

OD-3

WP No.291 of 2016
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

BAR ASSOCIATION, HIGH COURT, CALCUTTA & ANR.
Versus
UNION OF INDIA & ORS

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date : 31st March, 2016.

Appearance:

Mr. R. N. Bajoria, Sr. Adv.
Mr. S. K. Kapur, Sr. Adv.
Mr. J. P. Khaitan, Sr. Adv.
Mr. A. Chakraborti, Adv.
Mr. P. Jhunjhunwala, Adv.
Mr. A. Gupta, Adv.
Mr. P. K. Jhunjhunwala, Adv.

Mr. S. B. Saraf, Adv.
Md. T. M. Siddiqui, Adv.

Mr. Koushik Chandra,
Additional Solicitor-General
Mr. S. Bhattacharya, Adv.

The Court : The name of the first petitioner has been deleted by an order passed on March 30, 2016.

The petitioner is a designated Senior Advocate practising in this Court and challenges notifications bearing nos.9/2016 and 18/2016, both dated March 1, 2016, seeking to amend previous notifications of June 30, 2012 pertaining to service tax. The petitioner also challenges another notification bearing no.19/2016 dated March 1, 2016 seeking to amend the Service Tax Rules, 1994. Rule 6 of the Service Tax Rules, 1994 and Rule 3 of the Point of Taxation Rules, 2011, insofar as such provisions require the

payment of service tax by Senior Advocates on the basis of the issue of memorandum of fees, have also been challenged.

The petitioners refer to an instruction issued by the Central Board for Direct Taxes on July 22, 1974 covering the Wealth Tax Act, 1957. Such instruction no.720/CBDDT recognised that advocates who plead on the Original Side on instructions of solicitors and advocates in the Supreme Court do not act. The relevant instruction also recorded that when counsel is engaged by solicitors, “there will be no contract, express or implied, between the said pleading advocates and lay clients for payment of the former’s fees.”

Upon service tax being introduced by the Finance Act, 1994, several exceptions were made, particularly as to who would be liable to pay service tax on account of Senior Advocates and when such tax would be payable. The petitioner complains that though the Finance Bill, 2016 has not yet been passed and proposals are contained in such bill to alter the position pertaining to Senior Advocates, the impugned notifications seek to bring in the changes with effect from April 1, 2016 without affording the Parliament an opportunity to discuss the matters covered by the Finance Bill.

Prima facie, it appears that the changes sought to be brought about may unreasonably prejudice Senior Advocates. Affidavits are called for. Affidavit-in-opposition be filed within four weeks from date; reply thereto, if any, may be filed without a fortnight thereafter. The petition will appear for hearing on the first Monday thereafter.

The impugned notifications bearing nos.9/2016, 18/2016 and 19/2016, all dated March 1, 2016 and referred to at paragraph 5 of the petition, will remain stayed insofar as such notifications pertain to the levy of service tax on Senior Advocates.

Leave is granted for the petitioner to sue in a representative capacity. The petitioner will cause the gist of this petition to be advertised within a fortnight from date in two leading English dailies having national circulation. The advertisements will call upon Senior Advocates interested to oppose the cause to apply to be impleaded. Senior Advocates supporting the cause need not apply for being added as parties, unless it is perceived that the petitioner is not diligent in pursuing the same.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

bp.