(2015) 10 P&H CK 0170

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 21009 of 2015

Puri Construction Pvt. Ltd. APPELLANT

Vs

The State of Haryana and Others RESPONDENT

Date of Decision : 01-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Value Added Tax Act, 2003 — Section 15(3), 34, 34(2)

Citation : (2015) 10 P&H CK 0170

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Puneet Aggarwal, Saurabh Kapoor, Shivani Kapoor and Rishabh Kapoor, Advocates, for the Appellant

Judgement

Ajay Kumar Mittal, J.—In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notices dated 22.1.2015 (Annexure P-2) and dated 14.8.2015 (Annexure P-3). Further, a writ of prohibition has been sought directing respondent No. 3 not to proceed with the revisional proceedings initiated vide notices, Annexures P-2 and P-3, under Section 34 of the Haryana Value Added Tax Act, 2003 (in short "the Act").

2. Briefly stated, the facts necessary for adjudication of the present writ petition as narrated therein are that the petitioner is a real estate developer engaged in development and sale of immovable property. The petitioner had filed its return of income for the assessment year 2010-11. The assessing authority framed the assessment under Section 15(3) of the Act vide order dated 10.7.2012 (Annexure P-1) at Rs. 42,02,21,795/-. The revisional proceedings are to be completed within a period of three years from the date of supply of copy of the order. Since the assessment order has been made on 10.7.2012, the revisional order was required to be passed latest by 9.7.2015. A notice dated 22.1.2015 (Annexure P-2) was issued to the petitioner for revision of the assessment order

dated 10.7.2012 (Annexure P-1) under Section 34 of the Act. According to the petitioner, the show cause notice, Annexure P-2, was issued for revision of the assessment for the year 2010-11. Feeling aggrieved, the petitioner filed CWP No. 2961 of 2015 which was disposed of by this Court vide order dated 29.4.2015 in terms of order passed in CWP No. 5730 of 2014. Thereafter, another notice dated 14.8.2015 (Annexure P-3) was issued for revision of the order dated 10.7.2012 (Annexure P-1) for the assessment year 2010-11 under Section 34 of the Act. A circular dated 7.5.2013 was issued by the Excise and Taxation Commissioner, Haryana, to the effect that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction are chargeable to VAT. Consequently, another circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The said circulars are appended as Annexure P-4 (Colly) with the writ petition. The revisional authority has no power to make any revision in terms of notification dated 31.3.2003 (Annexure P-5) issued under Section 34(2) of the Act. The earlier notifications dated 31.3.2013 have later on been re-notified on 15.5.2003 (Annexures P-6 to P-9 Colly). Consequent upon the directions of this Court in CWP No. 5730 of 2014, the State of Haryana had introduced new set of rules for computation of turnover for charging tax on developers vide notification dated 23.7.2015 (Annexure P-10). In pursuance to the notices, Annexures P-2 and P-3, the petitioner submitted preliminary submission dated 17.9.2015 (Annexure P-11), but no response has been received till date. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notices, Annexures P-2 and P-3, issued by respondent No. 3-Deputy Excise and Taxation Commissioner-cum-revisional authority, Gurgaon (West), Gurgaon on the ground that the same was beyond limitation. It was urged that the notice having been issued without jurisdiction being beyond limitation, the proceedings pursuant thereto could not continue.

5. Learned counsel for the petitioner submitted that the petitioner on receipt of the notices, Annexures P-2 and P-3 had filed preliminary submission dated 17.9.2015 (Annexure P-11), but no action has so far been taken thereon.

6. At this stage, we do not find any justifiable reason to interfere with the notices under challenge. However, the revisional authority is directed to take a decision on the preliminary submission dated 17.9.2015 (Annexure P-11) in accordance with law within a period of six weeks from the date of receipt of a certified copy of this order after affording an opportunity of hearing to the petitioner and by passing a speaking order before proceeding further in the matter.

7. The writ petition stands disposed of accordingly.

8. It is, however, made clear that in case the petitioner has any grievance after the order is passed by revisional authority, it shall be open to it to take recourse

to the remedies as may be available to the petitioner in accordance with law.

