Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
MAHARASHTRA VALUE ADDED TAX APPEAL NO. 49 OF 2025
WITH
MAHARASHTRA VALUE ADDED TAX APPEAL NO. 69 OF 2025
(NOT ON BOARD)

Pragati Construction Corporation …Appellant

Versus

The State of Maharashtra …Respondent

Mr Ishaan V Patkar, *with Mr Vinit V Raje & Mr Yashwant J Patil, i/b, Alaksha Legal, for the Petitioner.*

Ms Jyoti Chavan, **Addl GP**, *with Mr Amar Mishra, AGP, for the Respondent-State.*

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CORAM **M.S. Sonak &**
Jitendra Jain, JJ.
DATED: **26 August 2025**

ORAL ORDER:- (*Per M S Sonak, J)*

1. Heard learned Counsel for the parties.

2. MVAT Appeal No. 69 of 2025 is not on board. However, with the consent of the learned Counsel for the parties, the same is taken on board since it involves the same issues of law and fact.

3. We admit these Appeals on the following substantial question of law: -

> "(A) Whether in the facts and circumstances of the case, the Impugned Judgment and Order dated 29 July 2024 which has held that the flat purchase agreements which are entered into after the application for occupancy certificate is filed but before it is granted are not eligible to be classified under Sr. No.(e) of the Table appended to Rule 58)1B)(a) of the MVAT Rules, 2005 is correct in law?"

4. Mr Patkar, learned Counsel for the Appellant, points out that according to him, the issue now raised stands answered in favour of the Appellant in the decision of this Court in the case of **Principal Commissioner of Income Tax Vs Gera Development Pvt Ltd**[1] and **Commissioner of Income Tax Vs Hindustan Samuh Awas Ltd**[2]**.** He submits that though these decisions are in the context of the provisions under the Income Tax Act, the same principles would apply in interpreting Rule 58(1B) of the Maharashtra Value Added Tax Rules, 2005 (MVAT Rules).

5. Mr Patkar also fairly concedes that the above decisions were not cited before the Tribunal and therefore, the Tribunal did not have the opportunity of considering the same. He therefore submits that in the interest of justice, the impugned judgment and order may be set aside, and the matter be remanded to the Tribunal for reconsideration. Mr Patkar points out that other appeals instituted by this very Appellant are pending before the Tribunal, and it would be in the interest of justice if all these appeals are decided by the Tribunal after considering the decisions of this Court in *Gera Development Pvt Ltd* (supra) and *Hindustan Samuh Awas Ltd* (supra).

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1 2018 SCC OnLine BOM 18538

2 2015 377 ITR 150

6. Ms Chavan, the learned Counsel for the Respondent-State, submits that the decisions referred to by Mr Patkar are distinguishable and would not apply in the context of Rule 58(1B) (a) of the MVAT Rules 2005. She submits that there is a difference in the provisions considered by the two decisions now relied upon and the provisions of the MVAT Rules.

7. At this stage, we do not propose to decide whether the two decisions relied upon by Mr Patkar cover the issue in favour of the Appellant. However, we think that this is an issue which is best decided by the Tribunal, more particularly, since Appeals on the same point instituted by this very Appellant are pending before the Tribunal. The contention now raised by Ms Chavan can also be considered by the Tribunal.

8. Therefore, rather than deciding the substantial question of law framed above ourselves and depriving this Court of the benefit of the ruling of the Tribunal on this issue, we set aside the impugned judgment and order dated 29 July 2024 and remand the matter to the Tribunal for fresh consideration and disposal of the Appellant's VAT Second Appeal Nos. 224 of 2019 and 225 of 2019. These appeals may now be considered along with the other appeals filed by this very Appellant, which are said to be pending before the Tribunal.

9. All contentions of all parties, including the contention now raised by Ms Chavan, are explicitly kept open, since this Court has not expressed any opinion on the merits of the matter.

10. These Appeals are disposed of in the above terms without any costs order. All concerned are to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M.S. Sonak, J)**