IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9455 of 2016

Date of Decision: 13.5.2016

M/s Saluja Construction Co. Ltd., New Delhi

....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. Rishab Singla, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this 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 30.3.2016 (Annexure P-4 Colly) for initiating assessment proceedings for the years 2009-10 to 2015-16 and for the assessment years 2009-10 to 2011-12.

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 applied for registration in the year 2014 under the Haryana Value Added Tax Act, 2003 (in short "the Act"). The Assessing Authority issued notice under Section 16 of the Act for framing assessment. The proceedings have been initiated in the name of Salcon Builders Pvt. Ltd. and not in the name of the petitioner for the assessment years 2009-10 to 2015-16 vide notices dated 30.3.2016 (Annexure P-4 Colly). In response to the said notices, the reply dated 11.4.2016 was filed raising a preliminary objection that the proceedings had been initiated in the name of Salcon Builders Pvt. Ltd. and not the petitioner. However, a letter dated 11.4.2016 issued by respondent No.2 was received by the petitioner stating therein that it was a clerical mistake and inspection note and notices be deemed to be considered in the name of the petitioner instead of Salcon Builders Pvt. Ltd. The assessment of the petitioners for the years 2009-10 to 2011-12 was to be framed within a period of three years as per Section 16 of the Act, i.e. by 31st March of the respective year. The petitioner filed detailed replies dated 3.5.2016 (Annexures P-5 to P-11, respectively) specifically pleading that the assessment proceedings were time barred. It was mentioned therein that even if the amendment dated 21.9.2015 (Annexure P-12) 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 verbally directed the petitioner to appear on 10.5.2016 failing which the assessment would be framed ex parte. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notices dated 30.3.2016 (Annexure P-4 Colly), issued by the Excise and Taxation Officer-cum-Assessing Authority, Gurgaon (East), on the ground that the same were beyond limitation. It was urged that the notices 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 notices, Annexure P-4 (Colly), filed replies dated 3.5.2016 (Annexures P-5 to P-11, respectively) to the said notices.

6. At this stage, we do not find any justifiable reason to interfere with the notices under challenge. The petitioner has filed replies dated 3.5.2016 (Annexures P-5 to P-11, respectively) to the notices, Annexure P-4 (Colly). Respondent No.2 shall decide the replies dated 3.5.2016 (Annexures P-5 to P-11, respectively), 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

May 13, 2016 **(RAJ RAHUL GARG)**
gbs **JUDGE**