

TRADE CIRCULAR

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No.DC(A&R)3/VAT/Promoters & Bldrs Assen/ADM Relief 06-10/ADM-8 Mumbai, dt. 10/11/2023
Trade Circular No.28T of 2023

Subject : Stay of recovery in the matter of Special Leave Petition filed by the Promoters and Builders Association and the Maharashtra Chamber of Housing Industry(MCHI).

- Ref.** 1. Trade Circular bearing No. 14T 2012 dated 6th August 2012.
2. Trade Circular bearing No. 17T 2012 dated 25th September 2012.

Gentlemen/Sir/Madam,

You are aware that there were several litigations going on in the Hon. Courts in respect of the taxation on sale of under construction flats. Hon. Bombay High Court in Maharashtra Chamber of Housing Industry vs State of Maharashtra And Ors. (Writ petition no. 2022 of 2007 decided on 10th April, 2012) confirmed the levy of the tax in respect of sale of under construction flats etc. Thereafter, this office issued a Trade Circular referenced at sr. no.1 above and issued instructions with regards to registration, administrative relief and payment of tax by Builders and Developers.

02. The Promoters and Builders Association as well as MCHI filed Special Leave Petitions before the Hon. Supreme Court. The apex court passed an interim order on dt.28/08/2012 in the matter [Promoters & Builders Assn. & Ors. Versus State of Maharashtra & Ors. [I.A. No. 2 in S.L.P. (C) Nos. 17709, 17738 And 21052 Of 2012]. The interim order held that in case the concerned developers pay tax under the Maharashtra Value Added Tax Act, 2002 as amended vide Section 2(24) w.e.f. June 20, 2006 on or before October 31, 2012, the coercive process for recovery of tax, interest or penalty shall remain stayed subject to the final decision in the matter before this Court.

03. To give effect to the interim order of the Hon'ble Apex Court, the Department modified the instructions in Trade Circular 14T of 2012 by bringing in Trade Circular 17T of 2012 dated 25th September 2012 which provided that -

- (a) *The developers who have not obtained the registration under MVAT Act, 2002 shall obtain the same on or before 15th October 2012.*
- (b) *The time for filing of return and payment of tax stands extended up to 31st October 2012.*
- (c) *The payment of the tax as aforesaid shall be subject to the final outcome of the aforesaid petition.*

Thus, the modified instructions provided that the payment of the tax shall be subject to the final outcome of the petition by the Promoters and Builders Association and the MCHI.

04. The Hon. Supreme Court in M/s. Larsen & Toubro Limited & Anr. (Civil Appeal No. 8672 OF 2013 and Others dated September 26, 2013) by its order dt.26/09/2013 decided all the above and like petitions and put all arguments as regards validity and taxability to rest by holding that-

- *There is no merit in the challenge to the constitutional validity to the provisions of explanation (b)(ii) to Section 2(24) of the Maharashtra Value Added Tax Act, 2002 (MVAT Act) which were amended with effect from 20.06.2006.*
- *The value of the goods which can constitute the measure of the levy of the tax has to be the value of the goods at the time of incorporation of goods in the works even though property in goods passes later.*
- *Taxing the sale of goods element in a works contract is permissible even after incorporation of goods provided tax is directed to the value of goods at the time of incorporation and does not purport to tax the transfer of immovable property.*
- *The mode of valuation of goods provided in Rule 58(1A) has to be read in the manner that meets this criteria and we read down Rule 58(1-A) accordingly. The Maharashtra Government has to bring clarity in Rule 58 (1-A) as indicated above. Subject to this, validity of Rule 58(1-A) of MVAT Rules is sustained.*
- *Once we have held that Raheja Development lays down the correct law, in our opinion, nothing turns on the circular dated 07.02.2007 and the notification dated 09.07.2010. The circular is a trade circular which is clarificatory in nature only. The notification enables the registered dealer to opt for a composition scheme. The High Court has dealt with the circular and notification. We do not find any error in the view of the High Court in this regard. Moreover, the Advocate General for Maharashtra clearly stated before us that implementation of Rule 58(1-A) shall not result in double taxation and in any case all claims of alleged double taxation will be determined in the process of assessment of each individual case.*

05. The Hon. Supreme Court in the above judgment was called upon to decide as to whether the two-Judge Bench decision of the Supreme Court in K. Raheja Development Corporation v. State of Karnataka [(2005) 5 SCC 162] laid down the correct legal position. It is to consider this question that in M/s. Larsen & Toubro Limited & Anr. v. State of Karnataka & Anr. [SLP(C) No. 17741 of 2007], a two-Judge Bench of the Supreme Court referred the matter for consideration by the larger Bench.

After giving answer to the reference by delivering the aforesaid decision dt.26/09/2013, the Hon. Supreme Court sent the matters back to the Regular Bench for final disposal. Of the 26 appeals under consideration before the Hon. Supreme Court, 14 were from Karnataka and 12 from Maharashtra. The matters from Maharashtra had the following Civil Appeal Nos. which were finally disposed on dates and for reasons shown in the Table below-

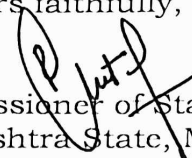
SR. NO.	CIVIL APPEAL NO. / YEAR	DISPOSAL DATE	PETITIONER	ORDER
1	8687 of 2013	18/12/2019	MAHARASHTRA CHAMBER OF HOUSING IND.	<i>The civil appeal is dismissed as withdrawn.</i>
2	8685 of 2013	19/07/2022	THE PROMOTERS AND BUILDERS ASSOCIATION	<i>The appellants fairly conceded that issue involved in all these appeals is now not res integra in view of the decision of the Court in the case of Larsen and Toubro Limited & Anr. Vs. State of Karnataka & Anr. (2014) 1 SCC 708, which as such can be said to be against the appellants herein but not in entirety. In that view of the matter, we dispose of all these appeals in terms of the binding decision of this Court in the case of Larsen and Toubro Limited & Anr. Vs. State of Karnataka & Anr. (supra).</i>
3	8686 of 2013		PROMOTERS	
4	8692 of 2013		BUILDERS AND DEVELOPERS ASSOCIATION OF SAWANTWADI	
5	8693 of 2013		THE PROMOTERS AND BUILDERS ASSOCIATION	
6	8695 of 2013		THE BUILDERS ASSN. OF SINDHUDURG	
7	8696 of 2013		RATNAGIRI BUILDERS AND DEVELOPERS ASSOCIATION RATNAGIRI	
8	8697 of 2013		THE SOLAPUR PROMOTERS	
9	8688 of 2013		26/07/2022	
10	8690 of 2013	RAJENDER RAMCHANDER AGARWAL		
11	8698 of 2013	M/S MCHI CREDAI RAIGA UNIT		
12	8699 of 2013	M/S BUILDERS ASSOCIATION OF INDIA		

06. In view of the above, the recovery in the cases involved in the above petitions stands no longer in abeyance. The Departmental authorities are requested to recover the same as per the provisions of the law. Also, the Trade is also requested to suo-motu come forward and pay the liability i.e. tax, interest and penalty, as the case may be, if any, involved in these cases.

07. This circular cannot be made use of for legal interpretation of the provisions of law as it is clarificatory in nature and

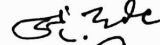
08. You are requested to bring the contents of this circular to the notice of the members of your association.

Yours faithfully,


Commissioner of State Tax,
Maharashtra State, Mumbai.

No.DC(A&R)3/VAT/Promoters & Bldrs Asscn/ADM Relief 06-10/ADM-8 Mumbai, dt. 10/11/2023
Trade Circular No.247 of 2023

Copy forwarded to the Joint Commissioner of State Tax (MAHAVIKAS) with the request to upload this Trade Circular on the Department's website.


(A. S. GORDE)
Joint Commissioner of State Tax, (HQ)-1,
Maharashtra State, Mumbai.