IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9938 of 2015

Date of Decision: 14.9.2015

ABW Suncity, Haiderpur Viran, 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).

Ms. Mamta Singla Talwar, DAG, Haryana.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 15 petitions bearing CWP Nos. 5144, 5169, 5176, 5184, 9938, 9939, 9940, 11718, 11724, 11728, 11733, 11741, 11756, 11761, 11762 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. 9938 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 assessment order dated 17.3.2015 (Annexure P-1) for the year 2011-12 passed by respondent No.3 seeking to impose Value Added Tax (VAT) on the value of land transferred in the execution of works contract on the basis of instructions; further prayer has been made for quashing the instructions

dated 7.5.2013, 4.6.2013 and 10.2.2014 (Annexure P-3 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 (Annexure P-12 Colly) 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 apartment/flats/ units. In the year 2013-14, the interested buyers entered into a 'Flat Buyers Agreement'. The property is sold by the execution of sale deed on payment of stamp duty on total consideration. The petitioner had regularly filed its returns under the Act and also the assessments till the period 2009-10 were completed by the authorities on the same basis. Till 2009-10, there was no demand of tax by the respondents regarding short payment of tax due to non-inclusion of value of land in taxable turnover. Respondent No.3 issued instruction dated 7.5.2013 to the effect that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction are chargeable to the VAT without referring the provisions of Act/Rules

regarding the manner of computation of tax. Thereafter the instruction dated 4.6.2013 was issued regarding assessment on developers. Further, the instruction dated 10.2.2014 were issued to include the value of land for imposition of VAT. All the three instructions are attached as Annexure P-3 (Colly) with the writ petition. The assessment order dated 22.3.2012 (Annexure P-5) 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 under Section 40 of the Act on account of late deposit of tax. Similarly, the assessment for the year 2009-10 was accepted by the ETO vide order dated 29.1.2013 (Annexure P-6). Notice dated 18.11.2013 (Annexure P-5) was received by the assessee for the assessment year 2011-12. For the assessment year 2013-14, the notice dated 3.2.2014 (Annexure P-2) was issued to the effect that the developers/contractors are entitled for deduction on account of labour and service charges and cost of land transferred to buyers as undivided share of interest. Similarly, notice dated 3.3.2014 (Annexure P-8) for the assessment year 2010-11 was issued. The petitioner submitted documents on 24.3.2014 (Annexure P-10 Colly) as required by the ETO in relation to the assessment proceedings for the financial year 2010-11. Vide letter dated 24.3.2014 (Annexure P-9), the petitioner was informed that the value of the land would be included in the gross turnover for payment of lump sum tax. The petitioner submitted detailed written submissions dated 24.3.2014 (Annexure P-10) by explaining the basis of computation of turnover for lump sum tax adopted by it which was accepted by the respondents for the past period, i.e. financial years

2007-08, 2008-09 and 2009-10. The Assessing Officer passed the order dated 28.3.2014 (Annexure P-11) for the assessment year 2010-11 by raising a demand of ₹ 4,06,36,502/- as tax including interest and penalty. Feeling aggrieved, the petitioner filed CWP No.7720 of 2014. The enquiry notice dated 4.2.2015 was issued by respondent No.3 for the financial year 2011-12. Aggrieved by the said notice, the petitioner filed CWP No. 5111 of 2015 and this Court vide order dated 20.3.2015 (Annexure P-13) 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 (Annexure P-14) disposed of CWP No.7720 of 2014. CWP No. 5111 of 2015 was adjourned to 2.7.2015 vide order dated 29.4.2015 (Annexure P-15). The notice dated 17.3.2015 (Annexure P-1) has been issued by respondent No.3 for the payment of VAT along with interest and penalty for the assessment year 2011-12. Hence, the present writ petitions.

4. We have heard learned counsel for the parties.

5. It was submitted by the learned State counsel that the assessment orders have been passed in all the cases as these cases are relating to lump sum tax payment.

6. It is not disputed by learned counsel for the petitioner(s) that the appeal lies against the assessment orders passed by respondent No.3. Accordingly, we do not consider it appropriate to entertain the writ petitions at this stage.

7. In view of the above, the writ petitions are disposed of by permitting the petitioner(s) to file the appeals within a period of 30 days

from the date of receipt of certified copy of the order. It shall not be treated to be beyond limitation, if the appeals are filed within that period.

(AJAY KUMAR MITTAL)
JUDGE

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