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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CWP-987-2017 (O&M)

M/S S.P.R. BUILDTECH LTD., FARIDABAD … Petitioner(s)

Vs.

THE STATE OF HARYANA AND ORS. ... Respondent(s)

(2) CWP-988-2017 (O&M)

M/S S.P.R. BUILDTECH LTD., FARIDABAD … Petitioner(s)

Vs.

THE STATE OF HARYANA AND ORS. ...Respondent(s)

(3) CWP-989-2017 (O&M)

M/S S.P.R. BUILDTECH LTD., FARIDABAD … Petitioner(s)

Vs.

THE STATE OF HARYANA AND ORS. ...Respondent(s)

DATE OF DECISION: 22.05.2017

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Rajiv Agnihotri, Advocate
for the petitioner(s).

Mrs. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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S.J. VAZIFDAR, C.J. (ORAL)

These aforesaid three writ petitions are being decided by a common order as they raise similar questions of law.

2. The revisional authorities assessed the petitioners' tax in respect of three separate assessment years under the Haryana VAT Act, 2003. The revisional authority, however, directed the assessing authority to pass an appropriate order in respect of interest for each of the years. The petitioners filed three writ petitions challenging the order of the revisional authority imposing tax. One of these writ petitions was decided in favour of the petitioner. The other two writ petitions were disposed of relegating the petitioners to the alternative remedy of filing an appeal. The Tribunal decided those matters also in favour of the petitioners. Thus, the question as to the imposition of tax was decided in favour of the petitioners in all the cases.

Pursuant to the order of the revisional authority, the assessing authority levied interest. This, however, was before the orders of the Tribunal and of this Court which decided the issue relating to the imposition of tax in favour of the petitioners. The petitioners, therefore, filed an appeal against the order of the assessing authority imposing tax before the First Appellate Authority-Commissioner (Appeals). The Commissioner (Appeals), however, held that he had no jurisdiction to entertain the appeal as although the interest was imposed by the assessing authority, it was only in compliance with the order of the revisional authority. The Commissioner (Appeals) held that he did not have jurisdiction to entertain an appeal against the order passed in revision.

3. If the petitioners ultimately succeed on the question of tax, the imposition of interest also would have to be set aside. The only question is the proceedings in which this ought to have been done. In CWP No.988 of 2017, the interest has been imposed in respect of the assessment year 2009-10 which was quashed by the order and judgment of this Court dated 30.01.2017. As far

as this petition is concerned therefore, it must be allowed. The imposition of interest does not survive in view of the imposition of tax having been set aside. If the Department wishes to challenge that order they are always at liberty to challenge this order as well.

4. The other two writ petitions namely CWP No.987 of 2017 and CWP No.989 of 2017 relate to the assessment years 2007-08 and 2008-09. They challenge the imposition of interest by the assessing authority pursuant to the orders of the revisional authority. As we mentioned earlier, the petitioners had also challenged the imposition of tax in respect of these years but were relegated to the alternative remedy of filing an appeal which the petitioners did before the Tribunal. Mr. Rajiv Agnihotri, the learned counsel appearing on behalf of the petitioners states that the orders in these matters have been pronounced by the Tribunal but the same are not available as yet. In view thereof, it would not be appropriate for us to pass orders in these writ petitions as the orders are yet to be signed and delivered to the parties. It would be appropriate for the petitioners to file the appeal as regards the interest also before the Tribunal. This would streamline the appeals, if any, against the orders of the Tribunal regarding tax as well as interest.

5. The writ petitions are, therefore, disposed of by the following order:-

(i) CWP No.988 of 2017 is allowed. The levy of interest is set aside.

(ii) CWP Nos.987 and 989 of 2017 are disposed of by relegating the petitioners to the alternative remedy of filing an appeal before the Tribunal. However, in the event of the Tribunal not entertaining the appeals by any reason whatsoever, including on the ground of limitation, these writ petitions itself shall stand revived without further orders of the Court. This is to ensure that petitioners are not left without any remedy and are not put to the difficulty of filing a separate writ petition.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(ANUPINDER SINGH GREWAL)
JUDGE

22.05.2017
SwarnjitS

Whether speaking/reasoned Yes /No
Whether reportable Yes /No