IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 20368 of 2015

Date of Decision: 23.9.2015

Amit Gupta and others

....Petitioners.

Versus

Union of India and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Parminder Singh, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing respondents No.3 and 4 to pay the service tax imposed by the Centre Government to be paid by them in light of show cause notice dated 23.4.2015 (Annexure P-6) issued by respondent No.2. Further, a writ of certiorari has been sought quashing the notices dated 4.9.2015 (Annexures P-7 and P-8, respectively) issued by respondents No.3 and 4 for vacation of the premises during the existing of lease period.

2. The petitioners are co-sharers of the piece of property situated at Bhanumal, Karnal and had given the property measuring 34536 square feet on lease to respondents No.3 and 4 vide lease deed dated 28.7.2010 (Annexure P-1) w.e.f. 16.7.2009 to 15.7.2018 at the rate

of ₹ 5,18,040/- per month with an increase of 15% on the expiry period of each three years. As per clause A of the lease deed, in case the court decides that the service tax is leviable on the demised premises, the petitioners shall be entitled to the reimbursement of the service tax from respondents No.3 and 4. The construction of additional space was carried out by the petitioners upon the draft plan of respondents No.3 and 4 and the lease deed dated 23.11.2012 (Annexure P-2) was executed of the additional area measuring 8898.68 square feet at the monthly rent of ₹ 1,33,480/- from 1.11.2011 to 31.10.2010. The levy of service tax was similar as per the lease deed, Annexure P-1. Government of India vide circular dated 28.4.2008 introduced the levy of service tax to be charged from the tenants on the basis of services provided to them by the landlord. The vires of levy of service tax were challenged in CWP No. 11597 of 2010 which was dismissed by this Court. The petitioners moved a representation dated 6.2.2015 along with synopsis dated 4.2.2015 of the Chartered Accountant (Annexure P-3 Colly) for the payment of the service tax of the demised premises. The petitioners were issued summons including summon dated 7.4.2015 (Annexure P-4) to pay the service tax for the financial years 2009-10 to 2014-15. In pursuance to the representation (Annexure P-3 Colly), respondents No.3 and 4 vide letter dated 26.3.2015 (Annexure P-5) informed that the Bank is exempted from service tax and the lessor may apply for exemption from service tax with the competent authority. On the basis of said letter, the petitioners laid the claim of service tax before respondent No.2 who vide order dated 23.4.2015 rejected their claim. Accordingly, the show cause notices dated 23.4.2015 (Annexure P-6) were issued to the petitioners to pay the service tax equivalent to the portion of the rent received by each of the petitioners. After the issuance of show cause notices, respondents No.3 and 4 issued two notices dated 4.9.2015 (Annexures P-7 and P-8, respectively) qua both the lease deeds for vacating the premises on or before 3.12.2015. The petitioners moved various representations including representation dated 8.5.2015 (Annexure P-9) before respondent No.4 for the payment of service tax, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have sent various representations including representation dated 8.5.2015 (Annexure P-9) to respondent No.4, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.4 to take a decision on the representation dated 8.5.2015 (Annexure P-9), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of one month from the date of receipt of certified copy of the order. It is further directed that in case the petitioners are found entitled to the amount, the same shall be released to them in accordance with law within two weeks thereafter.

(AJAY KUMAR MITTAL)
JUDGE

September 23, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**