IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23417 of 2015

Date of Decision: 2.11.2015

Ajay Enterprises (P) Ltd., Gurgaon

....Petitioner.

Versus

The State of Haryana and others

...Respondents.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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

PRESENT: Mr. Sandeep Goyal, 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 certiorari for quashing the notice dated 1.10.2015 (Annexure P-2). Further, a writ of prohibition has been sought directing respondent No.3 not to proceed with the revisional proceedings initiated vide notice, Annexure P-2 under Section 34 of the Haryana Value Added Tax Act, 2003 (in short “the Act”).

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner had filed its return of income for the assessment year 2007-08. The said return was processed under Section 15(1) of the Act which was assessed at nil turnover vide assessment order dated 27.10.2008 (Annexure P-1). In view of Section 17 of the Act, re-assessment can be made within five

years from the expiry of financial year or before expiry of 2 years following the date when the assessment becomes final whichever is later. 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. Consequently, another circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. In the present case, the Department can initiate revisional proceedings on or before 26.10.2011, but no such proceedings are initiated during the said period. A notice dated 1.10.2015 (Annexure P-2) was issued to the petitioner for revision of the assessment order dated 27.10.2008 (Annexure P-1). According to the petitioner, the show cause notice, Annexure P-2, for revision of the assessment year 2006-07 was issued after the expiry of more than eight years. The revisional authority has no power to make any revision in terms of notification dated 31.3.2003 (Annexure P-3) issued under Section 34(2) of the Act. The earlier notifications dated 31.3.2013 have later on been re-notified on 15.5.2003 (Annexures P-4 to P-7/A Colly). Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notice, Annexure P-2, issued by the Deputy Excise and Taxation Commissioner-cum-revisional authority, Gurgaon (East), Gurgaon 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.

5. From the perusal of the writ petition, we find that the petitioner on receipt of the notice, Annexure P-2, had filed the writ petition in this Court challenging the same to be without jurisdiction. The petitioner had neither filed any objection/reply to the said notice nor raised the pleas as have been raised in the instant writ petition before the competent authority.

6. 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 petition. In case any objection/reply is filed by the petitioner 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 and by passing a speaking order before proceeding further in the matter.

7. The writ petition stands disposed of accordingly.

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

(AJAY KUMAR MITTAL)
JUDGE

November 2, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**