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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 24.09.2026**# **CNR No. DLHC010323182009**+ **W.P.(C) 7058/2009****M/S VARDHMAN PROPERTIES LTD.Petitioner****Through: Mr. Puneet Agrawal, Ms. Mansi
Khurana, Mr. Viprav Tiwari,
Mr. Chetan Kumar Shukla,
Advs.****versus****THE VALUE ADDED TAX OFFICER & ORSRespondents****Through: Ms. Urvi Mohan, Ms. Roshni
Agarwal, Mr. Sumit Kumar,
Advs.****CORAM:****HON'BLE MR. JUSTICE AVNEESH JHINGAN****HON'BLE MS. JUSTICE SHAIL JAIN****AVNEESH JHINGAN, J. (ORAL)**

1. This writ petition is filed seeking quashing of the demand dated 16.01.2009 and the notice of default assessment of tax dated 28.01.2009 (for short 'notice dated 28.01.2009').
2. The brief facts are that the petitioner was a registered dealer under the Delhi Value Added Tax Act, 2004 (DVAT Act) and is a builder engaged in the construction and sale of commercial complexes.
3. The writ petition pertains to the demand raised for the assessment year 2005-06. The two legal issues involved are: -



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i. whether the petitioner being a builder shall be covered under the definition of 'works contract' and is exigible to Value Added Tax (VAT); and

ii. whether in the absence of machinery provisions, the levy of VAT on the activities of the builder is sustainable in law.

4. Learned counsel for the petitioner fairly submits that the Supreme Court in *Larsen and Toubro Limited v. State of Karnataka*, (2014) 1 SCC 708 held that the activities of the petitioner are covered within the definition of 'works contract' under Section 2(1)(zo) of the DVAT Act and are exigible to VAT. Reliance is upon the decision of the Supreme Court in *Commissioner, Central Excise and Customs, Kerala v. Larsen & Toubro Ltd.*, (2016) 1 SCC 170 to contend that *albeit*, the activities of the petitioner are exigible to VAT, the levy of tax cannot be sustained in the absence of the requisite machinery provisions.

4.1 The argument is that Rule 3 of the Delhi Value Added Tax Rules, 2005 (for brevity 'DVAT Rules') was substituted vide Notification No.F.3(22)/Fin.(T&E)/2006-07/dsfe/344-353 and provided the mechanism for determining the taxable turnover in respect of indivisible works contract. The submission is that the substituted Rule 3 came into effect on 07.09.2006 and the demand raised against the petitioner for the assessment year 2005-06 cannot be sustained. To fortify the contention, reliance is placed upon a decision of the Division Bench of the Punjab and Haryana High Court in *Dhingra Jardine Infrastructure Pvt. Ltd. v. The State of Haryana*



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and Ors., (2017) 101 VST 34 (P&H). It is submitted that the SLP against this decision was dismissed vide order dated 16.04.2018.

5. Learned counsel for the respondent does not dispute that the petitioner is a builder and that the demand pertains to the assessment year 2005-06. The contention is that apart from the legal issues, the factual aspects also require consideration by the authorities and the matter be remanded for reconsideration.

6. The Supreme Court in *Larsen and Toubro Limited* (supra) dealt with the reference as to whether the decision in *M/s K. Raheja Development Corporation v. State of Karnataka*, (2005) 5 SCC 162 laid down the correct legal position. It was held that after entering into an agreement to sell with the flat purchaser, construction carried out is on behalf of the purchaser and constitutes a works contract. The court further held that in the absence of a prior agreement to sell with the purchaser, the sale of completed building shall not fall within the ambit of a works contract. The view taken in *M/s K. Raheja Development Corporation* (supra) was accordingly upheld. The relevant paragraphs are reproduced below: -

“109. In Article 366(29-A)(b) the term “works contract” covers all genre of works contract and it is not limited to one specie of the contract. In *Raheja Development [K. Raheja Development Corpn. v. State of Karnataka, (2005) 5 SCC 162]* the definition of “works contract” in the KST Act was under consideration. That definition of “works contract” is inclusive and refers to building contracts and diverse construction activities for monetary consideration viz. for cash, deferred payment or other valuable consideration as works contract. Having regard



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to the factual position, inter alia, Raheja Development entered into development agreements with the owners of the land and it also entered into agreements for sale with the flat purchasers, the consideration being payment in instalments and also the clauses of the agreement, the Court held that developer had undertaken to build for the flat purchaser and so long as there was no termination of the contract, the construction is for and on behalf of the purchaser and it remains a “works contract”. The legal position summarised by us and the foregoing discussion would justify the view taken by the two-Judge Bench in *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] .

110. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government.

111. The reasons stated in the referral order for reconsideration of *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] do not make out any good ground for taking a view different from what has been taken by this Court in *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] . We are in agreement with the submission of Mr K.N. Bhat that since *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] in May 2005 almost all States have modified their laws in line with *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] and there is no justification for change in the position settled after the decision of this Court in *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] .



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112. The submission of Mr K.N. Bhat that the view in *Raheja Development* [*K. Raheja Development Corpn. v. State of Karnataka*, (2005) 5 SCC 162] that when a completed building is sold, there is no works contract and, therefore, no liability to tax is not correct statement of law, does not appeal to us. If at the time of construction and until the construction was completed, there was no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since at that time there is no purchaser. That the building is intended for sale ultimately after construction does not make any difference.”

7. With the authoritative decision of the Supreme Court in *Larsen and Toubro Limited* (supra) the issue as to whether the petitioner is covered under the definition of ‘works contract’ under Section 2(1)(zo) of the DVAT Act is decided and the petitioner is covered under the ‘works contract’ definition.

8. The issue of exigibility of service tax on a composite works contract involving labour and supply arose before the Supreme Court in *Commissioner, Central Excise & Customs, Kerala* (supra). It was held that a works contract is a separate species of contract, distinct from a contract of service simpliciter and has to be taxed separately as such.

9. The Court dealt with the issue of whether service tax could be levied on indivisible works contracts prior to 01.06.2007 when the Finance Act, 2007 (for short ‘2007 Act’) expressly made works contracts liable to service tax. The contention of the assessee that there was no charge of tax on works contracts under the Finance Act, 1994



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(for short '1994 Act') was accepted. It was observed that Section 67 as amended by the Finance Act, 2006 for the first time prescribed that where the consideration for the provisions of service tax is not ascertainable the amount may be determined in the prescribed manner.

10. The view taken by the Delhi High Court in ***G.D. Builders v. UOI***, 2013 SCC OnLine Del 4543 that tax is leviable even if no rules are framed for computation of the service component of a composite contract and that the contract can be bifurcated and taxed accordingly was not accepted. It was held that there was no machinery provision and in the absence of machinery for assessment, it would not be open to the assessing authority to arbitrarily assess the tax.

11. The mechanism for determination of taxable turnover in respect of works contracts under the DVAT Act was introduced with effect from 07.09.2006 by substituting Rule 3 of the DVAT Rules.

12. The Division Bench of the Punjab and Haryana High Court in ***Dhingra Jardine Infrastructure Pvt. Ltd.*** (supra) dealt with the following issue: -

(7) Whether levy of tax on builders can be sustained in the absence of machinery provisions? The period being upto 16.05.2010 and thereafter, when the Rules were framed.

13. After considering various decisions including ***Commissioner, Central Excise & Customs, Kerala*** (supra) and ***Larsen and Toubro Limited*** (supra) it was held that prior to 16.05.2010 there were no rules providing for the manner of determination of taxable turnover and in such circumstances though the levy of tax could not be disputed



but it was unenforceable. The relevant paragraphs are as under: -

“137. Analysing the provisions, as existed and referring to the judgment of Hon'ble the Supreme Court in L&T's 4th case (supra), considering the amendment as carried out in Finance Act, 1994 vide Finance Act, 2010 and in Service Tax (Determination of Value) Rules, 2006, w.e.f. 1.7.2012, it was opined that no service tax was chargeable in respect of composite contract as entered into by the builder. The relevant paras thereof are extracted below:

"53. As noticed earlier, in the present case, neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.

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55. In view of the above, we negate the challenge to insertion of clause (zzzzu) in sub-section 105 of Section 65 of the Act. However, we accept the Petitioners contention that no service tax under section 66 of the Act read with Section 65(105)(zzzh) of the Act could be charged in respect of composite contracts such as the ones entered into by the petitioners with the builder. The impugned explanation to the extent that it seeks to include composite contracts for purchase of units in a complex within the scope of taxable service is set aside."

138. The assessment years involved in the present bunch of petitions are from 2005-06 to 2011-12.

139. A combined reading of the provisions of the Act and the Rules, as added w.e.f. 17.5.2010, provides for the manner of calculation of taxable turnover. Prior to



17.5.2010, there were no machinery provisions in the Act or the Rules to calculate taxable turnover ensuring that only value of goods used in the works contracts are taxed. The issue was considered in the earlier round of litigation including Rule 25(2) of the Rules. Certain anomalies were found in the Rules added w.e.f. 17.5.2010. Affidavit was filed by the State. The matter was disposed of vide detailed judgment in CHD Developers Limited's case (supra) giving liberty to the State to amend the Rules in consonance with the affidavit filed in the court. Subsequent thereto, Rule 25 of the Rules was amended vide notification dated 23.7.2015 with retrospective effect from 17.5.2010. Relevant paras of the aforesaid judgment are extracted below:

"44. In case the provisions of law are seeking to charge sales tax on any amount other than the value of the goods transferred in course of execution of works contract, the provisions would be ultra vires to 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. When '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."

140. Vires of the Rules is not in question in the present set of petitions. The stand of the petitioners was that to challenge the vires of the Rules, separate petitions have been filed, which are pending.

Finding

141. For the period upto 16.5.2010, there were no Rules or instructions on the subject, to provide for manner of calculation of taxable turnover. In the absence of the machinery provisions specifying the details, though the levy as such cannot be disputed but it has become unenforceable upto 16.5.2010.

142. From 17.5.2010 onwards, there being Rules in existence, having been amended in terms of judgment of this Court in CHD Developers' case (supra) and observations made therein, we do not find that the levy cannot be sustained."

(Emphasis supplied)

14. In DVAT Act, prior to the substitution of Rule 3 with effect from 07.09.2006, there was no provision stipulating the manner of calculation of taxable turnover in respect of works contracts covering builders. Consequently, the demand for the assessment year 2005-06



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is unsustainable due to the non-existence of machinery provisions for determination of taxable turnover and is liable to be quashed.

15. The demand dated 16.01.2009 and the notice dated 28.01.2009 are set aside.

16. The petition is allowed.

17. Pending applications, if any, also stand disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

SEPTEMBER 24, 2026

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Reportable: Yes