IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-2454-2015
Date of decision:- 29.04.2015

Ansal Properties & Infrastructure Ltd.

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Sandeep Goyal, Advocate,
Mr. Puneet Agrawal, Advocate,
Mr. Dipankar Majumdar, Advocate,
for the petitioner.

Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J. (ORAL)

It is admitted that this writ petition is covered by the order and judgement of a Division Bench of this Court in a group of writ petitions with lead case i.e. CWP-5730-2014 titled as *CHD Developers Limited, Karnal* Vs *The State of Haryana and others* decided on 22.04.2015.

2. The petitioners therein had prayed for a writ of mandamus declaring Explanation (i) to Section 2(1) (zg) of the Haryana Value Added Tax Act, 2003 and Rule 25 (2) of the Haryana Value Added Tax Rules, 2003 and other related provisions in so far as they include the value of land for charging VAT on developers to be ultra vires to the Constitution of India. The Division Bench, inter alia, held as under:-

> *"44. In case the provisions of law are seeking to charge sales tax on any amount other than the value of goods transferred in course of execution of works contract, the provisions would be ultra vires the Constitution of India. The tax is to be computed on a value not exceeding the value of transfer of property in goods on and after the date of entering into*

agreement for sale with the buyers. However, the 'deductive method' requires all the deductions to be made therefrom to be specifically provided for to ensure that tax is charged only on the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. Where 'deductive method' has been prescribed under the rules for ascertaining the taxable turnover, ordinarily it should include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property. Consequently, Rule 25(2) of the Rules is held to be valid by reading it down to the extent indicated hereinbefore and subject to the State Government remaining bound by its affidavit dated 24.4.2014 The State Government shall bring necessary changes in the Rules in consonance with the above observations."

3. In these circumstances, the Division Bench disposed of the writ petitions as follows:-

"53. To conclude, in some of the writ petitions challenge has been laid by the petitioners to the assessment order passed by the Assessing Authority relying upon circular issued by the Excise and Taxation Commissioner whereas in others, the order of the revisional authority on the same premises has been assailed. Still further, in certain cases, the petitioners have approached this Court at the stage of issuance of notices for framing of assessments itself. In our opinion, in all these matters, the assessment orders and revisional orders passed by the concerned authorities are liable

> *to be set aside with liberty to the appropriate authority to pass fresh orders in the light of the legal principles enunciated hereinbefore. We order accordingly. In so far as cases where only notices have been issued, the competent authority shall be entitled to proceed further and pass order in accordance with law keeping in view the aforesaid interpretation noticed above. The writ petitions are, thus, partly allowed in the above terms."*

4. In these circumstances, the present writ petition is also disposed of in the same terms.

5. There shall be no order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

29.04.2015
Amodh