IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20779 of 2015

Date of Decision: 29.9.2015

Puri Construction Pvt. Ltd., Gurgaon

....Petitioner.

Versus

The State of Haryana and others

...Respondents.

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

PRESENT: Mr. Puneet Agrawal, Advocate and
Mr. Saurabh Kapoor, Advocate for the petitioner(s).

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of two petitions bearing CWP Nos. 20779 and 20791 of 2015 as according to learned counsel for the petitioner(s), the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 20779 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 notices dated 3.3.2014, 19.5.2015 and 14.8.2015 (Annexure P-3 Colly). Further, a writ of prohibition has been sought directing respondent No.3 not to proceed with the revisional proceedings initiated vide notices, Annexure P-3 (Colly) under Section 34 of the Haryana Value Added Tax Act, 2003 (in

short “the Act”).

3. Put shortly, the facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a real estate developer engaged in development and sale of immovable property and had filed its return of income for the assessment year 2008-09. The said return was processed under Section 15(3) of the Act which was assessed at ₹ 2,05,536/- vide assessment order dated 4.10.2010 (Annexure P-1). Since the assessment was framed on 4.10.2010, the revisional order was to be passed latest by 3.10.2013 (i.e. within a period of three years from the supply of copy of order). Respondent No.2 issued a circular dated 7.5.2013 to the effect that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction are chargeable to the VAT. Thereafter the circular dated 4.6.2013 was issued regarding assessment on the builders and developers. Further, the circular dated 10.2.2014 were issued to include the value of land for imposition of VAT. All the three circulars are attached as Annexure P-3 (Colly) with the writ petition. The notices dated 3.3.2014, 19.5.2015 and 14.8.2015 (Annexure P-3 Colly) was issued to the petitioner(s) for revision of the assessment order dated 4.10.2010 (Annexure P-1). According to the petitioner(s), the show cause notices, Annexure P-3 (Colly), for revision of the assessment year 2008-09 were issued beyond the period of limitation. The revisional authority has no power to make any revision in terms of notification dated 31.3.2003 (Annexure P-4) issued under Section 34(2) of the Act. In response to the notices, Annexure P-3 (Colly), the petitioner(s) filed written submissions dated 17.9.2015 (Annexur P-10). Hence, the

present writ petitions.

4. We have heard learned counsel for the parties.

5. The writ-petitioners have challenged the notices, Annexure P-3 (Colly), issued by the Deputy Excise and Taxation Commissioner-cum-revisional authority, Gurgaon (West), on the ground that the same was beyond limitation. It was urged that the notices having been issued without jurisdiction and 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 notices, Annexure P-3 (Colly) had filed the writ petitions in this Court challenging the same to be without jurisdiction. The petitioner(s) had filed written submissions to the said notices before the competent authority.

7. At this stage, we do not find any justifiable reason to interfere with the notices 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 29, 2015** **(RAMENDRA JAIN)**
gbs **JUDGE**