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## **Mohan Lal Goyal Vs Union of India**

### **Civil Writ Petition No. 28348 of 2013**

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**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Jan. 20, 2014

**Acts Referred:**

Constitution of India, 1950 " Article 226, 227#Finance Act, 1994 " Section 65(105)(zzzz), 65(90a), 66

**Citation:** (2014) 175 PLR 854 : (2015) 37 STR 981 : (2014) 75 VST 444

**Hon'ble Judges:** Anita Chaudhry, J; Ajay Kumar Mittal, J

**Bench:** Division Bench

**Advocate:** Arun Bansal, Advocate for the Appellant

**Final Decision:** Dismissed

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### **Judgement**

Ajay Kumar Mittal, J.

Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing notification dated

22.5.2007, Circular dated 4.1.2008 and the amended provisions of Section 66 of Finance Act, 1994 levying and collecting the service tax

retrospectively and the last demand notice dated 26.7.2013, Annexures P.2, P.3 and P.8 respectively vide which demand of service tax has been

made by respondent No. 2 from the petitioner for renting of immovable property. Further direction has been sought to respondent No. 3 to

receive the service tax under the Service Tax Voluntary Compliance Encouragement Scheme 2013 during the pendency of the petition. A few

facts relevant for the decision of the controversy involved, as narrated in the petition, may be noticed. The petitioner is a licensee. He was granted

licence by respondent No. 2 to run chemist shop. He submitted sealed tender for licence to run the shop in accordance with the terms and

conditions laid down in the tender notice. On acceptance of his tender, he was allotted licence to run the shop. The licence was for a maximum

period of five years with increase in licence fee every year. According to the petitioner, no services are being provided to it by respondent No. 2.

Vide notification dated 22.5.2007, Annexure P.2, "renting of immovable property" has been brought within the ambit of service tax liability w.e.f.

June 1, 2007, Annexure P.2. Circular dated 4.1.2008, Annexure P.3 was issued by respondent No. 1 to the effect that input credit of service tax

be taken only if the output is a "service" liable to service tax or goods" liable to excise duty. Since immovable property is neither "service" nor

"goods", input credit cannot be taken. On 13.3.2008, respondent No. 2 issued a notice to the petitioner stating that service tax had been imposed

on immovable rent property w.e.f. 1.6.2007 and demanded service tax at the rate of 12.36% on the licence fee paid from 1.6.2007 within one

week of the issue of the said notice. The petitioner replied to the notice pleading that service tax was not leviable on the rent and if at all the same

was chargeable, respondent No. 2 was liable to bear the same. Respondent No. 2 again issued notice dated 27.3.2008 to the petitioner.

Aggrieved thereby, the petitioner filed CWP No. 9676 of 2008 in this Court. The said petition became infructuous by virtue of the Amendment

Act, 2010 and the same was dismissed as withdrawn with liberty to the petitioner to avail the remedies available to him as per law. The

amendment was carried out on 1.7.2010 with retrospective effect from 1.6.2007. Hon"ble Delhi High Court in WP (C) 1659 of 2008 (Home

Solution Retail India Limited v. Union of India and others W.P. (C) No. 1659 of 2008 (Delhi)), held that Section 65(105)(zzzz) did not in terms

entail that the renting out of immovable property for use in the course or furtherance of the business of commerce would by itself constitute a

taxable service and be exigible to service tax under the said Act. After the amendment, the said petitioner again preferred petition challenging the

applicability of the amended provisions retrospectively. The Delhi High Court vide order dated 23.9.2011 in WP No. 3398 of 2010 upheld the

amended provisions retrospectively. Some of the petitioners approached the Hon"ble Apex Court and the Hon"ble Apex Court passed the order

dated 14.10.2011 granting the benefit of deposit of 50% and furnishing security for the rest of the amount for the period upto 1.10.2011. In 2013,

the respondents came out with a Service Tax Voluntary Compliance Encouragement Scheme, 2013 according to which 50% of the service tax

due can be paid upto 31.12.2013 and the balance 50% upto 30.6.2014 without any interest and penalty. Since the matter of the petitioner was

pending before this Court and the issue in respect of retrospective application of the provisions of service tax was pending before the Apex Court,

the petitioner requested the concerned authorities to receive his due service tax in terms of the aforesaid scheme but respondent No. 3 failed to

consider the same. The respondents on 26.7.2013 again issued a fresh notice to the petitioner for payment of due amount alongwith interest.

According to the petitioner, as per the aforesaid scheme, the alleged demand against him is of Rs. 46,88,477/- only out of which a sum of Rs.

43,57,694/- already stands deducted from his deposits. As such, a balance amount of Rs. 3,30,783/- only is pending. The petitioner filed reply to

the notice. The petitioner avers that the levy of service tax retrospectively w.e.f. 1.6.2007 by Finance Act, 2010 is unsustainable and ex facie bad

in law.-Hence the present petition.

2. We have heard learned counsel for the petitioner and perused the record.

3. Learned counsel for the petitioner submitted that the provisions amended retrospectively from 1.6.2007 levying service tax on renting of

immovable property is ultra vires and the matter is pending consideration before the Hon"ble Apex Court.

4. We find that the issue has been settled by this Court in CWP No. 11597 of 2010 (M/s. Shubh Timb Steels Limited v. Union of India and

another CWP No. 11597 of 2010), decided on 22.11.2010 wherein it has been held that the provisions of Section 65(90a) and Section 65(105)

(zzzz) of the Finance Act, 1994 imposing service tax on renting of immovable property are not ultra vires the Constitution. It has further been held

that giving of retrospective effect to the amendment effective from 1.6.2007 on which date levy was initially provided is also not bad. However, as

regards prayer for deposit of service tax under the Service Tax Voluntary Compliance Encouragement Scheme 2013 is concerned, it shall be open

for the petitioner to file representation to the appropriate authority at the first instance and claim benefit of the same, if available, in accordance with

law. Accordingly, finding no merit in the writ petition, the same is hereby dismissed.