IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19416 of 2015

Date of Decision: 14.9.2015

Essel Housing Projects Private Limited, Sukhrali, Sarhaul, Gurgaon
....Petitioner.

Versus

State of Haryana and others
...Respondents.

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

PRESENT: Mr. Amrinder Singh, Advocate for the petitioner(s).

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 6 petitions bearing CWP Nos. 19416, 19418, 19424, 19425, 19427 and 19428 of 2015 as according to learned counsel for the petitioner(s), the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 19416 of 2015.

2. 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 order dated 14.8.2015 (Annexure P-1) issued by respondent No.3 for imposing Value Added Tax (VAT) on the value of land transferred in the course of execution of works contract; further prayer has been made for quashing the instructions dated 7.5.2013, 4.6.2013 and 10.2.2014 (Annexure P-2 Colly) issued by respondent No.2 in violation of the provisions of the Haryana Value Added Tax Act, 2003 (in short “the Act”) and the Haryana Value Added

Tax Rules, 2003 (hereinafter referred to as “the Rules”) and for inclusion of value of land in taxable turnover of builders/developers selling flats/apartments/units and paying VAT under lumpsum scheme; Also a writ of mandamus has been sought declaring Section 3 and Explanation 1 to Section 2(1)(zg) of the Act, Rules 25(2) and 49 of 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.

3. 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. Interested buyers enter into a Flat Buyers Agreement. The property is ultimately sold by execution of sale deed on payment of stamp duty on total consideration. A circular dated 7.5.2013 was issued by the Excise and Taxation Commissioner, Haryana 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, another circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The said circulars are appended as Annexure P-2 (Colly) with the writ petition. The assessment order dated 19.3.2012 for the year 2008-09 was passed by the Excise and Taxation Officer (ETO) accepting the basis of computation of taxable turnover of works contract of the petitioner and a demand of ₹ 2000/- only was raised on account of

late filing of quarterly return VAT R.6. Similarly, the assessment for the year 2009-10 was accepted by the ETO vide order dated 13.3.2013 accepting the basis of computation of taxable turnover of the works contract by the petitioner. A notice dated 17.11.2013 was received by the assessee for the assessment year 2011-12 under Section 15 of the Act. Similarly, for the assessment year 2013-14, the notice was issued under Section 15 of the Act. The enquiry notice dated 4.2.2015 was received by the petitioner. Aggrieved by the notices dated 17.11.2013 and 4.2.2015, the petitioner filed CWP No. 5138 of 2015 and this Court vide order dated 20.3.2015 stayed the assessment proceedings. Thereafter, the petitioner received the assessment order dated 17.3.2015 for the assessment year 2011-12 passed by respondent No.3. This Court vide order dated 22.4.2015 disposed of CWP No.7720 of 2014. CWP No. 5138 of 2015 was adjourned to 2.7.2015 vide order dated 29.4.2015. Thereafter, notice dated 11.5.2015 was received by the petitioner for the assessment year 2013-14. The petitioner filed CWP No. 9940 of 2015 challenging the assessment order dated 17.3.2015 for the assessment year 2011-12 and the instructions, Annexure P-2 (Colly). This Court vide order dated 18.5.2015 stayed the recovery proceedings of demand raised in the order dated 17.3.2015 till 2.7.2015. The Assessing Officer vide order dated 14.8.2015 (Annexure P-1) framed the assessment for the year 2013-14 at ₹ 1,26,63,639/-. Hence, the present writ petitions.

4. We have heard learned counsel for the petitioner(s).

5. It is not disputed by learned counsel for the petitioner(s) that the impugned order dated 14.8.2015 (Annexure P-1) passed by respondent No.3 is an appealable order. Accordingly, we do not

consider it appropriate to entertain the writ petitions at this stage.

6. In view of the above, the writ petitions are disposed of by relegating the petitioner(s) to the alternative remedy of appeal.

(AJAY KUMAR MITTAL)
JUDGE

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