

GIB/DL/SURESH BANSAL/03-06-2016/HC-48

High Court Category : INTEREST

State : Delhi

Order No.: GIB/DL/SURESH BANSAL/03-06-2016/HC-48

Name of Entry :
SURESH KUMAR BANSAL

Date : 03-06-2016

Breif Issue :

Fact & Issues Involved:

The Petitioners are individuals who have entered into separate agreements with a builder (M/s Sethi Buildwell Pvt. Ltd. The builder has in addition to the consideration for the flats also recovered service tax from the Petitioners, which is payable by him for services in relation to construction of complex and on preferential location charges.

The Petitioners state that their agreement with the builder is a composite contract for purchase of immovable property and contend that in absence of specific provisions for ascertaining the service component of the said agreement, the levy would be beyond the legislative competence of the Parliament.

The Petitioners further claim that the Act and the rules made thereunder do not provide any machinery for computation of value of services, if any, involved in construction of a complex and, therefore, no such tax can be imposed.

Being aggrieved, the Petitioners filed Petitions before the Hon'ble High Court of Delhi challenging the levy of Service tax collected by the Builder on the services 'in relation to construction of complex' as defined under Section 65(105)(zzzh) of the Finance Act, 1994 ("the Finance Act") read with the explanation introduced by virtue of the Finance Act 2010, as being ultra vires of the Constitution of India. The Petitioners also challenged Section 65(105) (zzzzu) of the Finance Act, which seeks to subject preferential location charges charged by a builder to Service tax.

Whether Service tax is eligible on the consideration paid by flat buyers to a builder/ developer, for purchasing a flat in a complex, which was under construction/ development?

Decision of Advance Ruling Authority :

Decision:

These petitions were admitted by an order dated 21.07.2011 and the applications for stay of recovery filed along with the petitions were disposed of by directing that if any amount is collected on the basis

of the impugned explanation, the same shall be refunded with the interest in case the Petitioners succeed. Accordingly, the concerned officer of Respondent No. 1 shall examine whether the builder has collected any amount as service tax from the Petitioners for taxable service as defined in Section 65(105)(zzzh) of the Act and has deposited the same with the respondent authorities. Any such amount deposited shall be refunded to the Petitioners W.P.(C) Nos. 2235/2011 & 2971/2011 Page 43 of 43 with interest at the rate of 6% from the date of deposit till the date of refund.

No services are rendered in a contract to sell immovable property

✓ Imposition of Service tax in relation to a transaction between a developer of a complex and a prospective

✓ buyer does not impinges on the legislative field reserved for the States

✓ No statutory machinery provision for determining the service element in Composite Contract

✓ None of the Rules under the Service Tax (Determination of Value) Rules, 2006 (“the Service Tax Valuation Rules”),

cater to determination of value of services in case of a composite contract which involves sale of land

✓ 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

✓ Challenge to levy of Service tax on preferential location charges under Section 65(105)(zzzzu) negated