IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1934 of 2015 (O&M)
Date of Decision.13.07.2018

M/s Devyani International Ltd. ...Petitioner

Vs

The State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

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

Ms. Mamta Singla Talwar, DAG, Haryana.

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RAJESH BINDAL J.

The present petition has been filed by the petitioner challenging the validity of definition of “sale price” as contained in Section 2(1)(zg) of the Haryana VAT Act, 2003. Further challenge has been made to the clarification issued by the Government of Haryana, Excise and Taxation Department dated 22.08.2013, which provides that element of service tax will be considered for the purpose of sale price and tax shall be levied on that. Challenge has also been made to the notice dated 24.04.2014 issued to the petitioner.

The writ petition was entertained noticing the arguments of learned counsel for the petitioner at that time that the Tribunal, where the appeal against clarification is maintainable, was not functional. However, the fact remains that now the Tribunal is functional but the vacancy created on retirement of third Member has not been filled up.

Appeal against any clarification issued by the Government in exercise of powers under Section 56(3) of the Haryana VAT Act is to be heard by a Bench consisting of not less than three Members.

Learned counsel for the State after consulting learned Advocate General submitted that vacancy created on retirement of third Member shall be filled up within two months.

It is not in dispute that the petitioner has remedy of appeal against the clarification issued by the Government, hence, we relegate the petitioner to avail its remedy of appeal before the Tribunal. As the writ petition remained pending in this Court, we direct that if the appeal is filed within 30 days, the same shall not be dismissed on account of delay and shall be considered on its merits.

It is made clear that we have not examined the validity of Section 2(1)(zg) of the Haryana VAT Act. The petitioner shall be at liberty to challenge the same later, if necessary.

The writ petition stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

July 13, 2018
Pankaj*

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**