

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (T) No. 1599 of 2019

M/s Sulabh International Social Service Organization,
 (Jharkhand State Branch) Petitioner
 Versus

The Union of India through the Commissioner,
 Central Goods & Services Tax and Central Excise,
 Ranchi and others Respondents

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Petitioner : Mr. J.K. Mittal, Advocate;
 Mr. Sumeet Gadodia, Advocate;
 Mrs. Shilpi John, Advocate;
 Mr. Ranjeet Kushwaha, Advocate.
 For the Respondents : Mr. Ratnesh Kumar, Advocate

Order No. 02 : Dated 4th April, 2019

Aniruddha Bose, CJ.

In the present writ petition, the petitioner, a society registered under the Societies Registration Act, 1860 questions initiation of certain proceedings under Chapter V of the Finance Act, 1994 (the 1994 Act). The main content of that chapter has come to be known as service tax. The aforesaid statute stood omitted with effect from 1st July, 2017 upon introduction of Central Goods and Services Tax Act, 2017 (the 2017 Act). The omitting provision is contained in Section 173 of the 2017 Act. This provision stipulates:-

"173. Amendment of Act 32 of 1994.- Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 (32 of 1994) shall be omitted."

2. Section 174 of the 2017 Act contains the saving clause in sub-section (2) thereof. This sub-section reads:-

"174. Repeal and saving.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994)(hereinafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not –

- (a) revive anything not in force or existing at the time of such amendment or repeal; or
- (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

- (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or
- (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
- (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed."

3. In the case of the writ petitioner, a notice was issued on 5th December, 2018. The body of this notice reads:-

"This is in continuation to Show Cause Notice F. No. DZU/INV/F/ST/201/2016/2446 dt. 03.04.2018 issued by ADG, Directorate General of GST Intelligence, Delhi Zonal Unit wherein 22 SISCO units (01 unit located at Ashok Nagar, Ranchi Jharkhand STC-AACTS0080NST001) located all across the country which have been Show caused for wrong availment of Notification No. 25/2012(ST dt. 20.06.2012 (Mega Exemption Notification) and its various clauses/provisions by taking exemptions for the work accomplished/done (House keeping services, Cleaning services) in various authorities of the State/Central government during the Financial Year 2012-13 to 2015-16 and also availing benefit of Notification No. 30/2012-ST dt. 20.06.2012 amended vide Notification No.

7/2015-ST dt. 01.03.2015 (Reverse Charge Mechanism) under Manpower recruitment/supply services to various business entities across the country.

Further, in this connection, it is directed to submit the under mentioned documents/returns/invoices in relation to work performed during the financial year 2016-17 and 2017-18 until 30.06.2018.

1. Audited Balance Sheet And Profit/Loss Account for the Financial Year 2016-17 and 2017-18
2. ST-3 return copy for the Financial Year 2016-17 and 2017-18 (uptill 30.06.2017)
3. Quarter wise (2016-2017 and 2017-18 uptill 30.06.2017) total Value of Exempted services on which service tax has not been paid i.e. availing benefit of Notification No. 25/2012-ST dt. 20.06.2012 under clause 25(a) /9(b) (iii) (Cleaning Services provide to Government/local entities and educational entities).
4. Quarter wise (2016-2017 and 2017-18 uptill 30.06.2017) total taxable value and the abatement claimed under Notification No. 30/2012-ST dt. 20.06.2012 **amended vide Notification No. 7/2015-ST dt. 01.03.2015** for the services provided to business entities, if any, under Manpower recruitment/supply services.
5. Contracts/Letters related to claim of services provided to Govt/Local Authority/Governmental Authority & various business entities."

4. We find from the text of the said notice that this was in relation to an enquiry or audit as envisaged in Rule 5A of the Service Tax Rules, 1994. The specific provision under which the aforesaid notice was issued, however, has not been spelt out therein. The said notice has been followed by other reminders and summons. We are apprised by Mr. J.K. Mittal, learned counsel appearing for the petitioner, that the officers appointed under the 2017 Act have already visited the premises of the writ petitioner on 23rd March, 2019 and have collected several documents. Legality of such notices and summons as well as the visit of the said officers in the premises of the writ petitioner have been questioned in the writ petition. The main ground on which the writ petition is founded is that the saving clause which we have reproduced above does not protect the Service Tax Rules and hence any

action taken in pursuance of the said Rules would be without the authority of law. On this count, a Constitutional Bench judgment of the Hon'ble Supreme Court in the case of **Kolhapur Canesugar Works Ltd. and another Vs. Union of India and others** reported in **(2000) 2 SCC 536** has been relied upon by Mr. Mittal. The other authority on the same point relied upon by him is an earlier judgment of the Hon'ble Supreme Court in the case of **Air India Vs. Union of India and others** reported in **(1995) 4 SCC 734**.

5. Mr. Ratnesh Kumar, learned counsel appearing on behalf of the Union of India, on the other hand has sought to sustain the action of the authorities on the basis of sub-clause (2) of Section 174 of the 1917 Act only. His argument is that the acts sought to be protected by the saving clause contained in sub-clause (e) of Section 174 (2) of the 1917 Act also includes proceedings to be initiated subsequent to omission of the 1994 Act. In this regard, he has relied upon a judgment of the Hon'ble Guwahati High Court delivered in the case registered as **W.P. (C) 2059/2018 (Laxmi Narayan Sahu Vs. Union of India and 2 Ors.)** decided on 12th October, 2018. In that decision, demand-cum-show cause notices issued by the Assistant Commissioner under the Central Goods and Services Tax Act were under challenge. It was, inter-alia, held by the Hon'ble High Court of Guwahati rejecting the plea of the writ petitioner:-

"31. As the provisions of Section 174(2) also is clearly applicable in respect of an omission of the enactment under section 173, therefore, any such investigation, enquiry, etc., that was instituted, continued or enforced under Chapter V of the Finance Act of 1994, continues to remain in place inspite of such omission of Chapter V of the Finance Act. In other words, Section 174(2) (e) is a savings clause in respect of any investigation, enquiry etc., that was/to be instituted under Chapter V

of the Finance Act of 1994. A conjoint reading of Section 173 and 174 (2) (e) would show that while bringing an omission to the provision of Chapter V of the Finance Act of 1994 a savings clause for continuing with the proceedings initiated/to be initiated was also duly provided. Existence of the savings clause in respect of omission of Chapter V of the Finance Act of 1994 clearly brings it within the purview of the provisions laid down by the Constitution Bench of the Supreme Court in paragraph 37 of Kolhapur Canesugar Works Ltd. (supra).

32. As already elucidated hereinabove, paragraph 37 of Kolhapur Canesugar Works Ltd. (supra) provides that if a statute stood omitted with a savings clause, the savings clause would not render it impermissible for the proceedings initiated/to be initiated under Chapter V of the Finance Act of 1994, which stood omitted by Section 173 of the CGST Act of 2017 to be continued.

33. A conjoint reading of the provisions laid down in paragraph 37 of Kolhapur Canesugar Works Ltd. (supra) and Section 173 and 174(2)(e) would lead to a conclusion that although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under Section 174(2)(e) will enable the continuation of the investigation, enquiry, verification etc., that were made/to be made under Chapter V of the Finance Act of 1994.”

6. An order of the Hon'ble Calcutta High Court refusing the interim protection passed on 15th January, 2019 in **W.P. 380(W) of 2019** in the case of **M/s Gitanjali Vacationville Private Limited & Anr. Vs. The Union of India & Anr.** has also been relied upon by Mr. Kumar. He has drawn our attention to the following passage from the said order:-

“Prima facie, reading Sections 173 and 174 of the Act of 2017 it appears that, an enquiry or an investigation or even a legal proceeding under the Act of 1994 is permissible notwithstanding the coming into effect of the Act of 2017. The authorities are proposing undertake an audit for the period when the Act of 1994 was applicable. The authorities are entitled to do so.

In such circumstances, I am not minded to grant any interim order as prayed for.”

7. At the interim stage, we have to examine if any fresh proceeding under the 1994 Act for scrutiny, inspection or audit, if commenced after omission of the said Act is prima-facie legally valid or not. Though Mr. Mittal has submitted that the action complained against in this writ petition has been

undertaken in pursuance of the power under Rule 5A of the 1994 Rules, as we have already observed, the legality of the instruments challenged in this writ petition do not specify the provisions under which such actions have been taken by the revenue authorities. The saving clause itself after omission of the statute does not refer to any particular provision of the Rules. Sub-clause (e) which we have quoted in the preceding part of this order gives a list of actions which are saved.

8. On the question as to whether the fresh proceeding is permissible or not upon omission of the said statute, the controlling part appears under the said sub-clause in the following phrase:

“..... may be instituted, continued or enforced.”

Of the three situations contemplated in that phrase, the expression which comes for interpretation is “may be instituted”. The question is whether such institution ought to have taken place before the omission of the statute and subsequent to introduction of the saving provision. There are two interim orders passed by the Hon’ble High Courts of Gujarat and Delhi. In the case of **OWS Warehouse Services LLP Versus Union of India [R/Special Civil Application No. 16226 of 2018]**, in a similar situation, the order impugned therein has been stayed at ad interim stage. The Hon’ble Delhi High Court in the case of **M/s T.R. Sawhney Motors Pvt. Ltd. Versus Union of India and another [W.P.(C) 2138/2019 & CM Appl. No. 10002/2019 (stay)]** has also passed an interim order in favour of writ petitioner in a similar situation.

9. In our prima facie view, the expression “instituted” in sub-clause(e) would imply the proceeding which stood

already instituted at the time of repeal or omission of the 1994 Act.

10. In such circumstances, we choose to follow the course taken by the Hon'ble High Courts of Gujarat and Delhi and direct status quo to be maintained till the next date of hearing so far as the proceeding which form the subject matter of the present writ petition is concerned.

11. Let counter-affidavit be filed by 18th April, 2019. Rejoinder thereto may be filed by 29th April, 2019.

12. Matter shall be listed for hearing on 7th May, 2019 at 2:15 p.m.

(Aniruddha Bose, C.J.)

(Ratnaker Bhengra, J.)

AKT/SB