IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6111 of 2016

Date of Decision: 31.3.2016

M/s Gupta Promoters Pvt. 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 MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Sandeep Goyal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Through the instant 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 18.3.2016 (Annexure P-4), for initiating assessment proceedings for the year 2010-11 and for quashing the assessment proceedings initiated vide notice, Annexure P-4.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. A circular dated 7.5.2013 (Annexure P-1) was issued by the Excise and Taxation Commissioner, Haryana, to the effect that the assessment of tax in the cases of building contracts, should be levied as the said contract would be covered under

the definition of 'works contract'. Consequently, another circular dated 4.6.2013 (Annexure P-2) was issued to execute the earlier circular, Annexure P-1, vis-a-vis the limitation issue, implementation part of the monitoring. As per the said circular, Annexure P-2, the assessment should be framed within a period of three years. Subsequently, vide circular dated 10.2.2014 (Annexure P-3), the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The petitioner had got itself registered under the Haryana Value Added Tax Act, 2003 (in short "the Act") in the year 2014. For the assessment year 2010-11, the assessment proceedings had been initiated vide notice dated 18.3.2016 (Annexure P-4) under Section 16 of the Act. The petitioner being an unregistered dealer in the said year, the same had been received through e-mail on 26.3.2016. The said assessment was to be framed within a period of three years as per Section 16 of the Act, i.e. by 31st March, 2014. The petitioner filed a detailed reply dated 28.3.2016 (Annexure P-5) specifically pleading that the assessment proceedings were time barred. It was mentioned therein that even if the amendment dated 21.9.2015 (Annexure P-6) was considered, whereby the limitation period had been increased from 3 years to 6 years, then also the assessment proceedings were time barred as the said amendment was prospective in nature. The Assessing Authority proceeded on to frame the assessment proceedings and directed the petitioner to appear before it for further proceedings. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notice dated 18.3.2016 (Annexure P-4) issued by the Deputy Excise and Taxation

Officer-cum-Assessing Authority, Gurgaon (East), 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-4, filed objection/reply dated 28.3.2016 (Annexure P-5) to the said notice.

6. At this stage, we do not find any justifiable reason to interfere with the notice under challenge. The petitioner has filed objection/reply dated 28.3.2016 (Annexure P-5) to the said notice. Respondent No.2 shall decide the objection/reply, Annexure P-5, within a period of six weeks from the date of receipt of the certified copy of the order, 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 the authority, it shall be open to the petitioner to take recourse to the remedies as may be available to it in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

March 31, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**