entry tax from whom the tax was being charged vide notification dated 18.9.2011/2012. Simultaneously, the State Government had also issued a notification dated 4.10.2013 (Annexure P-2) under Section 6(7) of the Act for imposition of tax on 30 goods. In pursuance thereto, the petitioner moved an application dated 1.7.2015 (Annexure P-3) to respondent No.3 for exemption of advance tax, but no response has been received till date. Since, the respondents did not allow import of the goods, the petitioner deposited the advance tax vide receipts, Annexure P-4. Further, a perusal of quarterly returns filed for the year 2014-15 (4^{th} quarter) (Annexure P-5) shows that the entire sales of the petitioner are tax free sales. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 1.7.2015 (Annexure P-3) to respondent No.3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to take a decision on the application dated 1.7.2015 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order. It is, however, clarified that the question of vires is not being adjudicated upon at this stage and

it shall be open to the petitioner to approach this Court again laying challenge to the vires in accordance with law, after the decision by the concerned authority, if need so arises.

(AJAY KUMAR MITTAL)
JUDGE

September 19, 2015
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(RAMENDRA JAIN)
JUDGE