(2015) 09 P&H CK 0311

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 18262 of 2015

Orchid Infrastructure Developers Pvt. Ltd. APPELLANT

Vs

The State of Haryana and Others RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 246, 366(29A)

Citation : (2015) 09 P&H CK 0311

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Ashok Aggarwal, Senior Advocate, Puneet Aggarwal, Saurabh Kapoor, Rishabh Kapoor, Abhishek Maheshwari and Shivani Kapoor, Advocates, for the Appellant

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of a bunch of 8 petitions bearing CWP Nos. 18255, 18258, 18261, 18262, 18279, 18281, 18282 and 18358 of 2015 as according to learned counsel for the petitioner, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 18262 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 Rule 25(2) and 25(7) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") (Annexure P-1) in particular and other related provisions in so far as they charge tax on expenses and elements of total sale price of flat/unit which have no relationship with value of goods transferred in execution of works contract 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 and Article 366(29A) of the Constitution of India; for declaring Rule 25(2) and 25(7) of the Rules (Annexure P-1) in particular and other related provisions as ultra vires since value derived for charging sales tax under new Rule 25 does not make any reference to and is more than the value of

materials transferred by the developers to the buyers as appearing in the books of account of the developer; for declaring Rule 25(2) and 25(7) of the Rules (Annexure P-1) in particular and other related provisions as ultra vires since the State has not remained bound by its affidavit dated 24.4.2014 on the basis of which this Court in CWP No. 5730 of 2014 had upheld the provisions of Rule 25 of the Rules; for declaring Rule 25(7) of the Rules (Annexure P-1) as ultra vires the provisions of Section 3 read with Sections 6, 2(1)(u) and 2(1)(zg) of the Rules; for declaring Rule 25(2), (4), (6) and (7) of the Rules (Annexure P-1) as ultra vires and inoperative for being indeterminable; for declaring Rule 25(4) of the Rules (Annexure P-1) in particular and other related provisions of the Haryana Value Added Tax Act, 2003 (in short "the Act") since they seek to charge tax on a transaction not supported by money consideration which cannot be considered to be sale for the purpose of charge sales tax as ultra vires the State''s power under Article 246 of the Constitution of India read with Entry 54 of List II of the Seventh Schedule; for declaring Rule 25(4) of the Rules (Annexure P-1) because they seek to charge tax on the basis of presumptive valuation more than the actual consideration charged for transfer of property in goods as ultra vires the State''s power under Article 246 of the Constitution of India read with Entry 54 of List II of the Seventh Schedule. Further, a writ of certiorari has been sought quashing the notices dated 6.8.2015 (Annexure P-2) issued by respondent No. 3.

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. Consequent to the directions issued 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, the Government of Haryana has introduced new set of rules for computation of turnover for charging tax on developers vide notification dated 23.7.2015 (Annexure P-1) effective from 17.5.2010. A notice dated 6.8.2015 (Annexure P-2) was issued to the petitioner wherein the assessment of the petitioner for the years 2012-13 and 2013-14 was sought to be made in accordance with new Rule 25 of the Rules. The said rules are ultra vires the State''s power under Entry 54 List II and are in clear violation of the principles enunciated by this Court in CHD Developer''s case (supra). The new Rule 25 of the Rules is ultra vires the Constitution of India and in clear violation of the law laid down by this court in CHD Developer''s case (supra) and the authorities under the Act are bound by the said Rule. Hence, the present writ petitions.

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

5. Learned counsel for the petitioners has laid challenge to the notice dated 6.8.2015 (Annexure P-2) requiring the petitioner(s) to furnish the books of account and certain other information for the said period.

6. After hearing learned counsel for the petitioners, the present writ petitions are disposed of by directing the petitioners to produce the relevant record and to file

a detailed and comprehensive representation(s) whereupon the assessing authority shall take a decision in accordance with law by passing a speaking order and after affording an opportunity of hearing to each petitioner or its authorized representative. It is, however, clarified that the question of vires is not being adjudicated upon at this stage and it shall be open to the petitioners to approach this Court again laying challenge to the vires in accordance with law, after the decision by the concerned authority, if need so arises.

