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Paras Gundecha

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Dharmesh Jain

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Nayan Shah
Deepak Goradia
Boman Irani

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Nainesh Shah

HON. TREASURER
Sukhraj Nahar

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I.A.S. (Retd.)

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Ashok Mohanani
Sandeep Runwal
Bandish Ajmera

JOINT TREASURERS
Lakshman Bhagtani
Mukesh Patel

CO-ORDINATORS
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Jagdish Ahuja
Pujit Aggarwal
Parag Munot

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Rajan Bandelkar
Vikas Walawalkar
Jayesh Shah
Nayan Bheda
Sanjay Chhabria
Rajendra Chaturvedi

PAST PRESIDENT
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Pravin Doshi
Moham Deshmukh
Mofatraj Munot
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Rajni S. Ajmera
G. L. Raheja
Lalit Gandhi
Babubhai Majethia

MCHI-CREDAI UNITS
President, Thane
Shailesh Puranik
President, Kalyan-Dombivli
Johar Zojwalla
President, Raigad
Rajesh Prajapati
President, Navi Mumbai
Arvind Goel
Hon. Secretary, Mira Virar City
Shailesh Sanghvi

Ref. No.: MCHI/GEN/13-14/107

February 12, 2014

To,
The Commissioner of Sales Tax,
8th Floor, Vikrikar Bhavan,
Mazgaon,
Mumbai - 400 010.

Dear Sir,

- Subject: a) Clarification on new rules inserted with retrospective effect from 20th June 2006 vide Notification no. VAT 1513/CR-147/Taxation-1 dated 29.1.2014 and
- b) Extension of due date for filing of VAT audit report in case of builders/developers for the period 2012-13 by six months from 15th February 2014 to 14th August 2014.

The Finance Department has issued Notification no. VAT 1513/CR-147/Taxation-1 dated 29.1.2014 (Copy of Notification enclosed as Annexure - 'A') to amend the Maharashtra Value Added Tax Rules, 2005 retrospectively with effect from 20th June 2006 in order to give effect of the observations made by the Larger Bench of the Hon'ble Supreme Court of India in case of *M/s. Larsen & Toubro Limited and another vs. State of Karnataka and another* and other connected matters vide its order and judgment dated 26.9.2013. Subsequently vide its order and judgment dated 31.1.2014, the Hon'ble Supreme Court of India have clarified that *if the petitioners file revised returns in terms of this order and/or Notification dated 29.1.2014, such returns will be examined by the concerned assessing officer appropriately in accordance with law.* In order to comply with the new rules and also for purpose of filing revised returns, our members have issued certain queries, apprehensions and representations which are given below, for benefit of the trade we kindly request to issue appropriate clarification in the matter at the earliest:

- a) There is no procedure for issuance of certificate confirming 100% RCC framework completion certificate by the Local/Planning authority. Thus the certificate will have to be obtained from a registered RCC consultant, hence we request to kindly prescribe format for issuance of certificate by the RCC consultant or clarify that the certificate issued by registered RCC consultant confirming in so many words that "the plinth level of (building name) is/ was completed on (date)" shall be sufficient,
- b) Whether completion of 100% RCC framework should be read as 100% RCC framework of the floors or entire building being constructed?
- c) Whether the Occupancy certificate specified at Sr. no.(d) & (e) of the Table in Rule 58(1B)(a) includes Part Occupancy certificate issued by concerned authority for permitting occupancy of certain units/floors of the building after completion of 100% RCC framework?

MCHI-CREDAI (ISO 9001:2008)

Maker Bhavan II, 4th Floor, 18, V. Thackersey Marg, New Marine Lines, Mumbai - 400 020.
Tel.: 4212 1421, Fax : 4212 1411 / 407 • Email: secretariat@mchi.net
Website : www.mchi.net

- d) Many a times, the local authority endorse on the back side of the commencement certificate stating that the commencement certificate is further extended upto 'x' floors, instead of issuing certificate of plinth level work completion. Kindly clarify that the extension of the commencement certificate by endorsement on the back side would be accepted as certificate of plinth level completion,
- e) While the stamp duty has been collected on higher of the actual cost of land or value determined in accordance with the Annual Statement of Rates (including guidelines) prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 however requirement of proving before the Department of Town Planning and Valuation in cases where stamp duty has been paid on the basis of actual cost of land is resulting into repetition, hence it may kindly be clarified proving before the Department of Town Planning and Valuation that actual cost of land is higher may not be essential in such cases and the deduction of actual cost of land would be allowed,
- f) In order to comply with the proviso inserted in Rule 58(1A) kindly clarify the procedure required to be followed by the builder/developer and for uniformity purpose format of the certificate may kindly be prescribed and indicate the authority within that department who would be authorised to issue such certificate to our members?
- g) Whether the builder/developer would be eligible to claim subcontractor deduction, labour and service charges deduction and set off of tax paid on purchases of material attributable to the work done until Stage during which the developer enters into a contract with the purchaser of the flat/unit? To what extent shall the claims be allowable, may kindly be explained by way of illustrative example for sake of clarity and uniformity among the trade,
- h) Considering that certain flats have been handed over to the buyers, request to kindly clarify whether percentage specified in table for purpose of Rule 58(1B)(a) for determining the value of goods involved in works contract from the stage the developer enters into contract with the buyer can be followed in the initial year for the entire agreement value or every time certain amount is received/receivable from the buyer of the flat/unit?
- i) The Larger Bench of Hon'ble Supreme Court of India has clarified in Para 115 of the order and judgment dated 26.9.2013 that, "*the activity of construction undertaken by the developer would be works contract only from the stage of the developer enters into a contract with flat purchaser*" accordingly request to kindly clarify whether percentage specified for determining the value of goods involved in works contract from the stage the developer enters into contract with the buyer will be applicable to builder/developer opting to pay tax under composition scheme?

- j) On recomputation of the taxable turnover and tax liability by applying the new Rules, there shall be scenario of excess tax paid in some years, accordingly it may kindly be clarified that in case of builder/developer the excess tax payment in certain years can be adjusted against additional tax liability of remaining years including subsequent period/years?
- k) What shall be procedure of claim refund on account of excess tax paid or set off of tax paid in case of the builder/developer?
- l) In terms of the order and judgment of the Hon'ble Supreme Court of India dated 31.1.2014 in SLP (Civil) no.14153/2013 (Copy of order enclosed as **Annexure - 'B'**) whether the assessing authority would consider for examination in accordance with law the revised returns filed by the builder/developer after the date of issuance of Notice of assessment in Form 301?
- m) In accordance with the order and judgment of Hon'ble Supreme Court referred to in point (l) above, the builders/developers are permitted to file revised returns to give the effect of the observation of the Hon'ble Supreme Court and recomputation of the taxable turnover of sales, set off, tax liability as per new Rules inserted recently. For sake of administrative convenience it may kindly be clarified that the builders/developers can file one single revised return (Annual) for the respective period comprised in one year for the period from 2006-07 to 2012-13. In this regards appropriate procedure to be followed for purpose of filing one single revised return for entire year may also kindly be prescribed to sake of clarity,
- n) As the new rules have been inserted recently vide Notification dated 29.1.2014, kindly clarify regarding the interest applicability on the tax liability determined now in accordance with new rules?

As the effect of the Supreme Court judgment by way of amendment to Rule 58(1) and Rule 58(1A) was under consideration and in absence of rule amendment it may not be possible to complete the audit of developers, hence vide Trade Circular no.1T of 2014, dated 4.1.2014 administratively decided that Audit report in Form 704 pertaining to developer for the period 2012-13 if filed within one month from the due date i.e. on or before 15th February 2014, then penalty under section 61(2) shall not be imposed. We enclose herewith copy of the Trade Circular as **Annexure - 'C'** for your kind perusal. We request to kindly issue appropriate clarity on the above queries/apprehensions in connection with new Rules as it would necessary to evaluate the Rules carefully and appropriately for purpose of the recomputation of tax workings for the period from 2006-07 to 2011-12, preparation and filing of the revised returns, audit by the VAT auditor by considering the implications of recomputation of tax liability of earlier years in the VAT audit report for the year 2012-13, accordingly it is being requested that the due date for filing of VAT audit for the year 2012-13 kindly be extended by six months to 14th August 2014 which

gives sufficient time to complete the VAT audit correctly and shall serve the ends of justice to both auditor and the auditee.

In view of the aforesaid submissions, we kindly request to clarify/consider the above queries/apprehensions/representations of our members by way of FAQ as appropriate, and also request to be considerate and kind enough to extend the due date for filing of VAT Audit for the year 2012-13 in case of builders/developers by six months from 15th February 2014 to 14th August 2014.

It is our humble prayer to accede to our request and grant extension of due date in the above matter in appropriate manner at the earliest.

We request you to kindly provide us an opportunity to meet and express the concerns in person.

Thanking you.

Yours sincerely,
For MCHI-CREDAI



C. P. Goyal
Chief Manager, Finance & Admin.

CC:

The Joint Commissioner of Sales Tax (HQ) 1, Maharashtra State, Mumbai,

Q. R. 13
12/02/14
CLERK
जि.टी.सी. आयुक्त
महाराष्ट्र राज्य, मुंबई.

12/02/14
लिपीक
जि.टी.सी. सह आयुक्त (मुख्यालय)
महाराष्ट्र राज्य, मुंबई.

ITEM NO.53

COURT NO.2

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).14153/2013

(From the judgement and order dated 30/10/2012 in WP No.2440/2012 of The HIGH COURT OF BOMBAY)

BUILDERS ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned order and prayer for interim relief and office report)

WITH SLP(C) NO. 1257 of 2013

(With prayer for interim relief and office report)

Date: 31/01/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.M. LODHA

HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s)

SLP 14153

Mr. Vinayak Patkar, Adv.
Mr. Ashvin Acharya, Adv.
Mr. S. Ravi Shankar, Adv.

SLP 1257

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Parimal Shroff, Adv.
Mr. Ankur Saigal, Adv.
Mr. Mahesh Agarwal, Adv.
Mr. E.C. Agrawala, Adv.

For Respondent(s)

Mr. D.J. Khambata, AG
Mr. Shekhar Naphade, Sr. Adv.
Mr. Aniruddha P. Mayee, Adv.
Mr. Chinmoy Khaladkar, Adv.
Mr. C. Mahindarkar, Adv

UPON hearing counsel the Court made the following
O R D E R

Mr. D.J. Khambata, learned Advocate General for the State of Maharashtra submits that the controversy in the special leave petitions stands concluded by a three Judge Bench decision of this Court in *M/s. Larsen & Toubro Limited and another vs. State of Karnataka and another* and other connected matters decided on 26.9.2013. Learned Advocate General further informs us that in accordance with the judgment of this Court in *Larsen & Toubro (supra)*, a notification dated 29.1.2014 has been published in the Official Gazette.

2. We have also considered the submissions of Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner in SLP (C) No. 1257 of 2013.

3. We are satisfied that the controversy in the present special leave petitions is concluded by the decision of this Court in *Larsen & Toubro (supra)*.

We, accordingly, dispose of the special leave petitions in terms of that decision. It is, however, clarified that if the petitioners have any grievance about the Notification dated 29.1.2014, they may pursue their remedy in that regard. We further clarify that if the petitioners file revised returns in terms of this order and/or Notification dated 29.1.2014, such returns will be examined by the concerned assessing officer appropriately in accordance with law.

(Pardeep Kumar)
AR-cum-PS

(Renu Diwan)
Court Master

Office of the
Commissioner of Sales Tax
8th floor, Vikrikar Bhavan,
Mazgaon, Mumbai 400010.

TRADE CIRCULAR

No. Build-Devep/Adm.Relief.06-10/Adm-8
No. Trade Cir. No. 1 T of 2014

Mumbai, dated 04-01-2014

Sub: Audit Report to be filed by developers in form 704 for 2012-13.

Background :


1. The Maharashtra Chamber of Housing Industries (MCHI), Promoters and Builders Association and 10 other petitioners filed Special Leave Petition(SLP) before the Hon. Supreme Court against the order of Hon. Bombay High Court (Writ Petition no. 2022). The Supreme Court has decided these petitions by its common order dt. 26/09/2013. The Supreme Court while upholding the Constitutional validity of the amendment to the definition of Sale of MVAT Act, has clarified that-

(i) *" The activity of construction undertaken by the developer would be works contract only from the stage when the flat purchaser enters into a contract with the developer and that the value addition to the goods transferred after such agreement can only be made chargeable to tax by the State Government."*

(ii) The Court has further stated that, *"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."* The Court has directed the State Government of Maharashtra to bring clarity in Rule 58 (1A) as indicated above.

2. In order to give effect to the Supreme Court judgment, it is necessary to amend Rules 58(1) and 58(1A) of the Maharashtra Value Added Tax Rules,2005. The amendment to these rules is under consideration. However, it may take some time to effect the amendment.
3. The prescribed date for filing the report of the audit under section 61 in Form 704 for the financial year 2012-13 is 15th January 2014. In absence of amendment to rule 58(1) and rule 58(1A), it may not be possible to complete the audit of developers.
4. In view of the above, it is administratively decided that if an Audit Report in form 704, pertaining to developer for the period 2012-13, is filed within one month from the due date i.e. on or before 15th February 2014, then penalty u/s 61(2) shall not be imposed.

If any member of the trade has any doubt, he may refer the matter to this office for further clarification.


(NITIN KAREER)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.

No. Build-Devep/Adm.Relief.06-10/Adm-8

Mumbai, Dt. 04-01-2014

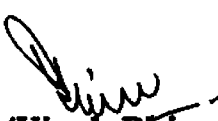
Trade Cir. No. 1 T of 2014

1. Copy forwarded To :

The Joint Commissioner of Sales Tax (MAHAVIKAS) with the request to upload this Trade Circular on the Departments web-site.

2. Copy forwarded with compliments for information to:

- a. The Officer on Special Duty, Finance Department, Mantralaya, Mumbai.
- b. The Under Secretary, Finance Department, Mantralaya, Mumbai.
- c. The Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.


(Vivek Bhimanwar)
Joint Commissioner of Sales Tax (HQ)1,
Maharashtra State, Mumbai.