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## **SC larger bench rules in that VAT arises on sale of flats**

The larger bench of the Apex court, in *Larsen & Toubro Limited and Anr. v State of Karnataka and Anr.* (2013-VIL-03-SC-LB) held that the contract for sale of flats where the consideration is to be received in instalments linked to the construction is species of works contract. Accordingly, the State Government has the constitutional right to levy VAT on such sale of flats in the State.

The two-judge bench of Apex court referred this matter to the larger bench to reconsider the legal position laid by the two-judge bench of the Apex court in the matter of *K Raheja Development Corporation v State of Karnataka* (2005) 5 SCC 162.

In *K Raheja Development Corporation* case, the Apex court had held that the developer, under such contracts, undertake to build for flat purchasers, and that the construction is for and on behalf of the purchaser and it is a 'works contract'. Accordingly, the State Government can levy VAT, irrespective of the eventual transaction of sale of immovable property in flats.

On the above reference, the larger bench held that the legal position as pronounced by the two-judge bench in *K Raheja Development Corporation* case is the correct legal position. The dominant nature test held to be not applicable in this case.

As a result, the position in the Raheja judgement stands reaffirmed.

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## Our offices

<p><b>Ahmedabad</b> President Plaza, 1st Floor Plot No 36 Opp Muktidham Derasar Thaltej Cross Road, SG Highway Ahmedabad, Gujarat 380054 Phone +91-79 3091 7000</p>	<p><b>Bangalore</b> 6th Floor, Millenia Tower 'D' 1 &amp; 2, Murphy Road, Ulsoor, Bangalore 560 008 Phone +91-80 4079 7000</p>	<p><b>Chennai</b> 8th Floor, Prestige Palladium Bayan 129-140 Grems Road, Chennai 600 006, India Phone +91 44 4228 5000</p>	<p><b>Hyderabad</b> #8-2-293/82/A/113A Road no. 36, Jubilee Hills, Hyderabad 500 034, Andhra Pradesh Phone +91-40 6624 6600</p>	<p><b>Kolkata</b> 56 &amp; 57, Block DN. Ground Floor, A - Wing Sector - V, Salt Lake. Kolkata - 700 091, West Bengal, India Telephone: +91-033 - 2357 9101/4400 1111 Fax: (91) 033 - 2357 2754</p>
<p><b>Mumbai</b> PwC House, Plot No. 18A, Guru Nanak Road - (Station Road), Bandra (West), Mumbai - 400 050 Phone +91-22 6689 1000</p>	<p><b>Gurgaon</b> Building No. 10, Tower - C 17th &amp; 18th Floor, DLF Cyber City, Gurgaon Haryana -122002 Phone : +91-124 330 6000</p>	<p><b>Pune</b> GF-02, Tower C, Panchshil Tech Park, Don Bosco School Road, Yerwada, Pune - 411 006 Phone +91-20 4100 4444</p>	<p>For more information contact us at, <a href="mailto:pwcetrs.knowledgemanagement@in.pwc.com">pwcetrs.knowledgemanagement@in.pwc.com</a></p>	

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