

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

CWP-4096-2022 (O&M)

Reserved on:26.08.2022

Date of Pronouncement:-24.01.2023

M/S ASF INSIGNIA SEZ PVT. LTD.

.....Petitioner

Versus

STATE OF HARYANA AND ANOTHER

.....Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present:- Mr. Rajesh Garg, Sr. Advocate and
Mr. Aashish Chopra, Sr. Advocate with
Mr. Manpreet Sawhney, Advocate,
Mr. Javedur Rahman, Advocate,
Ms. Naina Matharoo, Advocate and
Mr. Yash Pal, Advocate for the petitioner.

Ms. Shruti Jain Goel, DAG, Haryana
for respondent No.1.

Mr. B.R. Mahajan Sr. Advocate with
Mr. Piyush Bansal, Advocate and
Ms. Nikita Goel, Advocate
for respondent No.2- M.C. Gurugram.

TEJINDER SINGH DHINDSA J.

Challenge in the instant writ petition is to the order dated
30.11.2021 (Annexure P-1) passed by the Principal Secretary to
Government of Haryana, Urban Local Bodies Department holding the IT-
ITES, Sector Specific SEZ property of the petitioner exigible to property tax

at “commercial rates”.

A writ of mandamus is sought directing the respondents to levy property tax at “industrial rates” instead of “Commercial Rates” .

BRIEF FACTUAL MATRIX

Petitioner is stated to be a company incorporated under the Companies Act 1956. It has been averred that the petitioner's property was notified as IT-ITES SEZ by the Ministry of Commerce & Industry, Department of Commerce, Government of India as well as by the Industries and Commerce Department, Government of Haryana. Pursuant to such approval, the petitioner's properties were leased out to various lessees for setting up of SEZ units.

The Haryana Government, Urban Local Bodies Department issued a notification dated 11.10.2013 in terms of Section 87 (3) read with Section 149 (1) of the Haryana Municipal Corporation Act 1994 (hereinafter to be referred to as the '1994 Act') imposing property tax on buildings and lands within the limits of the concerned municipal corporation. Copy of the notification dated 11.10.2013 stands appended as Annexure P-5 alongwith the petition.

Thereafter the Haryana Government vide notification dated 03.03.2014 (Annexure P-6) brought out an amendment to the notification dated 11.10.2013 and *inter alia* inserted para 2F (xiii) and which was in the following terms:-

“(xiii) IT Park, Cyber City/Park

50 per cent of commercial space rate for both A1

and A2 cities respectively”.

The respondent-Municipal Corporation, Gurugram vide communication dated 11.09.2015 called upon the petitioner to pay property tax from 2010-2011 to 2014-2015 in terms of the 2013 notification and as amended in the year 2014. Petitioner is stated to have responded on 17.09.2015 clarifying that insofar as the petitioner's property was concerned, only two buildings were operational and the residential buildings were still under construction. Petitioner also raised a plea before Municipal Corporation, Gurugram, to levy property tax on the petitioner's property by treating the same to fall under the “industrial category”.

However, on 18.09.2015 communication was issued by Municipal Corporation Gurugram, informing that the petitioner's property had been assessed under head “IT Park, Cyber City-Park” which had been inserted in the notification dated 11.10.2013 by virtue of amendment made on 03.03.2014 and as such the property tax liable to be levied was 50 per cent of the rates applicable to commercial properties. Demand notices dated 11.09.2015 were as such issued by the Joint Commissioner, Municipal Corporation, Gurugram for recovery of property tax for the period 2010-11 to 2015-16. At this stage, petitioner filed CWP No.20789 of 2015 titled as ***M/s ASF Insignia SEZ Pvt. Ltd. vs. Municipal Corporation, Gurugram*** assailing the demand notices dated 11.09.2015 demanding property tax under the commercial category. In the meanwhile vide memo dated 30.12.2015 (Annexure P-16) petitioner was informed that his property falls under mix use category as per Clause 2 (G) of the notification dated

11.10.2013 and accordingly the liability of tax on such proprieties shall be as per areas under different usage.

CWP No.20789 of 2015 filed by the petitioner was withdrawn on 29.09.2015 with liberty to file an appeal against the assessment of property tax.

Accordingly, petitioner filed an appeal dated 21.05.2016 against the demand notices dated 11.09.2015 before the Divisional Commissioner under Section 138 of the 1994 Act.

On 15.11.2018 the Divisional Commissioner allowed the appeal preferred by the petitioner. The demand notices dated 11.09.2015 whereby property tax had been imposed at rates prescribed for “IT Park, Cyber City/Park” were quashed. Directions were issued to re-assess the property at industrial rates in respect of IT/ITES and its allied infrastructure buildings in the SEZ. However, the area under the SEZ where the petitioner was carrying out any commercial activity such as restaurant, hotel etc. and which is not related to information technology industry the same were held to be liable to be taxed as per commercial rates and likewise a view was taken that if the petitioner is carrying out any residential activity in the SEZ, the rates applicable for residential purpose ought to be levied and the factum of vacant land, under construction areas and basement for parking to be duly considered while levying property tax. Copy of the order dated 11.11.2018 passed by the Divisional Commissioner stands placed on record as Annexure P-23.

Thereafter, on 26.01.2019 the respondent-Municipal Corporation,

Gurugram preferred a revision before the 1st respondent i.e. The Principal Secretary, Government of Haryana, Urban Local Bodies Department. Such revision was allowed vide order dated 29.10.2021 and thereby setting aside the order dated 15.11.2018 passed by the Divisional Commissioner. Petitioner then filed CWP No.22675 of 2021 assailing the order dated 29.10.2021 passed by the Divisional authority. Vide order dated 09.11.2021 passed by this Court, CWP No.22675-2021 was disposed of in terms of setting aside the order dated 29.10.2021 passed by the revisional authority and the matter was remanded back for passing an order afresh.

Upon remand, the matter was again heard and an order dated 30.11.2021 (Annexure P-1) has been passed and the operative part of which reads in the following terms:-

“Hence, I am of the considered view that order dated 15.11.2018 passed by the Court of Commissioner, Gurugram Division, Gurugram, needs to be set aside and revision petition is allowed with the direction that IT space of IT SEZ be taxed as per para 2 Item F Clause (xiii) of notification dated 03.03.2014 and the residential/commercial spaces under hotels/restaurant etc. be taxed accordingly as per decision of Divisional Commissioner dated 15.11.2018.”

It is against such brief factual backdrop that the instant writ petition has been filed assailing the order dated 30.11.2021 passed by respondent No.1 at Annexure P-1.

Case of the petitioner

Learned Senior counsel towards assailing the order dated 30.11.2021 (Annexure P-1) has raised the following submissions:-

(a) It has been contended that respondent No.1 has erred in equating IT park, Cyber/ IT City with IT/ITES Sector Specific SEZ for purposes of levy of property tax.

It is argued that the notification dated 03.03.2014 (Annexure P-6) prescribing the rate of taxation in respect of IT Park, Cyber City/Park would not be applicable since petitioner's property was an IT/ITES SEZ and which is a completely distinct category in itself. In support of such contention the Haryana SEZ Act 2005 has been referred to and in particular the preamble thereof as also Section 11 falling under Chapter V. Submission advanced is that apart from stating in the preamble that SEZs are an industry, various incentives are contemplated under Chapter 5 Section 11 of the Haryana SEZ Act 2005. That apart the SEZ Rules 2006 have also been adverted to. It is urged that various restrictions stand imposed on a SEZ developer insofar as use of SEZ land is concerned and primarily restriction on transfer of the same. However, in the State of Haryana, there is no bar on the sale/purchase of property in Cyber City/Cyber/ I.T. Park. The Industrial and Investment Policy 2011 of the State of Haryana has also been referred to submit that such policy recognizes six distinct categories on IT/ITES in terms of facilities and restrictions available to them and the IT/ITES Sector Specific SEZ has been treated as a completely distinct and separate category thereunder.

The six categories under the 2011 policy are:-

- (i) IT/ITES and other Technology Unit;
- (ii) IT/ITES/Cyber/Technology Park;
- (iii) Technology City/Cyber City;
- (iv) IT/ITES Sector Specific SEZ;
- (v) Cyber/IT Parks/ other (set up within the HSIIDC/HUDA Developed Industrial Estates);
- (vi) Technology Parks (Established within HSIIDC/HUDA developed Industrial Areas on campus development norms).

Further submitted that the 2011 industrial policy of the State provides that EDC rates for the SEZs would be applicable as it is for the industrial sector. Contention raised is that the intent of the 2011 industrial policy of the State of Haryana is to treat SEZs as an industry.

In view of the above it was argued that the petitioner's property which is IT/ITES and SEZ is liable to be classified under the category of “Industry” and cannot be treated as a subject matter of taxation under Para 2 F (xiii) of the notification dated 11.10.2013 (Annexure P-5) by virtue of the amendment carried out vide notification dated 03.03.2014 (Annexure P-6).

(b) The second submission advanced by learned Senior counsel is that there cannot be any taxation by implication and the charging section in a tax statute has to be construed strictly. It is submitted that para 2 F (xiii) inserted in the notification dated 11.10.2013 by virtue of the amendment notification dated 03.03.2014 cannot be made applicable to IT/ITES Sector specific SEZ as applicability of the same has been specifically restricted to

IT park, cyber city, cyber park.

It is urged that until and unless a person/entity is brought within the ambit of the charging section by clear words, such entity cannot be taxed at all as nothing cannot be read or implied into a fiscal legislation.

(c) During the course of arguments, learned Senior counsel has referred to the notification dated 14.03.2005 (Annexure P-37) issued by the IT department of the Chandigarh Administration exempting SEZ units within the SEZ as well as SEZ developers from payment of various taxes including property tax. It is submitted that the Department of Industries and Commerce of the State of Punjab vide notification dated 11.08.2005 (Annexure P-38) has also granted similar exemptions. The State of UP has also exempted SEZ units from payment of taxes levied by local bodies by treating SEZs to be “industrial township”. Likewise the State of MP is also stated to have exempted SEZ developers and units from taxes levied by local bodies.

In terms of citing such instances it is contended that an overview of the taxation policy in other States would show that SEZs have been given preferential treatment by exempting them altogether from the payment of property taxes and a similar treatment ought to be meted out to the petitioner as well.

(d) The issue of delay at the hands of Municipal Corporation, Gurugram/respondent No.2 in filing the revision petition against the order dated 15.11.2018 passed by the Divisional Commissioner has been vehemently raised. It has been submitted that under Section 140 of

the 1994 Act, a 30 days limitation period for filing of a revision application against the order passed by the Divisional Commissioner under Section 138 has been provided. In the facts of the present case the revision application was stated to have been filed with a delay of 53 days. It is submitted that 1994 Act does not contemplate the applicability of any provision of the Limitation Act 1963 so as to empower the Revisional Authority to condone any delay whatsoever in filing of the revision application. It is urged that respondent No.1 was to be seen as a statutory authority while dealing with the revision application and such authority could not have condoned the delay in filing of the revision application since the Scheme of 1994 Act did not empower him to do so. In support of such contention judgement of the Apex Court was relied upon in ***Ganeshan Vs. T.N. Hindu Religious & Charitable Endowments Board (2019) 7 SEC 108***. It is submitted that the Apex Court held that the suits, appeals and applications referred to in the Limitation Act 1963 are suits, appeals and applications which are to be filed in a Court and not before any statutory authority. It is further held in the judgment that a special or local law could vide its statutory scheme provide for the applicability of any provision of the Limitation Act 1963 or exclude applicability thereof. Further argued that in the present case the revisional authority under no circumstances could have condoned the delay as the second respondent/Municipal Corporation Gurugram had not even filed an application seeking condonation of the 53 days delay in filing of the revision application.

Further submitted that the revisional authority's reliance on the

judgment of the Supreme Court in ***Bhakra Beas Management Board (PW) Slapper Vs. Excise & Taxation Officer Sunder Nagar/Assessing Authority*** to take a view that a judgment in ***CCE and Customs Vs. Hongo India (Pvt.) Ltd. (2009) 5 SCC 791*** stands distinguished and as such not applicable would not hold good.

In this regard counsel would submit that the afore-mentioned two judgments dealt with the power of 'High Court' under the H.P. VAT Act 2005 and Central Excise Act 1944 respectively and as such both these cases did not deal with the applicability of the Limitation Act 1963 to a statutory authority.

As such it is argued that the revision application that had been filed by Municipal Corporation Gurugram against the order dated 15.11.2018 passed by the Divisional Commissioner Gurugram ought to have been rejected solely on the ground of delay.

(e) Violation of the principles of natural justice has also been alleged in the present case. Counsel would submit that the demand notices dated 11.09.2015 were issued in violation of Section 87-B (2) of the 1994 Act, which requires that; *“the authority shall serve notice on the person chargeable with property tax, which has not been paid by him to show cause why he should not pay the amount specified in the notice and the authority shall pass an appropriate order in this regard after giving an opportunity of hearing”*.

It is contended that the demand notices were affixed on the petitioner's premises on 22.09.2015 even though during the same period of

time correspondence was being exchanged between the parties in relation to computation of the property tax. It is argued that the demand notices have been issued without any application of mind and there has been a flagrant breach of natural justice.

Stand of Respondents

Mr. B.R. Mahajan, learned Senior Advocate for respondent No.2/Municipal Corporation, Gurugram and Ms. Shruti Jain Goel, learned DAG, for respondent-State have vociferously defended the impugned order and have submitted that the same has been passed strictly in accordance with law and in terms of the notification dated 11.10.2013 and as amended vide notification dated 03.03.2014. It has been submitted that the rate of property tax is to be notified keeping in view various factors like location of property/building, the purpose for which said property is being used, its capacity for profitable use and other relevant factors. The purpose for which land/building is put to use is one of the important factors for levying of property tax by the concerned authority. Even if the building is set up for a specific purpose but such building is being used for a different purpose, for example if a industrial building is converted for use of IT enabled services, the property tax would be levied on the basis for which it is being used actually. In other words even if the building/premises is situated within the specific earmarked area like SEZ, the levying of the property tax on the building will be made on the basis of actual usage of such building within SEZ. It is further asserted on behalf of the respondents that the building/premises falling in SEZ/industrial township/residential township

can be used for different purposes and different rates of property tax accordingly will be levied on each and every building on the basis of actual usage and no uniform rate of property tax can be levied upon the entire area/buildings falling in such SEZ/industrial township/residential township. It has been argued on behalf of the respondents that merely for the reason that there is no specific mention of rate of property tax for SEZ in the notifications dated 11.10.2013 and 03.03.2014 cannot support the prayer raised on behalf of the petitioner for levy of property tax at “industrial rates”. It is submitted that each and every activity cannot be specifically mentioned in the Government notifications for levy of property tax. Accordingly, different activities may be clubbed in the broad categories like residential, commercial, institutional, industrial etc. and taxed accordingly. It is contended that the notification dated 11.10.2013 regarding property tax does not have IT park/Cyber park/Cyber city/SEZs as any separate category and as such based upon actual usage of the building, property tax in terms of para 2 F (xiii) which had been inserted in the notification dated 11.10.2013 by virtue of amendment notification dated 03.03.2014 has been levied.

As regards the aspect of delay in filing the revision petition against the orders of the Divisional Commissioner, it is submitted that the provisions of the Limitation Act 1963 would be applicable for condonation of delay as there is no specific provision for non-applicability of the Limitation Act under the special act i.e. under the 1994 Act. It is submitted that in the case of Government functionaries/instrumentalities, some delay does occur invariably in filing applications/revisions as various types of

approvals from authorities are required to be taken before filing of the same. In the facts of the present case the revision had been filed after a delay of 53 days only and such short period was attributable to administrative exigencies. The larger issue was with regard to the rate at which property tax was to be levied and such issue could not have been sacrificed on the alter of delay in itself. No prejudice as such is stated to have been caused to the petitioner in such regard as due opportunity of hearing had been granted by the revisional authority prior to passing of the impugned order.

In the light of the afore-noticed submissions advanced, counsel for the respondents seek dismissal of the writ petition.

Findings

Section 87 contained in Chapter VIII of the Haryana Municipal Corporation Act 1994 reads as under:-

“87. Taxes etc. to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government-- (1)
The Corporation shall, for the purposes of this Act, levy the following taxes-

1 “[a) a property tax payable by the owner or occupier of building and land at the rates notified by the Government, from time to time depending upon the area in which the building or land is situated, its location, purpose for which it is used, its capacity for profitable use, quality of construction and other relevant factors;

(b) 2 [----] such other tax, at such rates as the Government may, by notification, in each case direct;

(c) a duty on the transfer of immovable properties situated

within the limits of the municipal area in addition to the duty imposed under the Indian Stamp Act, 1899, as in force for the time being in the State of Haryana, on every instrument of the description specified below and at such rate, as the Government may, by notification, direct, which shall not be less than one percentum and more than three percentum on the amount specified below against such instruments:-

<i>Description of instruments</i>	<i>Amount on which duty shall be levied</i>
<i>i) Sale of immovable property</i>	<i>the amount or value of the consideration for the sale as set forth in the instrument.</i>
<i>ii) Exchange of immovable property</i>	<i>the value of the property or the greater value as set forth in the instrument.</i>
<i>iii) Gift of immovable property</i>	<i>The value of the property set as set forth in the instrument.</i>
<i>iv) Mortgage with possession of immovable property</i>	<i>The amount secured by the mortgage as set forth in the instrument.</i>
<i>v) Lease in perpetuity of immovable property</i>	<i>The amount equal to one-sixth of the whole amount or value of the rent which would be paid or delivered in respect of the first fifty years of the lease, as set forth in the instrument.</i>

The said duty shall be collected by the Registrar or Sub-Registrar in the shape of non-judicial stamp paper at the time of registration of the document and intimation thereof shall be sent to the Corporation immediately. The amount of the duty so collected shall be paid to the Corporation.

(2) Subject to the prior approval of the Government, the Corporation may for the purposes of this Act, in addition to the taxes specified in sub-section (1) levy-

(a) a tax on profession, trades, callings and employments;

[“(b) a tax on vehicles, plying for hire or kept registered under the Motor Vehicles Act, 1988 (Act 59 of 1988), within the

Corporation, and animals;]

(c) a development tax on the increase in urban land values caused by the execution of any development or improvement work;

(d) show tax;

(e) a tax on consumption of energy at a rate of two percent of the electricity bill consumed by any person within the Municipal area;

[“(ee) a tax on driving licenses issued under the Motor Vehicles Act, 1988 (Act of 1988), within the Corporation area;”.]

(f) any other tax that may be imposed under the provisions of the Haryana Municipal Act, 1973:

Provided that no tax shall be imposed under this sub-section unless an opportunity has been given in the prescribed manner to the residents of the Municipal area to file objections and the objections, if any, thus received have been considered.

(3) The taxes as specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made there under.

(4) The Government may, by special or general order, direct the Corporation to impose any tax falling under sub-section (1) or sub-section (2) not already imposed, within such period as may be specified and the Corporation shall thereupon act accordingly.

(5) If the Corporation fails to carry out any order passed under sub-section (4), the Government may, by a suitable order notified in the Official Gazette, impose the tax and the order so passed shall operate as if the tax had been duly imposed by the Corporation under sub-section (1) or sub-section (2) as the case may be.”

In exercise of the powers conferred by Sub-Section 3 of Section 87 read with sub-Section 1 of Section 149 of the 1994 Act, the Haryana Government, Urban Local Bodies Department issued notification dated 11.10.2013 (Annexure P-5) imposing property tax on buildings and land within the limits of the concerned Municipal Corporation.

Subsequently a notification dated 03.03.2014 (Annexure P-6) was issued carrying out an amendment in the previous notification dated 11.10.2013 and as per which in para 2, Item F sub para (xiii) was inserted and to the following effect:-

“(xiii) IT park, cyber city/park; 50% of commercial space rate for both A1 and A2 cities respectively.”

Upon a conjoint examination of the relevant statutory provision as also the notifications dated 11.10.2013 and 03.03.2014 Annexures P-5 and P-6 respectively, what clearly emerges is that the charging provision to levy tax is Section 87. It provides that the State Government shall notify the rate of property tax from time to time. The factors, which have been taken into consideration by the Government are (i) the area in which the building or land is situated (ii) its location; (iii) purpose for which it is used; (iv) its capacity for profitable use; (v) quality of construction and (vi) other relevant factors.

The notification dated 11.10.2013 (Annexure P-5) prescribes different rates of tax for residential; commercial-shops, commercial spaces i.e. shopping malls, multiplexes or commercial office space etc. industrial

properties; institutional properties-commercial, non commercial, educational institutions; special categories-private hospitals, marriage palaces, cinema halls, banks, storage godowns, grain market-subzi mandi/timber market/Submarket Yard, Clubs, Hotels, paying guests house/accommodation, private office building, restaurants; mixed used properties and vacant land.

However, there is no classification on the basis of nature of construction raised or the location of building within the area of municipal corporation.

A Division Bench of this Court in ***Brij Mohan Gupta vs. State of Haryana and another (CWP No.17765 of 2015 decided on 10.09.2015)*** while upholding the validity of Section 87 (1) (a) had held as follows:-

“The factors mentioned in Section 87 (1) (a) i.e. the area in which the building or land is situated, its location, purpose for which its used, its capacity for profitable use, quality of construction and other relevant factors, are the relevant guidelines incorporated in the statute itself to determine the rate of tax. Since the levy of property tax falls within the exclusive domain of the State legislature, it is the legislature which is competent to determine the basis of levy of the property tax. Thus, we do not find any illegality when Section 87 (1) (a) of the Act was incorporated empowering the State Government to notify the rates of property tax by taking into consideration the factors as mentioned therein.”

Clause 2 (G) of the notification dated 11.10.2013 (Anenxure P-5) stipulates that in case of the mixed used of premises in any property, the liability of tax shall be calculated as per area under different usage. In other words if a single building is being used for different and mixed purposes, then the property tax will be levied taking into consideration the usage of the specific area of the building/premises under different heads.

In our considered view the petitioner cannot escape the rigors of imposition of property tax at “commercial rates” in respect of such specific area which is being used for IT/ITES only on the basis that it falls under a separate distinct category of SEZ and as such ought to be levied property tax at industrial rates. It is not even the case projected in the pleadings that no area of the building/premises of the petitioner even though recognised as SEZ is not being used for IT/ITES purposes. Mere non-mention of IT in the SEZ category cannot be taken as a tenable ground for non-levy of property tax at commercial rates. We do not find any merit in the contention raised on behalf of the petitioner that it is a case of taxation by implication. Section 87 of the 1994 Act which is the charging section clearly envisages levy of property tax and one of the vital factors enumerated therein is the purpose for which the area in question is being used. Sub Section G of Clause 2 of the notification dated 11.10.2013 (Annexure P-5) clarifies that in case of mixed use of premises in any property, the liability of tax would be as per area under different use. By virtue of the amendment carried out vide notification dated 03.03.2014 (Annexure P-6) for IT park, cyber city/ park activities, the property tax leviable is 50% of the commercial space rate

for A1 and A2 cities. In terms of the order dated 30.11.2021 (Annexure P-1) passed by the Revisional Authority, a view has been taken that IT space of the petitioner SEZ be taxed as per Para 2 item No.F Clause (xiii) of the notification dated 03.03.2014, whereas for residential activity being carried out in the SEZs, the rate applicable for residential purposes be levied. We do not find any infirmity in the impugned order dated 30.11.2021 at Annexure P-1 whereby property tax stands levied as per actual usage of the petitioner SEZ and which would strictly be in terms of the charging provision i.e. Section 87 of the 1994 Act as also the notifications dated 11.10.2013 (Annexure P-5) and 03.03.2014 (Annexure P-6) respectively.

The reliance placed by learned Senior counsel upon the Haryana Special Economic Zone Act 2005 as also the Haryana Industrial and Investment Policy 2011 for purposes of treating the petitioner SEZ under a distinct and separate category and to be levied property tax at industrial rates is wholly misplaced. Relevant extract of Section 11 and Section 19 of the 2005 Act would be material to the issue at hand and are reproduced hereunder:-

“11. (1) The following shall be exempt from payment of any tax, duty, fees, cess of any other levies under any existing State law, namely:-

(i) Any goods exported out of or imported into the Special Economic Zone.

(ii) Inter unit transaction of goods within the Special Economic Zone;

(iii) Goods from the Special Economic Zone sent for value additional to the domestic tariff area and returned to the Special Economic Zone thereafter, and

(iv) Services that provide value addition to a product within the Special Economic Zone.

(2) All transactions and transfers of immovable property or documents related thereto within the Special Economic Zone shall be exempted from stamp duty.

19. Nothing in this Act shall affect:-

(i) any right, privilege, obligation or liability acquired, accrued or incurred under any other law;

(ii) any penalty, forfeiture, or punishment incurred under any other law;

(iii) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability; and

Any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed.

Undoubtedly Section 11 (1) of the 2005 Act envisages various benefits to a SEZ but the same is subject to any other law. Section 11 (1) list out the exemptions granted to a SEZ but there is no mention of exemption of property tax to be levied by the concerned municipality. On the other hand Section 19 of the 2005 Act, is couched in clear and

unambiguous language regarding any liability, obligation etc. of a SEZ as far as implementation of any other law is concerned. It can thus be concluded that provision of any other law including the Haryana Municipal Corporation Act 1994 would not stand excluded insofar as its applicability on buildings within SEZ including the aspect of imposition of property tax.

The contention raised on behalf of the petitioner regarding applicability of industrial property rates on IT/ITES buildings situated within SEZ on the plea that IT/ITES have been treated as industry under the Haryana Industrial & Investment Policy 2011 is also not well-founded. As the name of the policy would in itself suggest that it is an investment policy and the basic purpose is to provide incentives and priority to IT Sector in recognition of its potential towards employment, exports, wealth generation and growth of services sector. As per Clause 10.5 of the policy, SEZs are required to pay EDC rates as applicable to the industrial sector. The same can only be understood in the backdrop of equating certain service sectors like IT/ITES with industry for the limited purpose of granting certain incentives as are available to the industrial sector. By no stretch of imagination can the Industrial and Investment Policy of 2011 be construed to mean that it would have primacy over the other acts/provisions of the State Government like the 1994 Act or notifications issued by the Urban Local Bodies Department on the subject of imposition of property tax. We would have no hesitation in holding that the Haryana Industrial and Investment Policy 2011 issued by the Industries & Commerce Department cannot over-ride the State acts and rules made thereunder by the Urban

Local Bodies Department.

The reference made in the writ petition to the various notifications issued across the country in the nature of notification dated 14.03.2005 by the IT Department of the Chandigarh Administration, notification dated 11.08.2005 issued by Department of Industries and Commerce of the State of Punjab, State of U.P. SEZ Policy 2007, SEZ Policy of the State of Madhya Pradesh as also the Gujarat SEZ Act 2004 would have no bearing insofar as the present case is concerned. In each of these notifications as also SEZ policies there was a categorical and specific exemption envisaged insofar as property tax is concerned apart from other exemptions. In the present case, the charging provision is under Section 87 of the 1994 Act which rather permits levy of property tax based on various factors including actual usage of the premises. It is towards exercise of powers under the provisions of the 1994 Act that the notifications dated 11.10.2013 and 03.03.2014 Annexures P-5 and P-6 have been issued. The levy of property tax has to be necessarily as per the charging provision contained under the 1994 Act as also the notifications issued therein. The petitioner as such cannot be permitted to gain any mileage from the notifications/SEZ policies that may have been issued in relation to other states across the country.

This Court is also unable to accept the contention with regard to violation of the principles of natural justice. Admittedly, after issuance of the demand notices levying property tax at commercial rates, the petitioner availed of the statutory remedy of appeal before the Divisional Commissioner under the provisions of the 1994 Act. The appellate

authority took a view in favour of the petitioner. It is thereafter that Municipal Corporation Gurugram preferred a revision before the State Government under Section 140 of the 1994 Act. It is upon consideration of such revision petition that the impugned order dated 30.11.2021 (Annexure P-1) has been passed by the Principal Secretary, Urban Local Bodies Department. Both at the appellate and revisional stage the petitioner/authorized representative were granted effective opportunity of hearing. The contentions raised on behalf of the petitioner and who was arrayed as a respondent in the revision petition at the hands of Municipal Corporation, Gurugram, were specifically noticed as also dealt with. As has been noticed above, petitioner having contested the demand notices in terms of filing an appeal under Section 138 of the 1994 Act had succeeded at the appellate stage and merely for the reason that the revisional authority after granting due opportunity has taken a different view, would not tantamount to a situation which would permit the petitioner to allege violation of the principles of natural justice. The entire issue stands thrashed out on merits and after duly associating the petitioner/authorized representative/its counsel. The contention as such is sans merit.

As regards the aspect of delay, the Apex Court in ***Ganeshan (supra)*** dealt with the question as to whether the Commissioner while hearing the appeal under Section 69 of the ***Tamil Nadu Hindu Religious and Charitable Endowments Act 1959***, is entitled to condone delay in filing an appeal under the provisions of Section 5 of the Limitation Act 1963. Further issue that came to be dealt with was with regard to applicability of

Section 29 (2) of the Limitation Act and whether such provision can be pressed in service with regard to filing of the suit, appeal or application before the statutory authorities and Tribunals provided in special or local laws. While holding that the suits, appeals and applications referred to in the Limitation Act are not the suits, appeals and applications which are to be filed before a statutory authority like the Commissioner under the 1959 Act, it was observed that a special or local law vide statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of the Limitation Act which can be decided only after looking into the scheme of the particular special or local law.

Adverting to the facts of the present case under the 1994 Act, Chapter VIII deals with Taxes and Fees. Section 140 of the 1994 Act reads as follows:-

“140. Finality of appellate orders:-

Any person aggrieved by an order passed in appeal under Section 138 may, within thirty days of the communication to him of such order, make an application in writing to the Government for revision against the said order and the Government may confirm, alter or rescind the said order:-

Provided that the Government shall not pass an order under this section prejudicial to any person without giving such person a reasonable opportunity of being heard.”

Section 140 of the afore-reproduced nowhere expressly excludes the applicability of the provisions of the Limitation Act. The provisions of

Section 5 of the Limitation Act would be applicable as they are not expressly excluded by the provisions of the 1994 Act. At this point a reference may also be made to Sections 117 to 120 of the 1994 Act falling under Chapter VIII. Section 117 empowers the Corporation to charge development tax on the increase in the value of the land or building comprised in a scheme put into operation within the Municipal Area. Section 118 and Section 119 deal with the amount of development tax and payment of development tax respectively. Section 120 deals with assessment of development tax. Under Section 120 (1) the Commissioner may assess the amount of development tax payable by the person(s) concerned and is obligated to give a notice in writing stating the amount of the tax and installments, if any, and the dates on which the tax shall be paid. Under Section 120 (2) any person upon whom a notice of assessment is served under sub-Section (1) may, within one month from the date of service of such notice file an objection against such assessment before the Commissioner. Proviso to sub-Clause (2) states that an objection may be entertained even after the expiry of the period of one month if the Commissioner or an officer authorized by him under sub-Section (1) is satisfied that the failure to file objections was due to any cause beyond the control of the objector. The aforesaid provisions which also fall in Chapter VIII of the 1994 Act dealing with Taxes and Fees would clearly indicate that upon taking an overview of the Scheme of the Act it cannot be inferred that by implication the provisions of Section 5 of the Limitation Act stands excluded. The provisions contained in Section 29 (2) of the Limitation Act

in our view would be attracted as there is no express exclusion or by implication under the Scheme of the 1994 Act.

In *State of Haryana vs. Chandra Mani and others* (1996) 3 SCC 132 while dealing with the issue of delay and in particular at the hands of the State it had been observed as under:-

“It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.”

It was further held that the State cannot be put on the same footing as an individual insofar as dealing with condonation of delay. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. In ***Sesh Nath Singh & anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Lmt.& Anr. (2021) 7 SCC 313*** a view was taken that it is not mandatory to file an application in writing before relief can be granted under Section 5 of the Limitation Act. It was observed that had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Alternatively a proviso or an explanation would have been added to Section 5 requiring the appellant or the applicant as the case may be, to make an application for condonation of delay.

In the light of the discussion hereinabove we endorse the view taken by the first respondent in having condoned the delay of 53 days that had occurred in filing the revision petition at the hands of the Municipal Corporation Gurugram. A crucial issue as regards exigibility of property tax on different buildings carrying wide implications was involved and such issue in our view ought to have been dealt with on merits rather than being scuttled on the technical issue of limitation.

In our considered view the impugned order dated 30.11.2021 (Annexure P-1) passed by the first respondent is based on cogent and valid reasoning and in conformity with the relevant provisions of the 1994 Act as also the notifications dated 11.10.2013 (Annexure P-5) and 03.03.2014

(Annexure P-6).

We find no merit in the instant writ petition and the same is accordingly dismissed.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

24.01.2023
shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No