

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.23404 of 2016 (O&M)

Date of Decision: 25.09.2018

Balvinder Singh

..... Petitioner

Versus

Union of India and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Sandeep Goyal, Advocate
for the petitioner.

Mr. Anshuman Chopra, Advocate
for respondents No.1 and 3.

Ms. Salina Chalana, Advocate
for respondent No.2.

RAJESH BINDAL J.

Petitioner in the present petition is a buyer of a flat sold by Greater Mohali Area Development Authority (GMADA) in the scheme named as Purab Premium Apartments at SAS Nagar, Mohali. Challenge has been made to the provisions of Rule 2A of the Service Tax (Determination of Value) Rules, 2006. Further prayer has been made for directing the respondents not to recover service tax on the construction of flat in the absence of mechanism for determining the value on which service tax is to be calculated in a composite indivisible contract of construction.

Learned counsel for the parties are agreed that the issues raised in the present petition are squarely covered by the Division Bench judgment of Delhi High Court in WP(C) No.2235 of 2011 titled as '*Suresh*

Kumar Bansal vs. Union of India'. However, learned counsel for respondents No.1 and 3 submitted that Leave to Appeal has been granted against the aforesaid judgment of Delhi High Court by Hon'ble the Supreme Court and the matter is pending. However, he is fair enough to state that there is no interim stay. He further submitted that in case the appeal is accepted, the interest of the department is required to be protected.

To this learned counsel for the petitioner does not have any objection.

After hearing learned counsel for the parties, the present petition is disposed of in terms of *Suresh Kumar Bansal's case (supra)*, however, with a condition that in case the appeal filed by the department is accepted by Hon'ble the Supreme Court, the petitioner shall be liable to pay the amount of service tax which shall remain as first charge on the property. It shall be so recorded even if the petitioner transfers the flat to anyone else.

The present petition stands disposed of accordingly.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

25.09.2018
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No