

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**Civil Writ Petition No.21312 of 2016
Date of Decision: October 03, 2017**

Shree Shyam Goods Carrier(Regd.)

...Petitioner

versus

The State of Haryana and another

...Respondents

***CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL***

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

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J. (Oral)

The prayer in this petition filed under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari quashing the summons dated 03.10.2016 (Annexures P-5 and P-6) issued by respondent No.2, under the Punjab Land Revenue Act, 1887 for recovery of the demand raised in pursuance to order dated 01.08.2016 (Annexure P-1). Further prayer has also been made to restrain the respondents to recover the penalty imposed under Section 31(8) of the Haryana Value Added Tax Act, 2003 (in short, 'the HVAT Act') vide order dated 01.08.2016 (Annexure P-1) as the appeal against the said order is pending for adjudication and to declare Section 33(8) of the HVAT Act as unconstitutional.

2. A perusal of the writ petition shows that the Excise and Taxation Officer-cum-Assistant Collector (1st Grade), Rohtak-respondent No.2 vide order dated 01.08.2016 (Annexure P-1), had levied penalty under Section 31(8) of the HVAT Act and Section 9(2) of the Central Sales Tax Act, 1956 read with Section 31(2) of the HVAT Act, amounting to ₹5,85,646/-. The petitioner challenged the aforesaid penalty order by filing an appeal before the First Appellate Authority, appended as Annexure P-2 with the writ petition, which is stated to be pending before it. Accordingly, learned counsel submitted that he may be allowed to withdraw the present writ petition with liberty to the petitioner to approach the First Appellant Authority by filing an application for stay of recovery of penalty during the pendency of the appeal before it, in accordance with law.

3. Dismissed as withdrawn. It shall, however, 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

October 03, 2017
sonia gugnani

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No