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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 2138/2019 & CM Appl.No. 10002/2019 (stay)**

M/S T.R. SAWHNEY MOTORS PVT.LTD. Petitioner
Through: Mr. J.K.Mittal & Ms. Vandana Mittal,
Advocates

versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Siddharth Khatana, Sr.panel
counsel for Respondent No.1.
Mr. Amit Bansal, Advocate for
Respondent No.2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
11.03.2019

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CM Appl.No. 10002/2019 (stay)

1. The challenge in the present petition is to the letter issued to the Petitioner on 20th February, 2019 by the Assistant Commissioner (Audit), Goods and Service Tax Audit-I Commissionerate (Respondent No.2) requiring the Petitioner to produce the following documents for the purposes of Audit of its accounts/records for the period from 2014-15 to June, 2017:

“i) Copies of Balance Sheet, Trial Balance and Annual Financial Statement for the years 2014-15 to 2017-18.

ii) Copies of Service Tax returns (ST-3) for the year 2014-15 to June 17.

- iii) Annual returns submitted to the Registrar of Companies, Sales Tax Returns, Income tax Returns along with annexure for the years 2014-15 to 2017-18.
- iv) Returns if any submitted to the Banks/Financial Institutions for the years 2014-15 to 2017-18.
- v) Cost Audit, Tax Audit and Internal Audit Reports, wherever applicable for the years 2014-15 to 2017-18.
- vi) Copy of Form 26AS, 26Q and 24Q for the years 2014-15 to 2017-18.
- vii) Copies of Cenvat credit account maintained under Rule 9(5) of Cenvat Credit Rule, 2004.
- viii) List of input service supplier along with sample invoices on which credit is taken (preferably high value invoices of different time period)
- ix) Sample copies of bills/invoices/debit note/credit note/any other similar document issued during the audit period.
- x) Contracts, MOUs, Agreements with principals, clients, other group companies or any other person to whom any service is provided or received.
- xi) Copies of previous Audit /Investigation report if any.
- xii) A detailed note on all the services/other activities undertaken by you.
- xiii) Reconciliation of Service Tax return with balance sheet, trial Balance for the period 2014-15to2017-18(up to June, 1).”

2. The Petitioner is aggrieved by the above request on many grounds. The first is that Rule 5A of the Service Tax Rules, 1994 (‘ST Rules’) under

which the above order/letters have been issued is itself unconstitutional. This Court had in its judgment in *Mega Cabs Pvt. Limited v. Union of India 2016 (43) S.T.R. 67 (Del.)* declared Rule 5A (2) of the ST Rules to be ultra vires the Finance Act 1994. However, the Supreme Court of India while issuing notice in the Special Leave Petition (C) 26675 of 2016 filed by the Union of India against the above judgment has stayed the operation of this Court's judgment.

3. Mr. J. K. Mittal, learned counsel for the Petitioner, has placed reliance on an order passed by the High Court of Gujarat in *M/s OWS Warehouse Services LLP vs. Union of India 2018 (19) GSTL 27 (Guj)* where after noticing the judgment of this Court in *Mega Cabs (supra)* and the stay thereof by the Supreme Court, the Gujarat High Court nevertheless stayed a similar notice issued to the Petitioner in that case. The Gujarat High Court noticed that while enacting the Central Goods and Services Tax Act, 2017 there was no provision saving Rule 5A of the ST Rules to enable fresh proceedings for audit to be initiated under that rule for a period prior to the repeal of the Rule.

4. The second issue raised by the Petitioner concerns the competence of the authority to issue the impugned notice. As already noticed, it has been issued to the Assistant Commissioner (Audit) whereas Rule 5A (2) mandates that it should be issued by an officer "empowered under sub-Rule (1) or an audit party deputed the Commissioner or Controller and Auditor General". When enquired whether the Assistant Commissioner (Audit) was duly authorised by the Commissioner, Mr. Amit Bansal, learned counsel for the

Respondents sought more time for instructions.

5. On 6th March, 2019 when the matter was first listed time was sought for this very purpose. Therefore the Court on that date did not pass an interim order and adjourned it for today. Mr. Bansal then submitted that today was the first time that he was appearing and, therefore, the Court should grant him further time. The Court is not inclined to do so. When time was sought specifically for this purpose the Respondent ought to be ready with the instructions whether the Assistant Commissioner (Audit) was duly authorised.

6. The third issue raised by the Petitioner concerns the number of documents sought by the Respondents. Indeed, it appears *prima facie* to be a very long list of documents and it is doubtful whether all of these documents are in fact necessary for the purposes for which the notice has been issued. This is apart from the fact that there has already been an audit of the Petitioner's account/records up to the year 2014-15. This and this fact is not even noticed in the impugned letter dated 20th February 2019 issued by Respondent No.2.

7. For the aforementioned reason, the Court is of the view that the Petitioner has made out a *prima facie* case in its favour to grant of further stay of proceedings pursuant to the impugned letter/notice dated 20th February, 2019. It is accordingly directed that till the next date of hearing, further proceedings pursuant to the impugned letter dated 20th February, 2019 shall remain stayed.

8. List on 1st August, 2019.

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9. Mr. Bansal seeks and is granted six weeks' time to file counter affidavit. Rejoinder be filed before the next date. List on 1st August, 2019.

10. A copy of this order be given *dasti* to the parties under the signatures of Court Master.

S.MURALIDHAR, J

I.S.MEHTA, J

MARCH 11, 2019/mw