E. C. AGRAWALA

ADVOCATE SUPREME COURT

SECTION IX

STATE

IN THE SUPREME COURT OF INDIA, NEW DELHI

CIVIL / ~~CRIMINAL~~ **Appellate / ~~Original~~ Jurisdiction**

~~CRL.~~M.P. / I.A. No. _____ of 2014 in

~~W.P.~~ / Civil Special Leave Petition / ~~Appeal~~ No. 1257 of 2013

~~Transfer / Writ Petition~~

Maharashtra Chamber of Housing Society & Ors & Qrs Petitioner (s) Appellant (s)

VERSUS

State of Maharashtra & Ors & Qrs Respondent (s)

NAUTRE OF DOCUMENTS	Court Fee affixed in only Civil Proceeding
Petition of Appeal	Rs. 280/- Plus Rs.
Petition for Special Leave with Prayer for Interim relief	Rs. 270/-
Writ Petition / Habeas Corpus Petition	Rs. 50/-
Transfer Petition	Rs. 10/-
Caveat	Rs. 20/-
~~Statement~~ of case	Rs. 13/-
Application for the grant of bail / stay / intervention	Rs. 10/-
Application for exemption from billing official translation	Rs. 10/-
~~Application~~ for Condonation of Delay	Rs. 10/-
Application for exemption from filing certified copy of the impuged order	Rs. 10/-
Application for Permission to file Addl. Documents	Rs. 10/-
Copies of documents	Rs. 10/-
Application for Interim Relief	Rs. 20/-
Affidavit/Counter Affidavit/Rejoinder Affidavit	Rs.
Annexures _____ (filling fee for each is Rs. 2/-)	
Certified copy of the High Court's / Tribunal's Impugned Judgement & order	Rs.
Process Fees Rs. 10/- for every person	Rs. 3/-
Vakalatname	Rs. 5/-
Memo of Appearance	Rs. 20/-

FILED ON 6 JAN 2014 Supreme Court Of India

NOTE : (a) Correct three spare copies are filed here with / will be filed in _____ days

(b) The above documents relate to criminal proceedings, hence no court fee is paid, (Vide Rule 29 or Order XXI S.C.R.)

Filed on 6/1/14

Copy to :
Mr. Asha G Nair
Adv

E.C. AGRAWALA

Advocate (On record) Supreme Court
for the Petitioner (s) ~~Appellant (s)~~
~~Respondent (s) Intervenor (s) Caveator (s)~~
48, LAWYERS CHAMBER,
Supreme Court of India, New Delhi-1
Ph. : 23389629, 23382318
CODE : 177

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. NO._____OF 2014

IN

SPECIAL LEAVE PETITION (C) NO. 1257 OF 2013

IN THE MATTER OF:-

Maharashtra Chamber of Housing Society and others ...Petitioners

Versus

State of Maharashtra & Others ...Respondents

APPLICATION FOR INTERIM RELIEF

PAPER BOOK

FOR INDEX KINDLY SEE INSIDE

DVOCATES FOR THE PETITIONERS: MR. E. C. AGRAWAL

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IN THE SUPREME COURT OF INDIA, NEW DELHI

CIVIL APPELLATE JURISDICTION

I.A. NO._____OF 2014

IN

SPECIAL LEAVE PETITION (CIVIL) NO.1257 OF 2013

IN THE MATTER OF:

MAHARASHTRA CHAMBER OF COMMERCE INDUSTRY & ORS. ...PETITIONERS

VERSUS

STATE OF MAHARASHTRA & ORS. ....RESPONDENTS

APPLICATION FOR INTERIM RELIEF

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIPS COMPANION JUDGES

OF THE HON'BLE SUPREME COURT

THE HUMBLE APPLICATION OF THE PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioners have filed the above Special Leave to Appeal (C) against the impugned final Judgment and Order dated 30th October, 2012 passed by the Hon'ble High Court of Judicature at Bombay in Writ Petition No. 2502 of 2012 in the matter of provisions of Rule 58 (1) and Rule 58 (1-A) of Maharashtra Value Added Tax Act Rules (MVAT Rules) and Trade

Circulars dated 6th August, 2012 and 26th September, 2012 and for other reliefs. The Hon'ble High Court by the common Judgment and Order dated 30th October, 2012 also disposed of Writ Petition (Lodg.) No. 2440 of 2012 filed by Builders Association of India ("BAI"). The BAI has also preferred a Special Leave Petition being S.L.P. (C) No. 14153 of 2013 against the same common Judgment and Order dated 30th October, 2012. The said S.L.P. (C) No. 14153 of 2013 was shown to be listed for hearing before this Hon'ble Court on 13th December, 2013 as per Supreme Court Web Site. However as per Supreme Court Web Site there was no specific date given of the Listing of the above Special Leave to Appeal No. 1257 of 2013 of the Petitioners and hence the Petitioners requested to List the above Special Leave to Appeal 1257 of 2013 along with the said S.L.P. (C) No. 14153 of 2013 on 13th December, 2013. This Hon'ble Court by its Order dated 12th December, 2013 tagged the above Special Leave Petitioner (C) No. 1257 of 2013 with the said S.L.P. (C) No. 14153 of 2013.

2. On – December, 2013 S.L.P. (C) No. 14153 of 2013 (Builders Association of India V/s. State of Maharashtra & Another) was Listed for hearing before this Hon'ble Court. The State of Maharashtra through its Advocate circulated a letter inter alia stating that the issues involved in the S.L.P. (C) No. 14153 of 2013 directly related to Rule 58 of MVAT Rules 2005 referred

to the Judgment of the Larger Bench of this Hon'ble Court dated 26th September, 2013 holding that the Judgment delivered in the case of K. Raheja was a good law and in turn holding the amendment made to the definition of "sale" as defined under Section 2 (24) of MVAT Act, 2002 with effect from 20th June, 2006 as constitutionally valid. The State of Maharashtra further stated that it is held that the State is empowered to tax the works contract element involved in the Construction Contract and refer to Para 115 and Para 124 of the said Judgment dated 26th September, 2013. The State of Maharashtra further stated that in light of the above direction mentioned in Para 124 of the Judgment the Department has now proposed amendment to Rule 58. The amendment was awaiting its approval from the State Government and therefore adjournment of the hearing was sought. A copy of the letter circulated by the Advocate of State of Maharashtra dated 11th December, 2013 to the Registrar, Supreme Court of India is annexed hereto as **ANNEXURE 'A'**. (**At Pages** 9 **to** 11)

3. Pursuant to the said letter dated 11th December, 2013 this Hon'ble Court on 13th December, 2013 adjourned for six weeks the hearing of the S.L.P. (C) No. 14153 of 2013 along with hearing of the above S.L.P. (C) No. 1257 of 2013. Copies of the orders dated 12.12.2013 passed in SLP (Civil) No. 1257 of 2013 and dated 13.12.2013 passed in SLP (Civil)

No. 14153 of 2013 by this Hon'ble Court is annexed hereto as **ANNEXURE 'B' (Colly)**. **(At pages** 12 **to** 13 **)**

4. The Petitioners state that the Members of the Petitioners are at present subject to assessment of matters under MVAT Act and Rules and awaiting Orders. Some of the Members of the Petitioners are even assessed and subjected to action for recovery for MVAT in pursuance of such Assessment by the MVAT Authorities.

5. The Petitioners state and submit that on the one hand the State of Maharashtra is seeking to amend the impugned Rule 58 of MVAT Rules pursuant to the Judgment of the larger Bench of this Hon'ble Court dated 26th September, 2013 and has circulated the said letter for adjournment dated 11th December, 2013 and on the other hand the Department is continuing to assess the Members of the Petitioners Association on the basis of existing MVAT Rule 58 (1-A). The Respondents are not entitled to act illegally and arbitrarily as done by them. The Petitioners submit that the larger Bench of this Hon'ble Court has specifically held that the Maharashtra Government has to bring clarity in Rule 58 (1-A). Thus, unless such clarity is brought in, in Rule 58 by the State of Maharashtra and unless such amended Rule 58 and its validity is considered, the Department cannot continue to either assess the Members of the Petitioners Association or

adopt any action including coercive action for recovery of MVAT from them in the existing Rule 58 in the guise of obtaining adjournment of hearing as done by them.

6. The Petitioners therefore submit that it is in interest of justice that pending the hearing and final disposal of the above S.L.P., the Respondents should be restrained from either implementing Rule 58 of MVAT Rules 2005 or carrying out any assessment on the Members of the Petitioners or enforcing any assessment carried out or adopting any coercive step to recover any amount assessed from the Members of the Petitioners Association. The balance of convenience is in favour of the Petitioners and irreparable harm and injury will be caused to the Petitioners unless urgent ad-interim and interim Orders are passed by this Hon'ble Court as prayed for.

PRAYERS

It is therefore most respectfully prayed that, in the interest of justice, this Hon'ble Court may graciously be pleased to:

(a) grant ad-interim ex-parte order pending the hearing and final disposal of the above Special Leave Petition against the Respondents, their servants and agents from either implementing Rule 58 of MVAT Rules 2005 or carrying out any assessment on the Members of the Petitioners or enforcing any assessment carried out or adopting any

coercive step to recover any amount assessed from the Members of the Petitioners Association.

(b) Pass such order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)
ADVOCATE FOR THE PETITIONER

DRAWN ON: 4.1.2014
FILED ON: 6.1.2014
NEW DELHI.

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

INTERIM APPLICATION NO. OF 2014

IN

SPECIAL LEAVE PETITION (C) NO. 1257 OF 2013

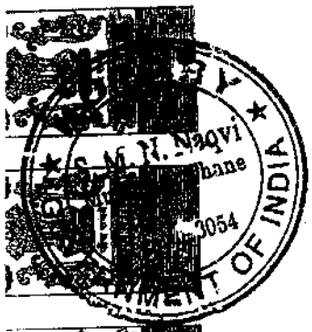
[Arising from the judgment and order dated 30th October 2012 passed by the Hon'ble High Court of Bombay in Writ Petition No.2502 of 2012]

IN THE MATTER OF

Maharashtra Chamber of Housing Society and others ...Petitioners

Versus

State of Maharashtra & Others ...Respondents

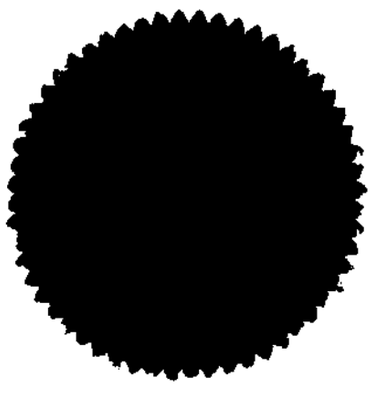


AFFIDAVIT

I, CHANDRAPRAKASH GOYAL, Chief Manager, Finance of Maharashtra Chamber of Housing Industry, having their office at Maker Bhavan No.2, 4th Floor, 18, Vithal Thakarsi Marg, New Marine Lines, Churchgate, Mumbai 400020, do hereby solemnly affirm and state as under:-

1. That I am the Chief Manager, Finance of the Petitioner No.1 and duly conversant with the facts and circumstances of the present case and competent to swear this Affidavit.

2. That I have read and understood the contents of the accompanying Interim Application and I say that the facts stated therein are true and correct to my knowledge.



That I state that the contents contained in the Application, pages __ to __ and paras __ to __ are true to my

knowledge, those contained in pages __ to __ of the List of Dates are also true and correct to my knowledge and record of the case.

4 That the annexures annexed to the accompanying Interim Application are true copies of their respective originals.

DEPONENT

VERIFICATION

I, the abovenamed Deponent, do hereby verify that the contents of this Affidavit are true and correct to the best of my knowledge. It conceals nothing and no part thereof is false.

Verified at Mum, on this day of January, 2014.

DEPONENT

Identified by me

MUTAVALLI G. M.
Advocate High Court,
C.M.M. Court Mahapalika Marg,
Mumbai-400 001. 9323557803

BEFORE ME
S. M. N. Naqvi
NOTARY
Government of India
Mumbai & Thane Dist.

S. M. N. Naqvi
Mumbai & Thane Dist.
Reg. No. 3054

S. No. 376 P. No. 34
NOTARY Register 62 Date 24/1/14

9

ANNEXURE "A"

A/B
ASHA G Nair
Advocate on Record
Supreme Court of India
BSc. LL.M. (Mumbai University)

Chamber: 322. C.K. Daphtary
Chamber Block
Supreme Court of India
New Delhi – 110 001
Phone : 09868716588

Off- cum Residence:- F-22, CSIR Apt.
Maharani Bagh Ashram
Chowk New Delhi – 110 065
Mob: 09810348981
E-mail: ashanair253@gmail.com

11.12.2013

COURT NO. **2** ITEM NO. **52** LISTED ON **13.12.2013**

To,

The Registrar,

Supreme Court of India,

New Delhi

RE:- SLP (C) No. 14153 of 2013

BUILDERS ASSOCIATION OF INDIA

Vs.

STATE OF MAHARASHTRA & ANR.

Sir,

The above mentioned matter is listed for hearing before the Hon'ble Court No. 2 as Item No. 52. The State of Maharashtra is seeking four weeks adjournment for the following reason:

The issue involved I the present impugned petition is directly related to Rule 58 of the MVAT Rules, 2005.

A larger Bench of this Hon'ble Court in the case of M/s. Larsen & Toubro Ltd. (Civil Appeal No. 8672 of 2013 in SLP (C) No. 17741 of 2007 (MCHI and Promoters & Builders Association and others pertaining to the State of Maharashtra) dated 26.9.2013 was pleased to hold that the judgment delivered in case of K Raheja is a good law in turn holding the amendment made to the definition of 'sale' as defined u/s 2(24) of the MVAT Act. 2002 w.e.f. 20.6.2006 as constitutionally valid. By this it is held that the State is empowered to tax the works contract element involved in the Construction Contracts.

The relevant para 115 and para 124 of the above judgment is reproduced as under-

"115. 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"

"124. 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"

(Emphasis supplied)

In the light of the above direction as mentioned in para 124 of the said judgment the Department has now proposed amendment to Rule 58. The matter was directed to be listed after six weeks i.e. on 13.12.2013. The amendment is yet awaiting its approval from the State Government and therefore an adjournment is sought for.

Kindly circulate this letter at my risk, among the Hon'ble Judges hearing the matter, to avoid any inconvenience to their Lordships.

Thanking you,

Yours faithfully,

Sd/-

[Asha Nair]

Advocate for the Respondent

C.C. to:-

S. RAVI SHANKAR

True Copy

Annexure C (colly) 12

ITEM NO.MM-1 COURT NO.1 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).1257/2013

(From the judgement and order dated 30/10/2012 in WP No.2502/2012 of The HIGH COURT OF BOMBAY)

MAHARASHTRA CHAMBERS OF HOUSING AND IND Petitioner(s)

VERSUS

STATE OF MAHARASHTRA AND ORS Respondent(s)
(With prayer for interim relief and office report)

Date: 12/12/2013 This Petition was mentioned today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE SHIVA KIRTI SINGH

For Petitioner(s) Mr. E.C. Agrawala,Adv.

For Respondent(s) Ms. Asha Gopalan Nair,Adv.

UPON being mentioned the Court made the following
O R D E R

List along with SLP(C)NO. 14153 of 2013.

[Madhu Bala]
Court Master

[Savita Sainani]
Assistant Registrar

True Copy

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ITEM NO.52+ 59 COURT NO.2 SECTION III

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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: 13/12/2013 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) Mr. S. Y. Nachiar, Adv.
Mr. S. Ravi Shankar,Adv.

SLP 1257 Mr. Mahesh Aggarwal, Adv. for
Mr. E.C. Agrawala, Adv.

For Respondent(s) Mr. Chinmoy Khaladkar, Adv. for
Ms. Asha Gopalan Nair,Adv.

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

List both matters after six weeks.

(Pardeep Kumar)
AR-cum-PS

(Sneh Lata Sharma)
Court Master

True Copy