IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7303 of 2015

Date of Decision: 2.9.2015

M/s Sweta Estates Pvt. Ltd., Gurgaon

....Petitioner.

Versus

The State of Haryana and others

...Respondents.

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

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Sandeep Goyal, Advocate and
Mr. Amar Pratap Singh, Advocate and
Mr. Amrinder Singh, Advocate for the petitioners.

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of writ petitions bearing CWP Nos. 7303, 7659 and 9001 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 7303 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 mandamus declaring Explanation (i) to Section 2(1)(zg) of

the Haryana Value Added Tax Act, 2003 (in short “the Act”) and Rule 25 (2) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as “the Rules”) (Annexure P-1 Colly) in particular and other related provisions in so far as they include the value of land for charging Value Added Tax (for brevity “VAT”) on 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 quashing the assessment order dated 30.3.2015 (Annexure P-3) issued by respondent No.3 and tax demand notice issued in pursuance to the orders (Annexure P-4 Colly) for charging tax on sale of flats/apartments/units and to make assessments of VAT; for quashing the circulars 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 Act and for issuance of a writ of mandamus directing respondent No. 4 not to charge and to refund the tax already paid in so far as it related to the value of materials sought to be charged to VAT.

3. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a builder engaged in the business of development and sale of apartments/flats/ units and got itself registered with the Department of Sales Tax vide TIN 06621832235. 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. Respondent No.3 vide order dated 25.3.2015 (Annexure P-3) for the assessment year 2011-12, raised a demand of ₹ 39,35,42,152/- from the petitioner. The Assessing Authority had issued notice dated 18.2.2015 which according to the petitioner has not ever been served upon it. 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 petitions.

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

5. 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.

6. Accordingly, while disposing of the present writ petitions 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(s) to agitate the question of limitation and any other plea before the assessing authority who shall adjudicate the same also after hearing the petitioner(s) or its representative and by passing a speaking order in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

September 2, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**