

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 100 OF 2011

IN

WRIT PETITION NO.1456 OF 2010

In the matter of Article 226 of the Constitution of India;

A n d

In the matter of Articles 14, 19(1)(g) and 300A of the Constitution of India;

A n d

In the matter of Entry 92-C of List I of Seventh Schedule of Constitution of India;

A n d

In the matter of levy of service tax under the explanation added to section 65(105) (zzq), 65(105)(zzzh) and of section 65(105)(zzzzu);

A n d

In the matter of constitutional validity of the Finance Act, 2010 (14 of 2010) seeking to amend the Finance Act, 1994 (32 of 1994) introducing an explanation to section 65(105)(zzq) and 65(105)(zzzh) to introduce the service tax and the concept of "deemed Service" for any commercial or industrial construction or construction of residential complex done prior to obtaining Completion Certificate and a new entry of (zzzzu) in section 65 (105) of Finance Act, 1994 to introduce service tax on "Special Service provided for preferential location or external or internal development of complexes on extra charges".

1. MAHARASHTRA CHAMBER OF)
HOUSING INDUSTRY, an Association)
Of Individuals and legal entities)
Associated with Housing Industry)
Registered under the provisions of the)
Societies Registration Act,1860)

- having registration No. BOM. 243/82)
 G.B.S.S.D of 1982 and also registered)
 under Registration No.BOM. F. 8096)
 of 1983 under Bombay Public)
 Trust Act, 1950 having their office at)
 Maker Bhavan No.2, 4th floor, 18, Vithal)
 Thakarsi Marg, New Marine Lines)
 Churchgatge, Mumbai 400 020)
2. Mr. Rajesh Shah, Director of)
 M/s. Dosti Reality Ltd.,)
 (earlier known as M/s. Dosti Associates))
 Lawrence & Meyo House, 1st floor,)
 276, Dr. D.N Road, Fort,)
 Mumbai 400 001.) ..Petitioners
- Versus
1. Union of India through Joint Secretary)
 Ministry of Law and Justice, Aayakar)
 Bhavan, M.K.Road, Churchgaga,)
 Mumbai 400 021)
2. Secretary, Ministry of Finance, Govt. of)
 India, North Block, Lok Nayak Bhavan)
 No.1 New Delhi)
3. Joint Secretary, Tax Research Unit,)
 Ministry of Finance, Department of)
 Revenue,)
4. Central Board of Excise and Customs)
 Constituted under the provisions of)

- Central Board of Revenues Act, 1963)
 Having its office at North Block, New)
 Delhi 110 001)
5. Director General of Service Tax)
 Having his office at Parimal Chambers)
 Jeejibhoy Lane, Parel (East),)
 Mumbai 400 012)
6. Commissioner of Service Tax having his)
 Office at 6th floor, Central Excise Bldg)
 115, M.K.Road, Churchgate,)
 Mumbai 400 020)..Respondents

TAKE NOTICE THAT this Hon'ble Court will be moved before Their Lordships Hon'ble Mr. Justice _____ and Mr. Justice _____ on _____ day of January, 2011 at 11 O'Clock Standard Time or soon thereafter as Counsel can be heard by Counsel for the following reliefs:-

- (a) That the Order dated 23rd July 2010 read with Order dated 3rd August 2010 passed in the above Petition be varied and modified to the extent:
- (i) That the Members of the Petitioner No.1 whose names have been set out in Exhibit "A" to the Petition are permitted to cause the Purchasers of premises from them to deposit the amount of Service Tax and such further amount in addition thereto as they may deem fit with any Bank or Financial institution in Escrow as per speciman Escrow Agreement annexed to the Affidavit in Support as Exhibit "E" thereto.

- (ii) Alternatively, the Members of the Petitioner No.1 whose names have been set out in Exhibit "A" to the Petition be permitted to deposit the service tax with Respondent No.6 under protest subject to outcome of the Petition with direction to the Respondent No.6 to refund the same with interest at the rate of 12% p.a. in the event of the Petitioners succeed in the above Petition;
- (iii) Alternatively, the Members of the Petitioner No.1 whose names have been set out in Exhibit "A" to the Petition be permitted to deposit the service tax with the Prothonotary & Senior Master/ Registrar (O.S.) of this Hon'ble Court with direction to refund the same with accrued interest thereon in the event the Petitioners succeed in the above Petition;
- (b) That in the event of the Order dated 23rd July 2010 read with Order dated 3rd August 2010 passed in the above Petition is varied and modified to the extent sought in prayer (a), the Undertakings given by some of the Members of the Petitioner No.1 be treated as cancelled and/or revoked and the members of the Petitioners No.1 be relieved from their undertakings;
- (c) That in the event the prayers (a) and (b) are not granted, the above Petition be heard and disposed of expeditiously within time bound period;

(d) Any such other and further.

Dated this day of January, 2011.

THIS NOTICE OF MOTION is taken out)
 by Parimal K. Shroff & Co., Advocates for)
 Petitioners having their office at Rustom)
 Building 1st Floor, 29, Veer Nariman Road,)
 Fort, Mumbai - 400 023.)

For M/s. Parimal K. Shroff & Co.

Advocate for the Petitioners

To,

1. Union of India
 2. Secretary, Ministry of Finance, Govt. of India.
 3. Joint Secretary, Tax Research Unit,
Ministry of Finance, Department of Revenue.
 4. Central Board of Excise and Customs Constituted under the provisions of
Central Board of Revenues Act, 1963
 5. Director General of Service Tax
 6. Commissioner of Service Tax
- The Respondents abovenamed

N.B.: TAKE NOTICE that the Affidavit of Mr. Deepak Goradia, Honorary
 Secretary of the Petitioner No. 1 abovenamed, affirmed on day of
 January, 2011 will be used in support of this Notice of Motion.

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. OF 2011
 IN
WRIT PETITION NO. OF 2010

Maharashtra Chamber of Housing
Industry & Ors. Petitioners

Versus

Union of India & Ors. Respondents

NOTICE OF MOTION

Dated this day of January, 2011

M/s. Parimal K. Shroff & Co.,
Advocates for the Petitioners
Rustom Building, 1st Floor,
29, Veer Nariman Road,
Fort, Mumbai 400 023.