IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17850 of 2015

Date of Decision: 14.9.2015

M/s Raheja Developers Limited, IMT Manesar, Gurgaon

....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. Puneet Aggarwal, Advocate,
Mr. Saurabh Kapoor, Advocate,
Mr. Rishabh Kapoor, Advocate,
Mr. Abhishek Maheshwari, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notices dated 27.1.2015 (Annexure P-2) and dated 7.5.2015 (Annexure P-3); for issuance of a writ in the nature of prohibition directing respondent No.3 not to proceed with the revisional proceedings initiated vide notices, Annexures P-2 and P-3, respectively, under Section 34 of the Haryana Value Added Tax Act, 2003 (in short “the Act”); for issuance of a writ in the nature of mandamus declaring Rule 25(2) and 25(7) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as “the Rules”) (Annexure P-10) in particular and other related provisions as *ultra vires* derived for charging sales tax under new Rule 25 of the Rules did not make any reference to and is more than the value of materials transferred by the

developer to the buyers, as appeared in the books of account of the developer; for issuance of a writ of mandamus for declaring Rule 25(2) and 25(7) of the Rules (Annexure P-10) in particular and other related provisions as *ultra vires* since the State has not remained bound by its affidavit dated 24.4.2014 as this Court in CWP No. 5730 of 2014 had upheld the provisions of Rule 25 of the Rules; for issuance of a writ of mandamus for declaring Rule 25(7) of the Rules (Annexure P-10) as *ultra vires* of Section 3 read with Sections 6, 2(1)(u) and 2(1)(zg) of the Rules; for issuance of a writ of mandamus for declaring Rule 25(2), (4), (6) and (7) of the Rules (Annexure P-10) as *ultra vires* and inoperative being indeterminable; for issuance of a writ of mandamus for declaring Rule 25(4) of the Rules (Annexure P-10) in particular and related provisions of the Act (Annexure P-11) in so far as they charge tax on a transaction not supported by money consideratio and, therefore, cannot be considered to be sale for the purpose of charging sales tax, as *ultra vires* the State's power under Article 246 of the Constitution of India read with Entry 54 of List II of Seventh Schedule; for issuance of a writ of mandamus declaring Rule 25(4) of the Rules (Annexure P-10) as they seek to charge tax on the basis of presumptive valuation more than the actual consideration charged for transfer of property in goods as *ultra vires* the State's power under Article 246 of the Constitution of India read with Entry 54 of List II of Seventh Schedule.

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 development and sale of immovable property. It had filed its return of income for the assessment year 2010-11. The assessment was framed by the Assessing Officer vide order dated 19.3.2014

(Annexure P-1) under Section 15(3) of the Act treating the petitioner as works contractor in respect of sale of flats to prospective buyers and the tax was computed. Feeling aggrieved, the petitioner filed CWP No. 10412 of 2014. A notice dated 27.1.2015 (Annexure P-2) was issued for the year 2010-11 for revision of the assessment order, Annexure P-1, under Section 34 of the Act. This Court vide order dated 22.4.2015 passed in CWP No. 5730 of 2014 laid down the principles for charging of VAT on the builders. CWP No. 10412 of 2014 was disposed of by this Court vide order dated 22.4.2015 in terms of CWP No. 5730 of 2014 by setting aside the notice dated 27.1.2015 (Annexure P-2). The revisional authority again issued a noticed dated 7.5.2015 (Annexure P-3) for revision of the assessment order, Annexure P-1. The petitioner filed reply, Annexure P-4, to the said notice. In terms of notification dated 31.3.2003 (Annexure P-5) issued under Section 34(2) of the Act, the revision authority had no power to issue notice to make any revision. The earlier notifications issued by the State of Haryana on 31.3.2003 have later on been re-notified on 15.5.2003 (Annexures P-6 to P-9, respectively). Consequent to the directions issued by this Court in CWP No. 5730 of 2014 decided on 22.4.2015, the Government of Haryana has introduced new set of rules for computation of turnover for charging tax on developers vide notification dated 23.7.2015 (Annexure P-10) effective from 17.5.2010. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The petitioner has challenged the notices, Annexures P-2 and P-3, respectively, issued by respondent No.3 on the ground that the same was beyond limitation. It was urged that the notices having been issued without jurisdiction being beyond limitation, the proceedings

pursuant thereto could not continue.

5. From the perusal of the writ petition, we find that the petitioner on receipt of the notices, Annexures P-2 and P-3, respectively had filed the writ petition in this Court challenging the same to be without jurisdiction. The petitioner has neither filed any objection/reply to the said notices nor raised the pleas as have been raised in the instant writ petition before the competent authority.

6. At this stage, we do not find any justifiable reason to interfere with the notices under challenge. However, we clarify that the proper course of action for the noticee is to file detailed and comprehensive objection/reply and to raise all the pleas as have been raised in the writ petition. In case any objection/reply to the notices is filed by the petitioner(s) within a period of two weeks from the date of receipt of the certified copy of the order, the revisional authority shall decide the same within a period of six weeks from the date of receipt of the objection/reply in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order before proceeding further in the matter. It is, however, clarified that the question of vires is not being adjudicated upon at this stage and it shall be open to the petitioner to approach this Court again laying challenge to the vires in accordance with law, after the decision by the concerned authority, if need so arises.

7. The writ petition stand disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

September 14, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**