

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

+ WRIT PETITION Nos.11528, 11529, 12365, 12366, 14484, 14501, 14519, 14825, 16355, 24392, 36105, 36117, 36143, 39089 of 2013, 5126, 5128, 5175, 9113, 11990, 12020, 14722, 14723, 15347, 15670, 16902, 20371, 20768, 20801, 22574, 26510, 28013, 30173, 30874, 30940, 31326, 37528 of 2014

WRIT PETITION No.11528 of 2013

% Dated 24-04-2015

Omega Shelters (P) Limited, Villa No.1, The Neithbourhood, Gundlapochampally Road, Kompally, Secunderabad rep., by its Director Mr. Mahabir Prasad Agrawall.

.... Petitioner

Vs.

\$ The Asst. Commissioner (CT)(LTU), O/o. the Dy. Commissioner (CT), Secunderabad Division, 4th Floor, Mayur Kushal Complex, C Block, Abids, Hyderabad.

.... Respondent

! Counsel for the petitioners: Sri V. Bhaskar Reddy, Dr. S.R.R. Viswanath, Sri A.V.A. Siva Kartikeya, Sri B. Narayana Reddy.

^ Counsel for respondents: Advocate General (TG), G.P. for Commercial Taxes (TG), Sri S. Suribabu, Spl. Standing Counsel for Commercial Taxes (AP), and Sri K. Vivek Reddy,

<GIST:

> HEAD NOTE:

? Citations:

1. AIR 2005 SC 2350= (2005) 5 SCC 162
2. (2014) 1 SCC 708

3. (2015) 77 VST 297
4. (2012) 55 VST 504 (Bom.)
5. AIR 2000 SC 109
6. (2014) 25 STJ 474 (Uttra)
7. (2012) 51 VST 168 (Bom)
8. AIR 1968 SC 1450
9. (2012) 6 SCC 613
10. (1959) 2 ALL E.R. 92
11. AIR 1973 SC 1016= (1973) 3 SCC 17
12. [1920] 1 K.B. 650 , 655
13. [1989] 1 SCC 345
14. 1992 Supp (1) SCC 21
15. (2013) 66 VST 499
16. AIR 1957 SC 121
17. 315 US 262
18. AIR (36) 1949 Federal Court 153
19. (1966) 1 QB 878
20. (1988) 2 SCC 299 : AIR 1988 SC 782
21. AIR 1953 SC 58 : 1953 SCR 302
22. (1911) A.C. 641
23. (1952) 2 ALL ER 255
24. (1992) 1 SCC 31
25. (2009) 4 SCC 94
26. (1919) A.C. 709

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-

WRIT PETITION Nos.11528, 11529, 12365, 12366, 14484, 14501, 14519, 14825, 16355, 24392, 36105, 36117, 36143, 39089 of 2013, 5126, 5128, 5175, 9113, 11990, 12020, 14722, 14723, 15347, 15670, 16902, 20371, 20768, 20801, 22574, 26510, 28013, 30173, 30874, 30940, 31326, 37528 of 2014

-

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The petitioners, in this batch of Writ Petitions, are dealers carrying on business in the development of immovable property, and in the sale of residential apartments, villas etc. They are aggrieved by the denial of the benefit of composition under Section 4(7)(d) of the A.P. VAT Act (hereinafter called the "Act") for the

construction made by them after execution of a registered sale deed whereby a semi-constructed apartment/flat was sold to the purchaser.

The petitioners, who are developers of apartment buildings, villas, houses, commercial complexes etc, identify and purchase land suitable for construction. After preparation of lay outs, and after making provision for necessary amenities such as roads, parks, water, electricity, sewerage, health club and other facilities, they construct houses and sell them after obtaining necessary sanctions. It is their case that for operational convenience, and to enable the buyers to raise loans, the respective plots, with a semi-finished structure, are initially sold to buyers with a pre-condition that development would be undertaken only by the petitioners in terms of the sanctioned plans for such group housing schemes. In some cases only plots are initially sold, and in some others semi-constructed structures are also sold along with the plot or the undivided share of land. Approval is obtained from the concerned authorities before commencement of construction, and prior to the sale of land. The petitioners execute a conveyance in favour of the purchaser, either in respect of the plot of land on which a residential house is to be constructed, or the plot of land with the semi-finished structure.

Initially an agreement of sale is entered into, by the developer-dealer with the prospective purchasers, with the pre-condition that the purchasers cannot enter into a contract, with any other third party, for construction of a residential apartment, house, building etc. After execution of the sale deed, another agreement is entered into by the petitioner with the purchaser for completion of construction of the residential apartment, buildings etc in accordance with the approved plans and the original document. Every residential house is predesigned, and is a part of the group housing scheme developed by the developer, and the buyer has no say in the matter. The initial agreement of sale, which the developers enter into with prospective buyers for the sale of apartments, includes the consideration receivable on the sale of a semi-finished apartment, and the cost of construction thereafter. The petitioners have all opted to pay tax by way of composition under Section 4(7)(d) and have been paying VAT at 4%/5% of 25% of the total consideration, on these components of the agreements, at the time of registration of the flats or soon thereafter.

Reference is made by the Learned Counsel for the petitioners mainly to the assessment order under challenge in W.P. No.30173 of 2014. Sri K. Vivek Reddy,

Learned Counsel for the respondent, would however rely on the assessment order which is the subject matter of W.P. No.37528 of 2014. In the assessment order (the validity of which is questioned in W.P. No.30173 of 2014), the Assistant Commissioner, CT-III, Hyderabad held that the main contractors had entered into a tri-partite agreement with the land owners and the prospective buyer (customer) for construction of a residential apartment; they had then register the semi-finished apartment in favour of the customer; they had opted for composition under Section 4(7)(d) of the Act; any works contract, executed after registration of a semi-constructed apartment in the name of the customer, is a separate works contract (construction agreement) under the Act and the A.P. VAT Rules, 2005 ("Rules" for short); the assessee is, therefore, liable to pay tax on the value of the goods at the time of its incorporation in the course of execution of the works contract, (at the rates applicable to the goods under the Act), under Section 4(7)(a) and not under Section 4(7)(d); the assessee has not opted for composition under Section 4(7)(b) for the construction/ completion/finishing agreement; they were, therefore, liable to be assessed under Section 4(7)(a); they had only paid 4% of 25% of the entire sale consideration; they had, thereby, under-declared VAT; and the value of the construction agreement was required to be assessed under the regular scheme of taxation i.e the non-composition scheme.

The assessing authority further held that the dealers themselves had admitted that they had executed three types of documents i.e, (1) the agreement of sale, (2) the sale deed for the semi-finished apartment, and (3) the construction agreement; a fresh agreement, for completion of the pending works of the flat, was entered into either with, or after, execution of the sale deed; the construction agreement, entered into after registration of the semi-finished apartment in the name of the customer, is a fresh works contract for which the contractor is required to pay tax at the rates applicable on the value of the goods at the time of incorporation, or under the composition scheme by filing Form VAT 250 before the assessing authority; as the dealer had failed to submit Form-VAT 250 opting to pay tax under Section 4(7)(b), and they had not submitted the details to arrive at the value of the goods at the time of incorporation, tax had been rightly proposed under the proviso to Section 4(7)(a) read with Rule 17(1)(g); in the light of the decision of the advance ruling authority in M/s. Madhu Collections, the transactions relating to incorporation of goods in the works, in the course of execution of a works contract subsequent to registration of

the immovable property ie apartments, residential complexes etc., is taxable under Section 4(7)(a) or Section 4(7)(b) of the Act, depending on whether the contractor had opted for composition; the said ruling squarely applied to the case of the assessee-dealer; and reliance placed on the advance ruling, in Sai Sree Developers Pvt. Ltd., was misplaced since the said ruling was given at a later point of time.

The assessment order dated 06.11.2014, (the validity of which is put in issue in W.P. No.37528 of 2014), was passed by the Commercial Tax Officer, Punjagutta. In the said order, the assessing authority held that the words “construction and selling”, as used in Section 4(7)(d), made it clear that the said provision was applicable only to transactions where construction and sale takes place; any construction, that takes place subsequent to sale, does not fall within the ambit of Section 4(7)(d); it would, necessarily, fall under Section 4(7)(a) if the dealer has not opted for composition, or under Section 4(7)(b) if the dealer has opted for composition; incorporation of goods in the course of execution of the works contract, subsequent to registration of the immovable property in the form of apartments, buildings, residential complexes etc, is taxable under Section 4(7)(a) or Section 4(7)(b) of the Act depending upon whether or not the contractor has opted for composition; the objection of the dealer, that all receipts should be taxed under Section 4(7)(d), was liable to be rejected; as the dealer had entered into an agreement of sale, the amounts received/receivable till execution of the sale deed is liable to tax under Section 4(7)(d); and the contract receipts, after execution of the sale deed, i.e., on the construction agreements, were liable to tax under Section 4(7)(a) of the Act.

Elaborate oral submissions were put forth by Dr. S.R.R. Viswanath, Sri V. Bhaskar Reddy, Sri A.V.A. Siva Kartikeya and Sri B.Narayana Reddy Learned Counsel for the petitioners and Sri K. Vivek Reddy, Learned Counsel for the respondent. Written submissions have been filed, on behalf of the petitioners, by Dr. S.R.R. Viswanath and Sri V. Bhaskar Reddy, and on behalf of the respondents by Sri K. Vivek Reddy. It is convenient to examine the rival submissions under different heads.

I. PRELIMINARY ISSUES:

A. CONTRARY RULINGS OF THE ADVANCE RULING AUTHORITY:

It is contended, on behalf of the petitioners, that the rulings of the Advance Ruling Authority, in Maytas Hill Country Pvt. Ltd. and Sai Sree Developers (P) Ltd., are directly applicable to the present facts scenario; it is not even the case of the assessing authority that they were revoked or cancelled; as long as the said advance rulings subsist, they are bound to be followed by the department in view of Section 67(4) of the Act; the assessing authorities have mis-conducted themselves in not following these rulings, and in not even referring to them; the Advance Rulings, in M/s Madhu Collections, Hyderabad and M/s Lumbini Constructions (P) Ltd., have no application, and are not consistent with the provisions of the Act; and these rulings were passed without reference to the earlier Advance Rulings in M/s Maytas Hill Country Pvt. Ltd., M/s Manjeera Constructions Limited, M/s Sri Sai Builders, M/s My Home etc., which are in favour of the assessee-dealers.

Sri K. Vivek Reddy, Learned Counsel for the respondents, would fairly state that, as there are conflicting Advance Rulings on this issue, this Court should give a quietus to this vexed issue on interpreting the provisions of Section 4(7)(d) of the Act and the Rules made thereunder.

Section 67 of the Act relates to clarification and advance rulings. Sub-section (1) thereof enables the Commissioner to constitute a State level 'Authority for Clarification and Advance Rulings' comprising of three officers not below the rank of Joint Commissioner to clarify, in the manner prescribed, any aspect of the implementation of the Act. Section 67(4) makes the orders of the Advance Ruling Authority binding on all officers in the commercial taxes department other than the Commissioner. The very object of inviting a clarification from, and a ruling being given by, the Advance Ruling Authority is to ensure uniformity in assessment orders. The Rulings, given by the Advance Ruling Authority, guide all assessing authorities in the State in passing orders of assessment. Conflicting rulings by the Advance Ruling Authority create confusion and result in uncertainty in tax administration. One possible reason for these conflicting rulings is the absence of a mechanism to bring the earlier rulings to the notice of the Advance Ruling Authority when its clarification is again sought on the very same issue. That, however, is a matter which the rule making authority and the Commissioner of Commercial Taxes should ponder over. Suffice it to observe that the interpretation placed, on Section 4(7)(d) of the Act and

the rules made thereunder, by this Court would, hopefully, bring the prevailing uncertainty to an end.

B. SUBMISSIONS MADE BEYOND THE CONTENTS OF THE IMPUGNED ORDERS OF ASSESSMENT:

It is contended on behalf of the petitioners that the revenue, while making its submissions before this court, has travelled beyond the contents of the impugned orders of assessment; new submissions were made beyond the record, which were neither stated by the assessing authorities in the respective orders of assessment, nor in the counter affidavits filed before this Court; and submissions cannot be made on hypothetical situations or those which are hyper-technical in nature.

It is wholly unnecessary for us to examine whether the submission made before this Court, on behalf of the Revenue, go beyond the scope of the several assessment orders under challenge in these Writ Petitions as the interpretation to be placed on Section 4(7)(d) of the Act, and the Rules made thereunder, are pure questions of law unrelated to the facts in issue, and can be raised at any stage, even for the first time in proceedings under Article 226 of the Constitution of India. In any event, the conflicting advance rulings necessitate examination of all questions of law touching upon the scope and application of Section 4(7)(d) and the Rules made thereunder.

II. IS THE POST-SALE COMPLETION/FINISHING WORKS CONTRACT ELIGIBLE FOR COMPOSITION UNDER SECTION 4(7)(d) OF THE AP VAT ACT?

It is contended, on behalf of the petitioners, that Section 4(7)(d) of the Act does not even remotely suggest that on the sale of a semi-finished flat, with a specific condition that the construction would be completed by the very same contractor under a completion agreement, the composition facility ceases; the "sale deed" and the "completion agreement" are integral parts of the initial-parent agreement; the petitioners have discharged the entire tax liability (even on the completion agreement) immediately upon registration of the semi-finished flat; both the sale deed and the construction agreement are registered on the same date; the petitioners cannot be denied the composition facility for that part of the turnover of

the works contract executed subsequent to the registration of the sale deed; Section 4(7)(d) does not speak of any particular type of agreement; it takes within its ambit all genre of contracts and agreements; the only requirement is that the contractor must opt to pay tax on the composite value of land and building (which should not be less than the market value for the purpose of stamp duty); identification of the prospective buyer, and execution of the work for such a prospective buyer, is sufficient to make it a "works contract" even though there is no transfer of ownership; even an agreement, entered into with a prospective buyer, itself creates the liability; in most of the cases, there are three parties - the owner of the land, the builder and the buyer; while the owner of the land, who is not a "dealer", agrees to transfer ownership in the land, the builder undertakes construction, and the buyer obtains a flat along with the undivided share in the land; in all such cases, as long as the builder-dealer agrees to pay tax on the "composite value" of land and building, he can avail the benefit of composition under Section 4(7)(d); the obligations arising under the initial parent agreement, and later split between the sale deed and the construction agreement, are integral to each other; and the petitioners are released from their contractual obligations only when the flat is complete in every respect.

On the other hand Sri K.Vivek Reddy, Learned Counsel for the respondents, would submit that the assessee have, in most cases, entered into three contracts (1) agreement to sell with the prospective buyer. Pursuant to this agreement, the builder commences construction for the prospective buyer. This is the first works contract executed by the builder for the prospective buyer. The parties to this works contract are the builder, owner and the prospective buyer. (2) Sale deed. Under this agreement, the builder sells the flat with the semi-finished construction. Once the sale deed is executed, the first works contract comes to an end. (3) post-sale finishing agreement with the buyer. This agreement may be either express or implied. Under this agreement, the builder-contractor executes the finishing work for the buyer/owner, and not the prospective buyer. This is the second works contract, and the consideration for this work is, ordinarily, stipulated in the finishing agreement; the post-sale construction, by the assessee for a buyer, cannot be subjected to composition under Section 4(7)(d) of the Act; composition, under Section 4(7)(d), is applicable only if the works contract contemplates construction followed by sale of the constructed work; the assessee has to strictly satisfy the requirements of Section 4(7)(d) for availing composition; and the petitioners are

entitled to composition if, and only if, they fall within the four corners of the Act.

Before examining these and the other submissions, it is useful to note the provisions of the Act, and the Rules made thereunder, mainly in relation to works contracts. Section 2(16) of the Act defines 'goods' to mean all kinds of movable property other than newspapers, actionable claims, stocks, shares and securities, and includes all materials, articles and commodities including the goods, as goods or in some other form, involved in the execution of a works contract or those goods used or to be used in the construction, fitting out, improvement or repair of movable or immovable property, and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Section 2(45) defines 'works contract' to include any agreement for carrying out, for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

The term "works contract", as defined in Section 2(45) of the Act, is an inclusive definition. It does not include merely a works contract as normally understood. It is a wide definition which includes "***any agreement***" for carrying out building or construction activity for cash, deferred payment or other valuable consideration. The definition does not make a distinction based on who carries on the construction activity. Thus even an owner of the property may be said to be carrying on a works contract if he enters into an agreement to construct, for cash, deferred payment or other valuable consideration, and he would be liable to pay tax on the turnover relating to the transfer of property in the goods involved in such a works contract. (**K. Raheja Development Corpn. v. State of Karnataka; Larsen & Toubro Ltd. v. State of Karnataka**).

The charge to tax, under Section 4(1) of the Act, is on the sale of goods in the State. As noted hereinabove "goods" are defined, under Section 2(16) of the Act, to mean all kinds of movable property other than those excluded by the definition itself. Labour and services, not being "movable property", would not fall within the definition of 'goods' under Section 2(16), and no tax can be levied under the Act for the consideration received in a contract merely for labour and services. Similarly "land", being "immovable property" and not falling within the definition of "goods" under Section 2(16), is not liable to tax under the Act.

Section 4(7) of the VAT Act is the charging provision whereby tax is levied on the goods involved in the execution of works contracts. Tax, under Section 4(7)(a) of the Act, is payable by a dealer if he chooses not to exercise the option of composition under Section 4(7)(b) and (d) of the Act. (**M/s.Mark Infrastructure Pvt. Ltd. v. The Commercial Tax Officer**). Under clause (a) of Section 4(7) the liability to pay tax, by a dealer executing works contracts, is on the value of the goods at the time of incorporation of such goods in the works executed by him. Rule 17(1)a stipulates that, in the case of contracts not covered by sub-rules (2) and (4), the VAT dealer is required to pay tax on the value of the goods, at the time the goods are incorporated in the work, at the rates applicable to the goods. Rule 17(1)(b) provides that such a VAT dealer shall be eligible to claim input-tax credit on 75% of the tax paid on the goods purchased, other than those specified in Rule 20(2), and he is eligible to issue a tax invoice. Rule 17(1)(d) provides that the value of the goods, declared by the contractor, to have been used in the execution of a works contract, shall not be less than the purchase value, and shall include seigniorage charges etc. Rule 17(1)(e) provides that, subject to clause (d) of Rule 17(1), the following amounts are allowed as deductions, from the total consideration received or receivable, for arriving at the value of the goods at the time of incorporation (i) labour charges for execution of the works; (ii) charges for planning, designing and architect's fees; (iii) charges for obtaining on hire, or otherwise, machinery and tools used for the execution of the works contract; (iv) cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract; (v) cost of establishment of the contractor to the extent it is relatable to supply of labour and services; (vi) other similar expenses relatable to supply of labour and services; (vii) profit earned by the contractor to the extent it is relatable to supply of labour and services; and (viii) amounts paid to a sub-contractor as consideration for execution of the works contract whether wholly or partly.

Even in a composite or an indivisible contract, where books of accounts are maintained by the dealer, his liability to pay tax under Section 4(7)(a) of the Act is only on the deemed sale of goods i.e., the value of the goods incorporated in the works executed by him. Under the proviso to Section 4(7)(a), where accounts are not

maintained to determine the correct value of the goods at the time of incorporation, the dealer is liable to pay tax at the rates specified in Schedule-V on the total consideration received or receivable subject to such deductions as may be prescribed. The deductions, prescribed in terms of the proviso to Section 4(7)(a), are those referred to in Rule 17(1)(g) and, thereunder, the standard deduction prescribed for works contracts, involving construction of buildings, is 30%; and the tax payable is 14½% on the total consideration received minus the standard deduction. In effect, the dealer is required to pay 14.5% tax on 70% of the total consideration received or receivable on the execution of the works contract relating to construction of buildings. (**M/s.Mark Infrastructure Pvt. Ltd.**³).

Tax, under Section 4(7)(a), is not levied either on land (which constitutes “immovable property”) or on the consideration received or receivable towards labour and services (as it does not constitute “goods”). Even in cases where the dealer does not maintain books of accounts his liability to pay tax, under Section 4(7)(a) and its proviso, is on the total consideration received or receivable less the standard deduction prescribed under Rule 17(1)(g). The standard deduction is prescribed to avoid subjecting to tax the labour and services component of the works executed by a contractor, as tax can only be levied on the deemed sale of “**goods**” incorporated in the works. As the net consideration, received or receivable, for execution of the works contract, (total consideration minus the standard deduction), is alone required to be taken into consideration, in determining the tax liability of the dealer, it is evident that tax, under Section 4(7)(a) and its proviso, is not levied on the consideration received for the land component, or on the labour and service component, of the works contract.

Two distinct schemes of compositions are provided under clauses (b) and (d) of Section 4(7). A scheme of composition, essentially, seeks to provide an option under which, in lieu of the tax payable under the provisions of the Act, a registered dealer can pay, what is described as the composition amount, in the discharge of his tax liability. In framing a scheme for composition the legislature has to balance numerous considerations including the interest of the revenue, the need to encourage compliance, and the burden on tax administration which is obviated by the introduction of a composition option. The composition scheme is not in the nature of an amnesty, but is a provision made by the legislature for composition by a registered dealer undertaking works contracts. The tax payable, as prescribed in the

composition scheme, is in lieu of the tax payable on the transfer of goods involved in the execution of a works contract. A scheme for composition is, therefore, in the nature of a concession which is granted by the State to a certain class or category of assesseees who fulfill the conditions spelt out therein. A composition scheme merely gives an option to an assessee, and he is not compelled to opt for the said scheme. **(Builders Association of India v. State of Maharashtra).**

Composition of tax liability under the two schemes referred to in clause (b) and (d) of Section 4(7) are an alternative to the regular mode of discharge of tax liability under clause (a) of Section 4(7). The assessee gets the benefit of paying a lower rate of tax under Section 4(7)(b) or (d) as opposed to a higher tax rate under Section 4(7)(a). However, while the tax base for composition under Section 4(7)(b) includes labour and services in addition to the value of the goods incorporated in the works, the tax base for the composition under Section 4(7)(d) includes the consideration received for land also. Unlike the regular mode of payment of tax under Section 4(7)(a), the assessee is also not required to maintain books of accounts, regarding the amounts paid for labour and services, on his exercising the option for composition. Both the schemes of composition, under clause (b) and (d) of Section 4(7), are statutorily prescribed by the legislature, among other reasons, to reduce the administrative burden of tax assessment and collection. A composition scheme in a taxing statute represents a legislative settlement of tax liability as prescribed in the Act. Neither does the dealer have the option to modify or enlarge the terms of the composition scheme nor can the Government deny the benefits of the said scheme to dealers who satisfy the conditions prescribed therein. The dealer is entitled to seek composition of his tax liability only if his case falls within the four corners of the composition scheme. As composition is optional, the dealer is not bound to compose his tax liability. If he finds the terms of the composition not favourable the dealer can, instead, discharge his tax liability by the normal mode prescribed in Section 4(7)(a) of the Act.

Under Section 4(7)(b) every dealer executing works contract may, in lieu of the tax payable by him under Section 4(7)(a), opt to pay tax by way of composition at the rate of 4%/5% of the total amount received or receivable by him towards execution of the works contract subject to such conditions as may be prescribed. Unlike Section 4(7)(a), which provides for levy of tax only on the value of goods at the time of its incorporation in the works executed by the dealer, Section 4(7)(b)

requires the dealer, who has exercised the option to pay tax by way of composition, to pay tax at 4%/5% of the total amount received or receivable by him towards execution of the works contract. Rule 17(2) of the VAT Rules relates to treatment of works contracts under composition. Rule 17(2)(a) stipulates that any VAT dealer, who executes a contract and opts to pay tax as specified in Section 4(7)(b), must register himself as a VAT dealer. Rule 17(2)(b) requires such a VAT dealer to pay tax at 4%/5% of the total consideration received or receivable. Rule 17(2)(c) requires the VAT dealer, who opts for composition, to notify the prescribed authority on Form VAT 250, before commencing execution of the work, the details including the value of the contract on which the option has been exercised. Under the proviso thereto, a consolidated Form VAT 250 can also be filed by the contractor who undertakes multiple works contracts of a similar nature. (**M/s.Mark Infrastructure Pvt. Ltd.**³). Instead of paying tax at 14½% under Section 4(7)(a), on the value of the goods incorporated in the works, the dealer is permitted, under Section 4(7)(b), to pay tax at 4%/5% of the total consideration received or receivable towards execution of the works contract, ie for both goods and labour & services. Section 4(7)(b), however, does not subject the land component, of the consideration received by the dealer, to tax.

Unlike the scheme of composition under Section 4(7)(b) which is available to dealers executing all kinds of works contracts, the composition scheme, under Section 4(7)(d), is available at the option of only those class of dealers mentioned therein. The ingredients of Section 4(7)(d) of the Act, and Rule 17(4) of the Rules as applicable in relation thereto, are (i) the dealer must be engaged both in the construction and in the sale of “**residential apartments, houses, buildings, commercial complexes etc.**” A dealer engaged merely in the construction of the aforesaid buildings, or only in the sale of such completely constructed buildings, and not in both, is not entitled to opt for the composition scheme prescribed under Section 4(7)(d); (ii) A dealer, satisfying the requirements of (i) above, may opt to pay tax by way of composition failing which he is liable to pay tax in terms of Section 4(7)(a) of the Act and the proviso thereto; (iii) the rate at which tax is payable, on exercise of such option, is 4%/5% of 25% of the total amount received or receivable; (iv) the tax payable, at 4%/5% of 25%, is on the higher of (a) the amount received or receivable towards the composite value of land and building, or (b) the market value fixed therefor for the purposes of stamp duty; (v) in cases where the market value

fixed for land and buildings, for the purpose of stamp duty, is higher than the consideration received or receivable towards the composite value of both land and building, it is the market value fixed for the purpose of stamp duty which is required to be taken as the composite value of land and building for determining the tax liability; (vi) exercise of option, to claim the benefit of composition, is subject to such conditions as may be prescribed by way of Rules, which are those stipulated under Rule 17(4); (vii) the dealer, executing a contract for “constructing and selling” the specified buildings, is required to register himself as a dealer (Rule 17(4)(a)); (ix) the dealer is then required to notify the prescribed authority in Form VAT 250, before commencement of execution of the work, of his intention to avail composition for all the works, relating to the construction and sale of the specified buildings, undertaken by him. (Rule 17(4)(b)). Form VAT 250 is the application to be submitted by the dealer opting for payment of tax by way of composition. The said Form requires the name and address of the dealer to be furnished; for the dealer to state that they were applying to pay by way of composition, contract wise or for a period as the case may be; and to furnish details of contract for which composition was opted. The Form requires the details to be given in a tabular form containing the following particulars viz., (1) serial number; (2) nature of option (Contract wise or for a period); (3) name & address of the other party in the case of option contract-wise; (4) nature of the contract/transaction; (5) date of contract/period of option; and (6) full value of the contract/transaction. The note, given below the table therein, stipulates that the option once made is irrevocable. The Form is required to be signed by the dealer who is also required to affix his stamp and seal. The Authority for Clarification and Advance Ruling has, under Section 67 of the Act in the case of M/s.Archinova Design Pvt. Ltd, clarified by order dated 01.07.2005 that, for more than one contract also, a single Form VAT 250 can be filed by the works contractor opting to pay tax under Section 4(7)(d); (x) the dealer is required to pay tax at the specified rate on the higher of (a) the total consideration received or receivable towards cost of land as well as construction or (b) the market value fixed for the purpose of stamp duty (Rule 17(4)(d)); (xi) the dealer should then enter such details in the monthly return filed, in Form VAT 200, in the month in which the sale is concluded and registered. The dealer is required to pay the tax due either before the sub-registrar or along with the return. The particulars of payment of tax is required to be reported in the relevant columns of the return (Rule 17(4)(e)); (xii) the dealer, exercising option under Section 4(7)(d), is neither eligible for input-tax credit nor to issue tax invoices. (Section 13(5))

(a) and Rule 17(4)(f)). While a dealer executing works contracts, and paying tax under Section 4(7)(a), is entitled to claim input-tax credit, he loses the said benefit on his exercising the option to pay tax, by way of composition, either under clause (b) or (d) of Section 4(7) of the Act.

A tax statute should clearly and unambiguously convey three components i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients, in a taxation statute, then there is no tax in law. It is then for the legislature to do the needful in the matter. (**Mathuram Agarwal v. State of M.P.**). Should a construction which renders Section 4(7)(d) unworkable, and its application uncertain, be accepted? Startling and unforeseen consequences would ensue if this Court were to accept the submissions urged on behalf of the revenue that (1) there is a change in the identity of the purchaser of the apartment on a sale deed being executed in his favour; (2) the construction made by the developer, after an agreement of sale is entered into but prior to execution of the sale deed, is the construction made for a prospective buyer; (3) any construction made by the developer, after execution of the sale deed, is a construction undertaken by him for the owner of the building; and, (4) while construction undertaken by the developer for a prospective buyer (with whom an agreement for construction and sale of the apartment is entered into) falls within the ambit of Section 4(7)(d), the construction made after a sale deed is executed does not.

A residential apartment/commercial complex, or a group housing scheme, consists of several units (ie flats or individual houses/villas/shops). Rule 17(4)(b) requires the dealer to exercise the option for composition, under Section 4(7)(d) of the Act, before commencement of construction. At that stage the developer may have entered into agreements with prospective buyers of some of, and not all, the flats/units. The developer would, ordinarily, still proceed with construction as he could identify and enter into agreements with prospective buyers, of the remaining units/flats, later. In such an event would the construction, made prior to any agreement being entered into with a prospective buyer, fall outside the ambit of a “works contract”, as the developer is constructing the flat/unit himself, and not for a prospective buyer or the owner of the flat? If the construction undertaken, after an agreement is entered into with the prospective buyer but before execution of a sale

deed, would alone fall within the ambit of Section 4(7)(d), how should the construction made by a developer, prior to entering into an agreement with a prospective buyer, be treated? Should it be held that such a construction is not a works contract as it has not been undertaken either for a prospective buyer or the owner? In cases where an agreement is entered into with a prospective buyer after commencement of construction, the consideration payable by the prospective buyer would also include the consideration for pre-agreement construction. Would it then mean that the consideration received, for the pre-agreement construction, is not liable to tax under the Act?

A registered deed may be executed and registered by the developer for the sale of a semi-constructed structure, in favour of different purchasers of residential apartments, houses, buildings or commercial complexes, at different stages of construction. While a sale deed may be executed for one of the flats after 10% of the construction is completed, a sale deed may be executed for another after 90% of the construction is completed. As the option, for composition both under clauses (b) and (d) of Section 4(7), must be exercised before commencement of construction, the developer would not know, when he submits Form-VAT 250, of the stage when he would be required to execute and register a sale deed. If the interpretation placed on Section 4(7)(d), on behalf of the revenue, is accepted, the developer would not know whether or not it is beneficial for him to exercise the option for composition as his liability to pay tax under Section 4(7)(d) would be contingent on the uncertain future event of execution and registration of sale deeds for different flats at different stages of construction.

As noted hereinabove Section 4(7) relates to levy of tax on works contracts. While the normal mode of levy of tax, on dealers executing works contracts, is under Section 4(7)(a), clauses (b) and (d) provide for two different schemes of composition. Clauses (a), (b) and (d) of Section 4(7) are in the alternative, and a dealer cannot be subjected to tax on the execution of a works contract partly under one and partly under another clause of Section 4(7). Classification of dealers executing works contracts, under clauses (b) and (d) of Section 4(7), is based on the nature of business the dealer is engaged in, and does not change merely because a conveyance deed is executed and registered for the sale of a semi-finished structure. As long as it is the same contractor who executes the works for the same purchaser, from commencement till completion, the option available to him, to pay

tax under clauses (b) and (d) of Section 4(7), would depend on the class and category of contractors to which he belongs, and the nature of the business he is engaged in, and not on the stage of construction when a conveyance deed is executed.

**(i) IS THE POST-SALE WORKS CONTRACT DISTINCT AND
DIFFERENT FROM THE WORKS CONTRACT EXECUTED PRIOR
TO EXECUTION OF THE SALE DEED?**

It is contended, on behalf of the petitioners, that the dealer, who opts for composition under Section 4(7)(d), is required to pay tax on the entire value of the consideration received or receivable, whichever is higher; this includes the cost of the land (either divided or undivided); on the other hand a person, who opts to pay tax under Section 4(7)(b), is required to pay tax only on the value of the goods involved in the execution of the works contract; the petitioners, while exercising option to pay tax under Section 4(7)(d) and even before commencement of construction, have disclosed the entire value of the project proposed to be constructed; they continue to enjoy the benefit of composition under Section 4(7)(d), even after registering the sale of a semi-finished construction or a plot in favour of the customer, till the completely constructed flat/house is handed over to the buyer in terms of the initial agreement; the act of registration is not fatal, and does not alter the position; the initial or parent agreement, for the sale of a house, by itself creates the liability; except in a few cases the entire tax, on the value mentioned in the initial agreement, has been remitted to the state exchequer, in terms of Rule 17(4)(e), at the time of execution of the registered deed itself whereby a semi-finished structure was sold; the petitioners are liable to pay tax, in terms of Section 4(7)(d), even on the turnover covered by the completion agreements/finishing agreements; and levy of tax under Section 4(7)(a) or under Section 4(7)(b), treating the finishing works (ie works executed after execution of the sale deed) as independent works contracts, is without jurisdiction and is contrary to the scheme of the Act and the Rules made thereunder.

On the other hand Sri K.Vivek Reddy, Learned Counsel for the respondent, would submit that, in the present batch of Writ Petitions, the petitioners seek composition under Section 4(7)(d) of two distinct works contracts – the pre-sale

construction works contract and the post-sale finishing works contract. The post sale construction cannot be the subject matter of composition, under Section 4(7)(d) of the Act. There are two works contracts which are being executed by the parties. In the first works contract, the construction work is undertaken by the assessee for the prospective buyer. This work contract is executed prior to registration of the sale deed. In the second works contract, the assessee executes the finishing work for the buyer. Unlike the first works contract, the construction work in the second works contract is undertaken not for the prospective buyer, but for the buyer himself. Further, in the first works contract, the assessee is executing the works contract in his capacity as the owner / developer. In the second works contract, the assessee executes the works merely as a contractor. Even though the parties may be the same, the capacity under which they undertake the contract changes completely after the execution of the Sale Deed; in **K. Raheja Development Corporation**¹ the Supreme Court held that any construction activity, for the prospective purchaser prior to the sale, amounts to a works contract; and in **Iravanshi Builders & Developers v. CCT, Uttarakhand** the Division Bench of the Uttarakhand High Court held that the construction, preceding the sale of immoveable property, constitutes a works contract.

Where the owner of land purchases goods (construction material such as cement, steel, bricks etc) and constructs a building himself engaging labour, the value of the goods purchased by him includes the VAT charged by the dealer who sold the goods to him. As he is constructing the building for himself, the only contract which the owner of the land enters into with another is a contract for labour and services and, as he cannot be said to have either actually or fictionally sold the goods to himself, construction of such a building, in such a situation, would not fall within the ambit of a “works contract”. On the other hand when the owner of the land enters into a contract with another to build a house for him, it is the contractor who purchases the goods and utilises it in the construction of the building. The contractor is liable to pay VAT on the deemed sale of goods incorporated in the works (building). As the contractor is entitled for input-tax credit, for the tax paid by him on the purchase of goods, it is only on the incremental value of the goods, incorporated in the works, is VAT paid by him.

A building contract may be defined as an agreement under which a person (called builder or contractor) undertakes for reward to carry out for another (building

owner or employer), works of building or civil engineering in character. Ordinarily, the work is carried upon the land of the employer or the building owner. (**Hudson's Building and Engineering Contracts, 11th Edn., Vol. 1; Larsen & Toubro Ltd.²**). The nature and complexity of building contracts has changed over time. As long as the contract provides for obligations of a contract for works, and meets the basic description of a "works contract", it must be described as such. (**Maharashtra Chamber of Housing Industry v. State of Maharashtra**). When the agreement between the promoter/developer and the flat purchaser is to construct a flat, and to eventually sell the flat with a fraction of the land, such a transaction involves the activity of construction in as much as it is, ordinarily, only when the flat is constructed is it then conveyed. A "works contract" is a contract in which one of the parties is obliged to undertake or to execute works. Such activity of construction has all the characteristics or elements of a works contract. The ultimate transaction between the parties may be the sale of a flat, but it cannot be said that the characteristics of a "works contract" are not involved in that transaction. (**Larsen & Toubro Ltd.²**).

The agreement between the developer, and the owner of land, is a development agreement. A typical development agreement is followed by a tripartite agreement between the owner of the land, the developer and the flat purchaser. Effectively, and de facto, it is the developer who constructs the building, for the flat purchaser, for monetary consideration. The label of payment is not decisive but the factum of the payment is. The construction is undertaken on payment of the price agreed upon between the developer and the flat purchaser. The construction work is undertaken by the developer not for himself or the owner but is carried for, and on behalf of, the purchaser. Such a transaction is a composite contract comprising of both a works contract and transfer of immovable property. Value added tax is levied on the value of the material involved in the execution of the works contract. (**Larsen & Toubro Ltd.²**). Where a contract comprises of both a works contract and a transfer of immovable property, such a contract does not denude it of its character as a "works contract". The term "works contract", in Article 366(29-A)(b), takes within its fold all genre of works contracts. (**Larsen & Toubro Ltd.²**).

Pursuant to the development agreement, a plan is sanctioned in the name of the owner of the property who would then execute a conveyance directly to the

purchaser. The developer has a possessory interest, and a right to construct which does not make him the owner of the property. The developer undertakes to build for the prospective purchaser. Such construction/development is on payment of the price, in instalments, as set out in the agreement. As the developer is not the owner, they claim a “lien” on the property. (**K. Raheja Development Corpn.**¹). The developer (the dealer who constructs the apartment/building) is liable to pay VAT even on the deemed sale of goods to a prospective buyer with whom he has entered into an agreement for the construction and sale of the apartment/building (**K. Raheja Development Corpn.**¹).

As long as the contract is not terminated the construction, for and on behalf of the purchaser, remains a “works contract” as defined under the Act. Any agreement, entered into before the construction is complete, would be a works contract. If, however, the agreement is entered into after the flat or the unit is already constructed, it would not be a “works contract”. (**K. Raheja Development Corpn.**¹; **Larsen & Toubro Ltd.**²). If at the time of construction, and until the construction is completed, there is no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since, at that time, there is no purchaser. That, ultimately, the building is intended for sale, after construction, does not make any difference. (**Larsen & Toubro Ltd.**²). If the developer sells the apartment only after it is fully constructed, he is not liable to pay VAT as there is no deemed sale of goods, and what is sold is “immovable property” which does not constitute “goods” liable to tax under the Act. In such a case, the developer would not be entitled for input-tax credit on the tax paid by him on the goods purchased and utilised in the construction of the building, as input-tax credit can only be claimed on the tax paid on the sale/deemed sale of “goods” by a VAT dealer, and not on the sale of immovable property.

A dealer, who opts for composition under Section 4(7)(d), is liable to pay tax on the composite value of the apartment/building which includes the consideration received or receivable for transfer of land, the goods incorporated in the works, and labour and services. Section 4(7)(d) applies only to dealers engaged in the “**construction and selling**” of “**residential apartments, houses, buildings or commercial complexes**”. The word “and” has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and it is the

antithesis of "or". (**Ishwar Singh Bindra v. State of UP**; **Stroud's Judicial Dictionary, 3rd Ed. Page 135**). **Maxwell on Interpretation of Statutes, 11th Ed.**). By the use of conjunctive word '**and**', between "construction" and "selling", Section 4(7)(d) restricts the benefit of composition only to those dealers who are engaged both in the construction and in the sale of residential apartments, houses, buildings, commercial complexes etc, and not merely to those engaged only in construction, and not in the sale, of such buildings or vice-versa. (**M/s.Mark Infrastructure Pvt. Ltd.**³). Those dealers who are engaged only in construction, and not also in sale, of buildings, are not entitled to claim the benefit of composition under Section 4(7)(d), and are liable to pay tax either under Section 4(7)(a) or opt for composition under Section 4(7)(b) of the Act. A person carrying on business only in the sale of fully constructed residential apartments/houses etc, which is immovable property (and does not constitute "goods" under Section 2(16)), cannot be subjected to tax under the Act as he would then not fall within the definition of a "dealer" under Section 2(10) thereof.

Section 4(7)(d) uses the words "**residential apartments, houses, buildings or commercial complexes**". Rule 17(4) relates to treatment of "**Apartment Builders and Developers under composition**". An apartment builder can only be a person who builds a completed apartment and not a semi-finished structure. The words "**residential apartment**", "**house**" or "**commercial complex**" can only mean a completed building, and not a semi-finished structure. Only those dealers engaged in the construction of a residential apartment, house, building, commercial complex etc from its commencement till its completion, and in the sale of such buildings, are entitled for the benefit of composition under Section 4(7)(d) of the Act. **Black's Law Dictionary** - (6th Edition) defines 'engage' to mean to employ or involve one's self; to take part in; to embark on. **P.Ramantha Aiyer's 'The Law Lexicon** –(Reprint edition 2002) defines 'engaged in business' to mean occupied in doing business and 'engages' to mean to take part; to devote attention and effort; to employ one's self; and to conduct. The word 'engaged', in the context of Section 4(7)(d), can only mean 'involved in' or 'carrying of business in'. The words "**residential apartments, houses, buildings or commercial complexes**" as used in Section 4(7)(d), is in the plural and not in the singular. These words, when read in conjunction with the word 'engaged', can only refer to a developer who carries on business in the construction and sale of a plurality of units. (residential apartments

consisting of several flats or commercial complexes comprising several shops). The benefit of composition is available to those carrying on business of construction and sale of the buildings referred to in Section 4(7)(d), and is not based on the vagaries of the stage of sale of the semi-finished structure of one of the units (ie one of the flats in a residential complex or one of the shops in a commercial complex).

The entire transaction must be viewed from a commercial and realistic perspective, and must be examined holistically. (**Vodafone International Holdings BV v. Union of India**). The purchaser of the residential apartment, house/building etc, is the same person with whom the developer enters into the initial agreement, executes a registered deed for the sale of a semi-finished structure, and thereafter enters into a finishing agreement for completion of the semi-finished structure into a residential apartment, house, building etc. The artificial severance of the identity of the person who purchases the residential apartment/flat from a developer, firstly as a prospective buyer before execution of a sale deed, and thereafter as the owner of semi-finished structure, does not find support from a plain and literal construction of Section 4(7)(d). Where the literal reading of a fiscal statute produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of the legislature. (**R. v. Oakes**). It is wholly impermissible, while construing any provision much less a taxing provision, to read into the Section more words than it contains. (**CIT v. Vadilal Lallubhai**). When one is construing a penal statute, the first thing is to construe it according to the ordinary rules of grammar, and if a construction which satisfies those rules makes the enactment intelligible, and especially if it carries out the obvious intention of the legislature as gathered from a general perusal of the whole statute, that grammatical construction ought not to be departed from. (**Attorney-General v. Beauchamp and R. v. Oakes**¹⁰).

The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions, particularly where the language is plain and unambiguous. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and

intention of the legislature. (**Mathuram Agarwal**⁵). The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. The need to resort to any interpretative process arises only where the meaning is not clear from the plain words of the statute. If the words are clear, and directly convey the meaning, there is no need for any interpretation. (**Collector of Central Excise, Bombay-1 v. M/s. Parle Exports (P) Ltd.,; Mangalore Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes**). On a literal interpretation, clauses (a), (b) and (d) of Section 4(7) of the Act do not require the developer to be treated as a dealer falling within the ambit of Section 4(7)(d) prior to execution of a sale deed, and as a contractor falling within the ambit of Section 4(7)(a) or Section 4(7)(b) for the construction made thereafter.

(ii) CAN THE POST-SALE WORKS CONTRACT BE TREATED AS AN INDEPENDENT CONTRACT FOR EXECUTION OF WORKS WITHOUT SALE?

It is contended, on behalf of the petitioners, that the option exercised by the petitioners, before commencement of the work, is on the basis of the initial parent agreement which includes the cost of the land, the semi-finished flat/building, and the value of the work covered under the completion/finishing agreement; the petitioners cannot be treated as independent works contractors, in respect of the finishing works, as these works executed by them are also covered under the initial agreement, and are not new works; the petitioners were under a contractual obligation to complete construction of the flats/houses, in terms of the initial agreement, and were required to hand over possession only after obtaining “occupancy certificate” from the respective Municipality/ Municipal Corporation in terms of the Building Regulations; they hand over possession only after obtaining an occupancy certificate from the respective municipality/municipal corporation in terms of the Building Regulations; the petitioners, who have opted to pay tax under Section 4 (7) (d) on the entire value mentioned in the initial agreement, which includes the cost of land, construction and other amenities, are liable to pay tax only at 4%/5% on 25% of the turnover covered by the completion/finishing agreement;

and levy of tax at 12.5%/14.5% under Section 4(7)(a), or at 4%/5% under Section 4(7)(b), treating the finishing works as independent works contracts, is not only without jurisdiction, but is also contrary to the scheme of the Act and the Rules made thereunder.

On the other hand Sri K.Vivek Reddy, Learned Counsel for the respondent, would emphasise on the absence of “sale” in the finishing agreement. Learned Counsel would submit that, under Section 4(7)(d), only a dealer who is engaged in “construction and selling” can opt for composition; this is further elaborated in Rule 17(4) which talks of a “*dealer who executes a contract for construction and selling*”; a plain reading of Section 4(7)(d) read with Rule 17(4) shows that composition is available only if the dealer executes a contract for construction and selling; the works contract must provide for the dual requirement of construction and sale; in the present case, the first works contract i.e., the pre-sale works contract can be the subject matter of composition as it is “*a contract for construction and selling*”; the unfinished work is sold by the contractor to the prospective buyer; the second contract contemplates only construction without any sale; the second works contract i.e., the post sale finishing agreement cannot be the subject matter of composition under Section 4(7)(d) r/w. Rule 17(4) as there is no element of sale; the petitioners have contended that, since they have filled the Form (Form No.VAT-250) with the entire consideration for the pre-sale and post-sale construction, the same should also form part of the subject matter of composition under Section 4(7)(d); this contention is not tenable as the “Form” cannot govern the provisions of the Act; and, in any case, there is no scope for rejection of the Form.

In **State of Karnataka v. Precision Technofab & Engineering Pvt. Ltd** the assessee, by an agreement dated February 3, 1995, undertook to execute the works for design, fabrication, supply and erection of 12 numbers of radial crest gates with hydraulic hoists, and 3 sets of stop log gates and gantry crane for the spillway of the Alamatti Dam Package. Subsequently, a separate agreement dated December 1, 1999 was entered into for compressing the erection process of spillway crest gates, from 12 months to six months, on the ground that the erection of the crest gates should be completed urgently so as to facilitate impounding of water at the Alamatti Dam in the same year. Additional finance was calculated for the year 2000 -01 for deploying additional equipment, the manpower required for compressing the

erection process, and for hiring two high powered cranes and additional erection equipment. The assessee had opted for composition, and for payment of tax on the consideration received for execution of the works contract at the Alamatti Dam. They claimed non-liability to tax, on the additional financial compensation received for compression of the erection period, contending that it was not part of the consideration received towards the “works contract”. The assessing authority accepted their claim. The revisional authority, however, revised the assessment order on the ground that the payment received by the assessee, for compression of the erection period, was also payment received for execution of the works contract for erection of radial crest gates; and, therefore, the said payment could not have been left out of the tax net. The revisional authority ordered that the left out consideration should also be brought to tax. On the order of the revisional authority being subjected to challenge, the Division Bench of the Karnataka High Court held:-

“.....If the second contract is viewed as an independent contract, it is a contract for obtaining two numbers of high powered cranes and additional equipments, there is no sale of goods. It is purely a labour contract. But the contract between the parties is not to provide labour. **The first contract where he undertook to execute the work is to be considered. In other words, the second contract cannot be treated as an independent contract. This is part and parcel of the first contract. Both the contracts put together the assessee undertook to complete the work which is entrusted to him. Though in the original consideration agreed upon, the parties had not thought of taking assistance of these cranes. When the project is to be completed within six months, they had to take the assistance of these cranes, for which hire charges is to be paid, for which the State agreed to pay. Therefore the total consideration paid for execution of the work is the consideration paid under both the contracts.**

When once the assessee opted for composition under section 17(6), the tax is payable on the total turnover and the total turnover includes consideration under both the agreements and therefore the revisional authority was justified in levying tax on the escaped turnover on the consideration mentioned in the subsequent agreement.....”

(emphasis supplied)

In the present batch of Writ Petitions, the registered deed executed for the sale of a semi-finished structure, and the finishing/completion agreement entered into thereafter to make the semi-finished structure a fully built residential apartment fit for occupation, are both integrally connected with the initial agreement entered into between the developer and the prospective buyer, and is not independent thereof. The scope of the work specified in the initial agreement is split into two. While the land component and a portion of the executed work are, ordinarily, reflected in the registered sale deed, the construction still remaining to be completed, in terms of the initial agreement, is specified in the finishing/completion agreement. The finishing agreement forms an integral part of the initial agreement.

The total turnover, liable to tax under Section 4(7)(d), is the consideration reflected in the initial agreement which is later split up between the consideration reflected in the sale deed and the consideration receivable as specified in the finishing agreement.

The legislature must be presumed to be aware of similar Acts passed by the same legislature and the Rules made thereunder. Acts of the legislature, dealing with the same or similar subject-matter, should be construed not only as expressing the intention of the legislature on the dates these Acts were passed, but the later Acts should also be regarded as legislative interpretations of the prior ones. (**Hariprasad Shivshanker Shukla v. A.D. Divelkar**). In construing a statute the Court may, with propriety, refer to the history of the times when it was passed. (**Hariprasad Shivshanker Shukla**¹⁶; **Great Northern Railway Co. v. United States of America**). It is a settled canon of construction that the meaning of words and terms used in a statute can be properly explained only by reference to the circumstances existing at the time when the statute was enacted. (**Auckland Jute Co. v. Tulsi Chandra**; **Maxwell on Interpretation of Statutes**, p.23 (9th Edn.)).

The A.P. Revised Common Building Rules were made, in exercise of the power conferred under Section 585 of the Hyderabad Municipal Corporations Act, 1955; Section 18 of the Andhra Pradesh Municipal Corporations Act, 1994; and Section 58 of the Andhra Pradesh Urban Areas (Development) Act, 1975, by the Government of Andhra Pradesh. Rule 21 relates to occupancy certificate and, under sub-rule (i) thereof, an occupancy certificate is mandatory for all buildings. No person shall occupy or allow any other person to occupy any building or part of a building for any purpose unless such building has been granted an occupancy certificate by the sanctioning authority. Partial occupancy certificate may be considered by the sanctioning authority on merits i.e. flats/units or area within a complex which have fulfilled all the requirements in addition to basic facilities like lifts, water supply, sanitation, drainage, roads, common lighting etc. Under sub-rule (ii), the owner shall submit a notice of completion through the registered architect and licensed builder/developer, along with the prescribed documents and plans, to the sanctioning authority. The sanctioning authority, on receipt of such a notice of completion, shall undertake inspection with regard to the following aspects: (a) number of floors; (b) external setbacks; (c) parking space provision; (d) abutting road width. He shall, then, communicate the approval or refusal of the occupancy certificate within 15 days or may issue the same. In view of the aforesaid provisions

of the building regulations, the obligation of a developer is to complete construction of the building in all respects, and obtain an occupancy certificate thereafter to enable the purchaser to occupy the building. A semi-finished structure, not being fit for occupation, cannot be said to be a residential apartment, house or building. The dealer, referred to in Section 4(7)(d), is evidently a person who constructs and sells a completely constructed building in the form of either a residential apartment or a house or a commercial complex, and not one who constructs and sells a semi-finished structure.

The liability of the dealer, to pay tax by way of composition under Section 4(7)(d) of the Act, is on the total consideration received, towards the composite value of the land and building, from the commencement of construction of the residential apartment, house, building etc., till its completion, and not merely on the consideration received for the construction of a semi-finished structure. Accepting the interpretation placed, by Sri K. Vivek Reddy, Learned Counsel for the respondents, on Section 4(7)(d) would exclude the construction made by the developer prior to an agreement of sale being entered into with a prospective buyer, and the construction made after execution of a sale deed for a semi-finished structure, from its ambit. Such a construction would render Section 4(7)(d) and Rule 17(4) unworkable. A construction which would make the provisions more effective and workable must be adopted, if possible without doing too much violence to the language used. An intention to produce an unreasonable result is not to be imputed to a statute. (**Artemiou v. Procopiou; Francis Bennion Statutory Interpretation**).

The pre-requisite, for being extended the benefit of composition under Section 4(7)(d), is for an application to be submitted in Form VAT 250 before commencement of construction. Section 4(7)(d) makes the benefit of composition thereunder subject to such conditions as may be prescribed. Section 2(24) of the Act defines 'prescribed' to mean prescribed by Rules made under the Act. Rule 17(4)(b) of the Rules requires the dealer, exercising option under Section 4(7)(d), to notify the prescribed authority, on Form VAT 250, of his intention to avail composition for all works specified in Rule 17(4)(a). The requirement of notifying the authority in Form VAT 250 is stipulated in Rule 17(4)(b), to which the option under Section 4(7)(d) is subject to. Form VAT 250 requires, among others, the value of the contract to be

mentioned therein. The value of the contract is the consideration reflected in the initial agreement between the developer and the prospective buyer. As Form VAT 250 forms part of Rule 17(4)(b), to which Section 4(7)(d) is explicitly made subject to, the submission urged on behalf of the revenue, that the "Form" cannot govern the provisions of the Act, does not merit acceptance.

As option is to be exercised, before commencement of construction, the dealer (who constructs and sells residential apartments, houses etc) would be unaware at that stage whether and when he would be able to identify a prospective buyer, and enter into an agreement with him for the construction and sale of the apartment/building. As agreements, with different prospective buyers, may be entered into at different stages of construction, the dealer would be required, if the construction placed on Section 4(7)(d) and Rule 17(4) by the revenue were to be accepted, to maintain records separately for the construction made prior to an agreement of sale being entered into with a prospective buyer; the construction made after an agreement is entered into with a prospective buyer but prior to execution of a registered sale deed for the sale of a semi-finished structure; and after execution of a registered sale deed till the construction of the apartment/building is complete in all respects and is fit for occupation by the purchaser. Consequently one of the benefits of composition, of not being required to maintain records, would no longer be available. Just like separate records being maintained as aforementioned, the consideration received/receivable for the construction and sale of the apartment would also have to be divided into three distinct parts for it is only the consideration received/receivable from a prospective buyer, for the construction made between the initial agreement and execution of a registered sale deed, which, according to the revenue, would alone fall within the ambit of Section 4(7)(d). The benefit which accrues to the State in prescribing a scheme for composition, i.e., reduction of the burden of tax administration, would also cease, as a result. Such a convoluted construction of Section 4(7)(d) does not merit acceptance.

(iii) DOES THE WORKS CONTRACT, EXECUTED PRIOR TO SALE, ALONE FALL WITHIN THE AMBIT OF SECTION 4(7)(d)?

It is contended, on behalf of the petitioners, that registering a semi finished construction, prior to handing over the completed flat/house to the prospective buyers in terms of the initial agreement, is not fatal; the assessing authorities have

erred in holding that the liability of the dealers to pay VAT is on the transfer of property by way of a registered sale deed, ignoring the fact that the liability of the dealers is not dependent on the sale deed; dealers, engaged in construction and sale of residential apartments, houses, buildings or commercial complexes, can avail themselves of the facility of composition as long as they are willing to pay tax on the composite value of land and building, or the market value fixed therefor, whichever is higher; undisputedly the agreed consideration is more than the market value fixed for the purpose of stamp duty; and it represents the composite value of land and buildings.

On the other hand Sri K.Vivek Reddy, Learned Counsel for the respondent, would submit that construction must precede sale; on a plain and natural reading, Section 4(7)(d) permits composition only with respect to an activity which requires the dealer to construct and sell; the subject matter of sale has to be the constructed work; the dealer should have engaged himself in the activity of construction, and then have sold the constructed work; consequently, construction has to precede the sale; this interpretation also flows from Rule 17(4)(a) which contemplates a dealer executing a “contract for construction and selling”; the contract must provide for sale of the constructed work; in the present case, even if the petitioners’ contention that there is only one works contract is accepted, the work under the finishing agreement is not the subject matter of the sale deed; and the construction, under the finishing agreement, is subsequent to execution of a sale deed.

While the dealer is given, and is not obligated to exercise, the option of composition either under clauses (b) or (d) of Section 4(7), the legislature has chosen not to confer any discretion on the government to refuse to extend the benefit of composition to a dealer on his exercising the option and fulfilling the conditions prescribed under clauses (b) and (d) of Section 4(7) and the Rules made thereunder. While the scheme of composition, under clauses (b) of Section 4(7), is available at the option of all dealers executing works contract of any form, be it electrical contracts; installation of plant and machinery; civil works like construction of buildings, bridges, roads etc; design, fabrication and installation of centralised air-conditioning plants; refrigeration plants, other heating, ventilating and air conditioning systems; tyre re-treading; dyeing and printing of textiles; printing of reading material etc, the benefit of composition under Section 4(7)(d) is available

only to those class of dealers who are engaged both in the construction and in the sale of residential apartments, houses, buildings and commercial complexes, and is not subject to the vagaries of the stage of construction when a registered deed is executed for the sale of a semi-finished structure relating to one of the units (be it a flat in a residential apartment building or a shop in a commercial complex).

The requirement is for the dealer to be engaged both in “construction” and “sale” of the specified buildings. The mere fact that the word ‘selling’ is used after the word ‘construction’ does not mean that Section 4(7)(d) is applicable only to those dealers who are engaged in construction prior to the sale of the building, and not thereafter. The person who enters into the initial agreement with the developer for the purchase of the apartment/building proposed to be constructed (otherwise called “the prospective buyer”) is the same person in whose favour a registered sale deed is executed for conveyance of a semi-finished structure, and is also the very same person with whom the completion/finishing agreement is entered into by the developer thereafter. As the option for composition under Section 4(7)(d) can be exercised only by those dealers who construct and sell residential apartments, houses, commercial complexes, buildings, and not semi-finished structures, the option can neither be curtailed only till the stage of execution and registration of a sale deed, nor can the construction made subsequent thereto be excluded from its ambit.

Accepting this erroneous interpretation, sought to be placed on Section 4(7)(d) by the Revenue, would enable a dealer to justifiably claim that he is not liable to pay tax under the Act for the construction made by him prior to his having entered into the initial agreement with the prospective buyer. The liability to pay tax under Section 4(7)(d), read with Rule 17(4)(d), is on the total consideration received or receivable towards the value of land as well as construction. The words “construction and selling” in Section 4(7)(d) merely refer to a dealer who is engaged in both the activities of construction and in selling residential apartments, and not to a dealer who constructs and sells a semi-finished structure. The words “construction and selling” in Section 4(7)(d) only mean the activities of both “construction” and “sale”, and cannot be read as “construction prior to sale”.

The entire construction, as specified in the initial agreement entered into between the developer and the prospective buyer, would fall within the ambit of Section 4(7)(d), and not merely that part of the construction undertaken prior to

execution of a registered sale deed for a semi-finished structure. The residential apartments, houses, buildings and commercial complexes, referred to in Section 4(7)(d), can only mean fully constructed apartments, houses, buildings or commercial complexes, and not a semi-finished structure. The submission urged on behalf of the revenue that the benefit of composition, under Section 4(7)(d), is confined only to those dealers who first construct and then sell residential apartments, and not to those who commence construction, execute a registered deed for the sale of a semi-finished structure, and thereafter complete construction of the residential apartment, is not tenable.

**(iv) IS THE CONSIDERATION FOR THE FINISHING WORKS
NOT REFERABLE TO THE AGREEMENT OF SALE?**

It is contended, on behalf of the petitioners, that merely because documentation is made in phases, in respect of the cost of undivided land and construction separately, does not change the legal position; it would suffice if, under the composition scheme under Section 4(7)(d), the total consideration has been subjected to VAT, and VAT at the rate of 4%/5% on 25% of the total sale consideration is paid; consequently, the question of taxing the material component of the works, executed subsequent to registration of a sale deed for a semi-constructed flat, separately does not arise; the Petitioners-dealers, having exercised their option to pay tax by way of composition under Section 4(7)(d), have been discharging their tax liability on the entire consideration received by them, which includes the cost of land, construction and other amenities; the contention of the Revenue, that as the petitioners had executed sale deeds in favour of the prospective buyers of semi-finished flats / villas, the benefit of composition under Section 4(7)(d) would be available only for the value shown in the sale deed, and the balance amount received or receivable thereafter, for completion of the semi-finished construction, is taxable either under Section 4(7)(a) or under Section 4(7)(b) is not tenable; the composition scheme under Section 4(7)(d) is applicable for the entire consideration based on the initial or parent agreement; the option of composition was exercised by the petitioners before commencement of the work, and the initial or parent agreement included the entire cost of land, the semi finished

flat / villa together with the value covered under the completion / finishing agreement; the petitioners are not entitled to the benefit of composition under Section 4(7)(d) to the extent the works executed by them are not covered by the initial or parent agreement; the petitioners have executed sale deeds in favour of prospective buyers merely for operational convenience, i.e., to enable the purchasers to obtain bank loans, etc; they are under a contractual obligation to complete construction of the flats/villas in terms of the initial agreement; even in those cases where there is an agreement, for completing the semi-finished flat / villa, the value mentioned in the sale deed (for transfer of the semi-finished structure), and the value mentioned in the completion agreement, tallies with the amount shown in the initial agreement; payment of tax at the composite rate, in terms of Section 4(7) (d), would apply for the entire consideration received by them, from the commencement of the initial agreement till they hand over the constructed flat/building to the prospective buyers in terms of the initial agreement; as the petitioners herein have opted to pay tax under Section 4 (7) (d) by disclosing the entire value of the project proposed to be constructed even before commencement of construction, and have been paying tax at 4%/5% on 25% of the entire consideration received or receivable towards the cost of land, construction and other amenities, they continue to enjoy the status of dealers as referred to in Section 4(7) (d); and, except in a few cases, the entire tax on the value mentioned in the initial agreement has been remitted, in terms of Rule 17 (4) (e) of the VAT Rules, when the sale deed, for transfer of the semi-finished structure, was executed.

Sri K.Vivek Reddy, Learned counsel for the respondent, would place emphasis on the consideration receivable for the work executed under the finishing agreement to submit that the subject matter of composition under Section 4(7)(d) can only be “the amount received or receivable towards the composite value of both the land and the building”; what can be composed is only the amount received or receivable; in the present case, the petitioners are seeking composition by asserting that the amount payable for the finishing work is received or receivable under the agreement of sale; this contention is not tenable as the finishing agreement (second works contract) has a consideration clause; any amount received by the contractor-dealer for the finishing work is traceable to the finishing agreement, and not to the agreement to sell; this is also evident from the fact that, if there is any defect in the finishing work, the buyer can sue only under the finishing agreement; although the

agreement to sell stipulates a consolidated consideration for the entire work, the consideration for the post-sale finishing work can only be attributed to the finishing agreement, and not to the agreement to sell, because the liability to execute the finishing work, and the consideration for the said work, is stipulated in the finishing agreement; any amount received by the assessee-contractor for the finishing agreement, prior to execution of the said agreement, is only a case of past consideration; the finishing agreement does not also make any reference to the agreement to sell; and the petitioners have to strictly satisfy the terms of composition as set out in Section 4(7)(d) and Rule 17(4).

The agreements entered into between the petitioner in W.P. No.30173 of 2014, and Sri P. Narasareddy (who purchased a flat from them), can be taken as illustrative of the agreements entered into between the developers (petitioners in this batch of Writ Petitions) and the purchasers of the apartments/villas constructed by them. The initial agreement of sale dated 27.10.2009, entered into by the petitioner with the purchaser, contained details of the sale price in clause (1) thereof. Clause 1.1 of the said agreement required the vendor to sell, and the purchaser to purchase, schedule 'B' and 'C' properties for the consideration stipulated in Schedule 'G' including the cost of the proportionate undivided share in the land, the cost of construction of the apartment, car park, cost of providing amenities and facilities, as also development and legal expenses. Schedule 'G' of the said agreement stipulates that the consideration, for sale of Schedule 'B' and 'C' properties, would be Rs.32,42,000. It also records that the purchaser had already paid Rs.6,48,400/-, and the balance amount of Rs.25,93,600/- should be paid in instalments, the last of which for Rs.1,62,100/- was payable at the time of handing over the respective flat.

The registered sale deed, executed thereafter by the petitioner in favour of the purchaser on 30.05.2012, records that the vendor had offered to sell the semi-finished residential flat for a total sale consideration of Rs.14,40,000/-, of which Rs.6,38,400/- was paid initially, and the remaining Rs.8,01,600/- had also been paid thereafter. Clause 32 of the registered sale deed required the purchaser to entrust the work relating to the flat, for converting the semi-finished structure into a finished-structure, to the vendor (petitioner) only; and the said works were required to be executed as per the terms and conditions of the construction agreement enclosed to the sale deed. The construction agreement (also called completion/finishing agreement) is also dated 30.05.2012. This agreement refers to the earlier registered

sale deed dated 30.05.2012, to the consideration already paid, and the consideration payable for the construction/completion agreement as Rs.18,02,000/-. The consideration referred to in the registered sale deed of Rs.14,40,000/-, plus the consideration referred in the completion agreement of Rs.18,02,000/-, is equivalent to the consideration referred to in the initial agreement of sale i.e Rs.32,42,000/-.

Sri K.Vivek Reddy, Learned Counsel for the respondents, would submit that the agreement for completion of the semi-finished flat (subject matter of W.P.No.37528 of 2014) which refers to the registered sale deed, whereby the purchaser or the vendee had purchased the semi-finished flat, only refers to completion of certain works such as electrical works, sanitary works and painting; and the consideration shown therein is only Rs.50,000/-. Even the agreement of sale, (which is the subject matter of W.P. No.37528 of 2015), i.e., the initial agreement dated 24.10.2013 entered into between the owner of the land and the petitioner (developer) on the one hand, and the vendee on the other, records the total sale consideration payable, for the flat proposed to be sold, as Rs.23,06,000/-. The registered sale deed dated 27.01.2014, executed thereafter for the sale of a semi-finished flat, records the sale consideration as Rs.22,56,000/- and the agreement for completion of the semi-finished flat, also dated 27.01.2014, records the consideration payable as Rs.50,000/-. It is evident, therefore, that the consideration referred to in the registered sale deed dated 27.01.2014 for Rs.22,56,000/-, plus the consideration referred to in the agreement for completion of the semi-finished flat also dated 27.01.2014 for Rs.50,000/-, equals the consideration, referred to in the initial agreement of sale dated 24.10.2013, ie for Rs.23,06,000/-.

Section 20 of the Act relates to Returns and Assessments and thereunder every dealer, registered under Section 17 of the Act, shall submit such return or returns, along with proof of payment of tax, in such manner, within such time, and to such authority as may be prescribed. Rule 23 relates to Tax Returns and, under sub-rule (1) thereof, a return to be filed by a VAT dealer under Section 20 shall be on Form VAT 200, and it shall be filed within 20 days after the end of the tax period. The return shall be completed in duplicate, and one copy with proof of receipt shall be retained by the VAT dealer. Rule 17(4)(e) requires the VAT dealer, executing the contract mentioned in Rule 17(4)(a), to calculate the tax due at the rate of 4%/5% of 25% of the total consideration, or the market value fixed for the purpose of stamp

duty, whichever is higher, and to enter such details in Form VAT 200 filed for the month in which the sale of such property is concluded and registered. The tax due is required to be paid with the return in Form VAT 200, and the particulars of payment of tax, made directly, or through the sub-registrar, are required to be reported in the relevant columns in Form VAT 200. Rule 17(4)(e)(i) stipulates that payment of the tax due, as mentioned in clause (e), shall be made by way of treasury challan; and the challan shall be presented, at the time of registration of the property, to the Sub-Registrar who is registering the property, duly furnishing the TIN No. of the dealer and the full address of the Commercial Tax Officer/Assistant Commissioner concerned, on the reverse of the challan. The Sub-Registrar is required to send the challans, received in a particular week, to the Commercial Tax Officer/Assistant Commissioner concerned before the end of the immediately succeeding week. Rule 17(4)(f) stipulates that the contractor VAT dealer shall not be eligible for input-tax credit, and shall not be eligible to issue tax invoices.

As stipulated in Rule 17(4)(e), the liability to pay tax under Section 4(7)(d) is in the month in which the sale of such property is concluded or registered. The VAT dealer is required to declare the tax due in his monthly return, for the month in which the sale of the property is concluded and registered; and to pay the tax due either directly to the assessing authority or to the Sub-Registrar. The month, in which the sale of the property is concluded and registered, is the month in which the entire tax due is required to be paid which, as noted hereinabove, is at 4%/5% of 25% of the consideration received or receivable. As tax is required to be paid even on the consideration not yet received, it is evident that the liability to pay tax, on composition under Section 4(7)(d), is also on the consideration receivable on the construction to be continued and completed, in terms of the initial agreement, after conclusion and registration of the sale of the semi-finished structure.

The tax liability of a dealer, under Section 4(7)(d), is on the consideration stipulated in the initial agreement for the composite value of the land and the building, and this liability is to be discharged in the month in which the sale deed is executed and registered, even if it be for a semi-finished structure. The dealer is liable to pay tax either before the sub-registrar when the sale deed is executed or along with the monthly return, before the assessing authority, in the month in which the sale deed is executed and registered. The taxable turnover, for levy of tax under

Section 4(7)(d), is, ordinarily, the consideration stipulated in the initial agreement. If the consideration reflected in the initial agreement is lesser than the market value of both land and buildings, as fixed for the purpose of stamp duty, the taxable turnover would be the market value of the land and buildings fixed for the purpose of stamp duty. As the option under Section 4(7)(d) r/w. Rule 17(4)(b) is required to be exercised even before commencement of construction, it is evident that the liability of a dealer to pay tax under Section 4(7)(d) is on the composite value of the land and building, and on the total consideration received in this regard from the commencement of construction till its completion ie for the total consideration as detailed in the initial agreement entered into with the prospective buyer.

Even if the dealer has not received the entire consideration, and a part thereof is still due, he is nonetheless required to pay tax on the total consideration, (in terms of the initial agreement between the developer and the prospective buyer), at the time of registration of the sale of the semi-finished structure. The taxable turnover, under Section 4(7)(d), is the entire consideration, agreed upon between the developer and the prospective buyer in the initial agreement, for the value of the land and the completely constructed building. The tax, so computed, must be paid to the Sub-Registrar at the time of registration of the conveyance deed for the sale of the semi-finished structure. The VAT payable, at the time of registration of the sale deed conveying land and the semi-finished structure, would include the VAT payable on the consideration reflected in the sale deed plus the tax payable on the consideration receivable for the remaining construction to make the semi-finished structure a fully complete residential apartment/house.

The VAT, at the rate prescribed in Section 4(7)(d), must be paid on the entire consideration, and not merely on the consideration reflected in the registered sale deed, to the Sub-Registrar at the time of registration or, in the very same month, along with the tax return, to the assessing authority. The entire tax liability is required to be discharged in the month in which the sale of a semi-finished structure is concluded and registered, and tax should be paid, at that stage itself, for the total consideration received or receivable for the land and buildings which would include the consideration which the developer has not yet received for the post-sale construction to be undertaken by him. The consideration still due, as referred to in the finishing/completion agreement, is the consideration stipulated in the initial agreement minus the consideration already received and reflected in the registered

sale deed. It matters little, therefore, whether the right of the purchaser to sue for any defect in construction, post-execution of the sale deed, is referable to the completion agreement or to the initial agreement.

Any construction made beyond the scope of the initial agreement would, however, be an independent works contract not falling within the ambit of Section 4(7)(d) of the Act. Learned counsel, appearing on behalf of the petitioners, would fairly state that the “works” executed beyond or independent of the initial agreement, entered into by the developer with the prospective buyer, would not fall within the ambit of Section 4(7)(d) of the Act; and, on such works contracts, the dealer would be liable to pay tax under Section 4(7)(a) of the Act and its proviso.

III. DISTINCTION MADE, UNDER THE APGST ACT, BETWEEN THE COMPOSITION SCHEME FOR GENERAL WORKS CONTRACTS, AND WORKS CONTRACTS OF CONSTRUCTION OF APARTMENTS AND RESIDENTIAL BUILDINGS:

It is contended, on behalf of the petitioners, that the National Housing and Habitat Policy, 1998 requires the Central and the State Governments to promote housing in the country; consistent with this policy, the Andhra Pradesh General Sales Tax Act, 1957 (“APGST Act” for short) was amended by Act No.21 of 1998, and the 2nd proviso was added to Section 5-G thereof; composition, under Section 4(7)(d), is merely an extension of the earlier facility intended to promote the object of housing for all; the State Government has also been pursuing the policy of promoting housing; it had, by memo dated 28-1-2003, permitted even unregistered dealers to register themselves, and pay composition tax under the APGST Act, for projects already executed in the past; the same liberal attitude is continued under the VAT regime also by the Government, vide memo dated 17-6-2011, and the Circular dated 23.03.2012 as issued by the Commissioner of Commercial Taxes; and the authorities, by their illegal act, cannot be permitted to frustrate the very object of Section 4(7)(d) of the Act.

In considering the scope of Section 4(7)(d), and whether it would bring within its ambit only land and the semi-finished structure, and not the construction made after executing a registered sale deed for the sale of the semi-finished structure, reference can usefully be made to the APGST Act enacted by the same legislature,

and the rules made thereunder which were in force till the A.P. VAT Act was enacted. The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and consequence, or the spirit and the reason of the law. (**Blackstone “Commentaries on the Laws of England” (Facsimile of 1st edn. 1765, University of Chicago Press 1979 Vol. 1 at 59; Doypack Systems (P) Ltd. v. Union of India)**). In the construction of a statute it is, at all times and under all circumstances, permissible to have regard to the state of things existing at the time the statute was passed. (**D.N. Banerji v. P.R. Mukherjee; Keates v. Lewis Merthyr Consolidated Collieries**). In ascertaining the meaning of words, the context is also relevant to know what exactly was meant to be conveyed by the terminology employed. (**D.N. Banerji**²¹).

Section 5-G of the APGST Act related to composition of tax and, under subsection (1) thereof, subject to such conditions and, in such circumstances as may be prescribed, if a dealer who executes any works contract so opts, the assessing authority of the area may accept, in lieu of the amount of tax payable by him under the Act during the year, by way of composition, an amount at the rate of 4% of the total amount paid or payable to the dealer towards execution of the works contracts. Under the second proviso thereto if a dealer, who executes a works contract of construction of apartments or buildings so opts, the assessing authority of the area may accept, by way of composition, an amount calculated at the rate of Rs.4/- (Rupees four only) per square foot of the constructed area. While the benefit of composition, under Section 5-G(1) of the APGST Act, was available to a dealer executing any works contract, the benefit of composition under the second proviso thereto was confined only to dealers who executed works contracts of construction of apartments or residential buildings. The liability of a dealer executing works contracts, having exercised the option under Section 5-G(1), was to pay tax at 4% of the total consideration. On the other hand, the tax liability of dealers, who had exercised the option under the second proviso to Section 5-G(1), was Rs.4/- per square feet of the constructed area. Even under the APGST Act, the rate at which tax was payable by a dealer, executing the works contract of construction of apartments or buildings, was different from the tax rate prescribed for dealers executing other categories of works contracts.

Rule 17(4)(h) of the A.P. VAT Rules stipulates that, where a dealer mentioned in Rule 17(4)(a) (i.e., a dealer executing a contract for construction and selling of residential apartments, houses, buildings or commercial complexes) had opted for composition, and had paid tax under the provisions of the APGST Act before 30.04.2005, there would be no further liability in respect of the built-up area, for which tax has already been paid under the APGST Act, provided the sale deed was executed in respect of such built up area before 30.09.2005. Rule 17(4)(h) of the VAT Rules recognises that the dealers, specified in Section 4(7)(d) of the Act and Rule 17(4)(a) of the Rules, are the dealers referred to in the second proviso to Section 5-G(1) of the APGST Act.

It is a well established principle of construction that a statute is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion. (**National Assistance Board v. Wilkinson; Byram Pestonji Gariwala v. Union Bank of India; Central Bank of India v. State of Kerala**). In the absence of any context indicating a contrary intention, it may be presumed that the Legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection. (**Lennon v. Gibson & Howes Ltd.**). The distinction made by the APGST Act, between contractors who execute all kinds of works contracts and those who construct apartments and buildings, has been continued under the AP VAT Act also. While different rates of tax were prescribed under the APGST Act for general works contracts, and works contracts relating to apartments and buildings, this distinction is made under the A.P. VAT Act also. The legislative intent of both the enactments is to extend the benefit of a distinct scheme of composition to a particular class of contractors executing works contracts of residential apartments and buildings, and not to make the benefit contingent on the stage of construction when a registered sale deed is executed for the conveyance of a semi-finished structure.

IV. CONCLUSION:

If dealers engaged in the construction and sale of residential apartments, houses, buildings or commercial complexes exercise the option, and comply with the conditions stipulated in Section 4(7)(d) and Rule 17(4), they cannot be denied the

benefit of composition thereunder for the construction made by them, for the very same person, after execution of a registered deed for the sale of a semi-finished structure. Denial of the benefits of the composition scheme under Section 4(7)(d) to such dealers, for the post-sale construction made in terms of the initial agreement, is illegal and is contrary to the provisions of the AP VAT Act and the Rules made thereunder. The impugned assessment orders must therefore be, and are accordingly, set aside. The assessing authorities shall, in the light of what has been held hereinabove, re-examine the matter and, after giving the petitioners a reasonable opportunity of being heard, pass orders afresh in accordance with law.

The Writ Petitions are disposed of accordingly. Miscellaneous Petitions, if any pending, shall also stand disposed of. However, in the circumstances, without costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

Date: 24-04.2015.

Note: L.R. copy to be marked.

B/o

MRKR/CS