IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13029 of 2015

Date of Decision: 25.8.2015

Hamilton Heights P Limited, Village Palla, Faridabad

....Petitioner.

Versus

The State of Haryana and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Rajiv Agnihotri, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the assessment order dated 30.3.2015 (Annexure P-1 Colly) passed by respondent No.3 seeking to make assessment of Value Added Tax (VAT) and for treating the petitioner as lump sum dealer who is not a contracter but a developer; for quashing the circular issued vide memo Nos. 952/ST-1 dated 7.5.2013, 1166/ST-1 dated 4.6.2013 and 259/ST-1 dated 10.2.2014 (Annexure P-2 Colly) issued by respondent No.2 being in violation of the provisions of the Haryana Value Added Tax Act, 2003 (in short “the Act”). Further, a writ of mandamus has been sought declaring Section 3 and Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the

Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") in particular and other related provisions in so far as they include the value of land for charging VAT on builders/developers to be *ultra vires* the Constitution of India in so far as it violates Article 246 of the Constitution of India read with Schedule VII, List II, Entry 54; for issuance of a writ in the nature of certiorari for declaring the statutory notice in Form N-2 as barred by limitation; for issuance of a writ of mandamus directing the respondents not to charge and to refund the stamp duty already paid in so far as it relates to the value of materials sought to be charged to VAT; to direct respondent No.3 not to recover the additional demand created vide assessment order.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a developer engaged in the business of development and sale of apartments/flats/units and got itself registered with the Department of Sales Tax w.e.f. 20.8.2008. A circular dated 7.5.2013 was issued by respondent No.2 stating therein that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction were chargeable to VAT. Consequently, a circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The said circulars are appended as Annexure P-2 Colly. Notification dated 12.8.2014 (Annexure P-3) was issued defining 'developer' other than contractor and in view thereof, the petitioner could not be held to be a lump sum dealer. However, the petitioner was assessed as lump sum dealer vide assessment order

dated 30.3.2015 (Annexure P-1) for the year 2010-11 under Section 15 (3) of the Act. The developer being engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided under the Act for computation of tax, the imposition of tax insisted by the authorities was unconstitutional and beyond the provisions of the Act and Rules. Hence, the present writ petition.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the parties are agreed that the issues raised in the present petition have been adjudicated by this Court in **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015. It was urged by the learned counsel for the petitioner that additionally the proceedings initiated were barred by limitation and even the statutory notice in Form N-2 issued, considering the petitioner as lump sum dealer, is also barred by limitation.

5. Accordingly, while disposing of the present writ petition in terms of **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015, it shall be open to the petitioner to agitate the question of limitation before the assessing authority who shall adjudicate the same also after hearing the petitioner or its representative and by passing a speaking order in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 25, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**