IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116 **(PROCEEDINGS THROUGH V.C.)**

CM Nos.9609-10 of 2020 in/and
Review Application No.202 of 2020 in CWP No.1941 of 2016

CM Nos.9587-88 of 2020 in/and
Review Application No.200 of 2020 in CWP No.1807 of 2016

CM Nos.9589-90 of 2020 in/and
Review Application No.201 of 2020 in CWP No.1951 of 2016

CM Nos.9585-86 of 2020 in/and
Review Application No.199 of 2020 in CWP No.1956 of 2016

M/s Gazebo Developers Pvt. Ltd., Ludhiana
Versus
Financial Commissioner, Appeals Punjab and others

Present: Mr. Saurabh Goel, Advocate
for applicant-respondent No.4.

By this order, I propose to decide applications moved under Section 5 of the Limitation Act for condonation of delay of 156 days in filing the review applications, applications filed under Order 1 Rule 10 of Code of Civil Procedure read with Article 226 of the Constitution of India for impleading the applicant-Principal Commissioner, Central Goods & Service Tax, Ludhiana, as respondent No.4 to the writ petitions and applications under Order 47 Rule 1 of the Code of Civil Procedure for review of the judgment and order dated 11.09.2019 passed in the writ petitions.

2. The first application, which this Court intend to deal with, is the one for impleadment of the applicant-Principal Commissioner, Central Goods & Service Tax, Ludhiana, as respondent No.4 to the writ petitions. This application has been preferred on the premise that the order dated 11.09.2019 passed by this Court would adversely impact the recovery, which is liable to be effected from M/s Royal Industries Limited-

respondent No.2 to the writ petitions, from which Central Excise Department has a demand, which was confirmed vide order in original dated 27.03.2009 and 25.06.2009 on account of duty/penalty/RF and interest as payable, copies of these orders have been appended as Annexures A1 and A2 along with the applications. The confirmed demand against respondent No.2 comes to ₹20.75 crores (besides interest). It has further been asserted that there is a confirmed tax liability vide OIO No.39/Ldh./208 dated 27.03.2009 and 10/Ldh./09 dated 25.06.2009 qua which a notice of attachment was issued under Rules 9 and 10 of the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995, copy of the notice of demand dated 04.12.2019 and copy of order of attachment and notice attachment both dated 13.12.2019 are appended as Annexures A-5 and A-6 respectively. It has been submitted that respondent No.2 was fully aware that the sale of the plot allotted by Department of Industries, Punjab, was illegal as also was it aware of the order passed by the Adjudicating Officer confirming the demand of tax. Despite that, respondent No.2 approached this Court for withdrawal of the reply, which has been filed on 14.07.2016 and also for permission to withdraw the revision petition filed before the learned Financial Commissioner (Appeals).

Factual averments with regard to the illegal act on the part of respondent No.2-M/s Royal Industries Limited, which was allotted a plot of land measuring 20 acres at Focal Point, Phase-VIII, Ludhiana under "Off the Shelf Scheme" by the Directorate of Industries through Udhyog Sahayak, Punjab, vide allotment letter dated 22.04.1994 in pursuance to a financial collaboration agreement signed between the Punjab State Industrial Development Corporation Limited and MD of M/s Royal Exports on 15.07.1994 for setting up of a composite knitted fabrics/garments unit in the name of M/s Royal Industries Limited. The corporation had made an investment of ₹198 lakh in equity shares capital of the company and as per the arbitration award in favour of the corporation, the collaborator owes ₹1374.99 lakh along with future interest at the rate of 19% per annum with effect from 01.01.2010, for which the corporation is taking action for recovering the said amount. For violation of the terms and conditions of allotment of land, FIR has been registered against Shri Harbhajan Singh Sandhu, Managing Director of M/s Royal Industries Limited. It is asserted that the applicant is a necessary party for complete and proper adjudication of the writ petition in order to bring correct and proper facts on record and it would suffer irreparable loss and injury in case the applicant is not impleaded as respondent No.4.

3. On considering the submissions made by the counsel for the applicant, this Court is unable to accept the said contention in the light of

the issue involved in the writ petitions, where the challenge was to the orders dated 02.12.2015 passed by Financial Commissioner (Appeals), Punjab, which related to a dispute between M/s Royal Industries Limited and M/s Gazebo Developers Private Limited. It was limited to the extent of the mutation dispute and nothing more nor less. The Court, therefore, was dealing with a dispute between two parties with reference to the sanction of mutation. The parties having settled the dispute between them, this Court had proceeded to decide the case.

4. The validity of the compromise was never in dispute nor was it an issue, even the document of compromise was not on record, therefore, this Court had no occasion to declare it valid or otherwise. It was merely on the basis of the applications, which have been filed by the parties and on the basis of the statement of theirs that the writ petitions were decided.

5. The issue with regard to the liability of the Department of Central Excise or any other financial liability was not the subject matter of the writ petitions and similarly, there was no issue relating to the Department of Industries. The Court has neither commented upon the correctness or otherwise of the sale deeds nor has the Court accepted the validity of the compromise between the parties. Similarly the order passed by this Court does not, in any manner, uphold the sale deeds as this issue was never adjudicated upon. The Court had not adjudicated upon either the

sale deeds or the compromise, which has been entered into between M/s Royal Industries Limited and M/s Gazebo Developers Private Limited. Since the Court was dealing with a specific issue with regard to the dispute of mutation and that too between two parties i.e. M/s Royal Industries Limited and M/s Gazebo Developers Private Limited only, the disposal of the writ petitions by this Court does not, in any manner, adversely impact the right of the applicant or for that matter any other party to recover the dues from the parties to the writ petitions.

6. In the light of the above, this Court is of the considered view that the right of the applicant has not been adversely impacted/effected in any manner and, therefore, the applicant is not a necessary party to the writ petitions. Therefore, the present applications stand dismissed.

7. In the light of the fact that the applications under Order 1 Rule 10 of Code of Civil Procedure read with Article 226 of the Constitution of India for impleading the applicant-Principal Commissioner, Central Goods & Service Tax, Ludhiana, as respondent No.4 to the writ petitions as a party respondent No.4, stand dismissed, the applications for condonation of delay as well as the review applications are hereby dismissed.

October 6th, 2020 **(AUGUSTINE GEORGE MASIH)**
Puneet **JUDGE**