IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION No.6613 OF 2017(O&M)

Date of Decision: 23.02.2018

M/s Tulip Infratech Pvt. Ltd.

.......Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE AVNEESH JHINGAN, JUDGE

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

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

AVNEESH JHINGAN, J.

The writ petition has been filed for quashing of order dated 28.02.2017 passed under Section 29 of The Haryana Value Added Tax Act, 2003 (for short 'the Act').

The respondents are the State of Haryana, the Excise and Taxation Officer-cum-Assessing Authority, Gurugram (West) and Deputy Excise and Taxation Commissioner (ST), Sales Tax Officer, Gurugram (West).

The petitioner is engaged in the business of developing residential and commercial projects. The business premises of the petitioner were inspected by the respondents on 16.03.2016 and certain documents were impounded. On the basis of the impounded material, proceedings under Section 29 of the Act were initiated by issuing a notice dated 15.07.2016.

A reply dated 10.10.2016 was filed to the notice. The respondents rejected the contentions and directed the petitioner to produce necessary documents for framing assessment. The dealer failed to submit any document in support of his claims. The judgment was reserved on 18.11.2016.

The State of Haryana under the provisions of Section 59A of the Act introduced an Amnesty Scheme on 12.09.2016 vide Haryana Act No. 31 of 2014. The Scheme applied to the dealers who were engaged in the business of construction of civil structures, flats, dwelling units, buildings, premises, complexes commercial or otherwise and for the sale and transfer thereof alongwith the land pertaining thereto. Under the Scheme in lieu of tax and interest penalty payable, the dealer was required to pay a lump-sum 1% along with surcharge of 5% on the entire aggregate amount.

The petitioner moved an application on 08.12.2016 wherein it opted for amnesty under the scheme for the assessment years 2009-10 to 2013-14. The dealer in compliance with the terms of Amnesty Scheme deposited 25% of the net amount payable. The dealer was served with Deficiency Notice dated 12.01.2017. In compliance with the Deficiency Notice, the dealer deposited another amount of ₹ 32,42,837/- on 25.01.2017. The application of the petitioner was allowed by respondent No. 3 vide order dated 08.02.2017. The liability of the petitioner as a developer was covered by the said order. He was not absolved of his liability to pay tax as a contractor or sub-contractor. The said order noted the fact that the amount due under the Amnesty Scheme has been paid by the petitioner.

As per clause-8 of the Scheme, the dealer was required to withdraw all the pending petitions, appeals and cases before any Authority or Court of law. The proceedings against the contractor were to be kept in abeyance and such cases on final payment of entire liability could have become infructuous.

The petitioner never informed respondent No.2 about the acceptance of his application. An order dated 28.02.2017 was passed in the proceedings where order was reserved on 18.11.2016. The order created a liability of ₹ 81,62,87,724/-. The liability includes liability of the petitioner for the period 2011-12 as a builder/developer to the tune of ₹ 53,96,78,860/- and the balance demand of ₹ 27,66,08,864/- was on account of liability of the petitioner for the work done as a contractor.

The petitioner is aggrieved against the order dated 28.02.2017. The issue raised is that once his application for Amnesty had been accepted, the proceedings should have been kept in abeyance and on final payment, these should have been rendered infructuous.

Clauses-8 and 9 of the Amnesty Scheme are quoted below:

> "8.(1) In the event of acceptance of the Form by the Deputy Excise and Taxation Commissioner, the contractor shall, within fifteen days of the date of acceptance, make an application to withdraw all appeals, writ petitions and/or cases pending before any Authority or Court of Law. Similarly, any Authority under the Act shall keep all proceedings against the contractor in abeyance and such pending cases on final payment of the entire liability shall become infructuous.
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> (2) In the event of failure of the contractor to withdraw the cases as above subsequent to the acceptance of his Form, his Form shall be deemed to have been rejected and the proceeding held in abeyance shall be finalized in accordance with law. The amount deposited by him under this Scheme shall stand forfeited:
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> Provided that the time period lost on account of proceedings under this Scheme shall be excluded in computing the period of limitation specified under the Act, to finalize the proceedings kept in abeyance

under this Scheme.

9.(1) Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the contractor other than the benefit, concession or immunity granted under this Scheme.

(2) In case of any ambiguity or dispute arising out of this Scheme, the decision of the Excise and Taxation Commissioner, Haryana thereon shall be final."

The contentions raised by learned counsel for the petitioner cannot be accepted. The order accepting the application under the Amnesty Scheme was a conditional order. The Amnesty was given only qua the liability of the petitioner as a builder and developer. It was specifically mentioned that the liability of the dealer to pay tax for his liability as contractor or sub-contractor would not be absolved. The proceeding could not have been rendered infructuous as the proceeding had a cumulative effect of determining tax payable as a developer and as a contractor. The impugned order has raised a demand on account of liability under both the heads i.e. the builder/developer and as a contractor.

Learned counsel for the petitioner argued that his liability created as a contractor is relatable to the turn over considered for calculating the liability as builder/developer.

In such circumstance, it would not be appropriate for us, at this stage, to strike down the impugned order partially viz-a-viz the developer. As per the contention raised both the liability created would be having bearing on each other.

As per clause-8 on acceptance of the application for Amnesty, the dealer was required to withdraw all appeals within 15 days of acceptance order. Learned counsel for the petitioner contended that appeal cannot be filed against the impugned order because of clause-8 of the

Amnesty Scheme. The dispute survives only with regard to liability created on the petitioner for work contract.

The order passed would be appealable under Section 33 of the Act. It is clarified that in case the petitioner files an appeal against the said order, it would not be treated as violation of clause-8 of the Amnesty Scheme as the dispute would be relating to its liability created as a contractor which is not covered by the order of Amnesty.

As per Sub Section 5 of Section 33, the petitioner is required to furnish a bank guarantee or surety to the satisfaction of the Appellate Authority for entertainment of the appeal.

In the impugned order, the petitioner has been held liable as a developer to a liability of ₹ 53,96,78,860/- for which the petitioner has discharged his liability by paying a lump-sum under the Amnesty scheme. The petitioner would be required to comply with the provisions of Section 33(5) of the Act only with regard to the balance payment i.e. ₹ 27,66,08,864/-.

The writ petition is disposed of with liberty to the petitioner to file appeal against the impugned order.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

23.02.2018
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No