IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 30080 of 2014 (H)
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PETITIONER(S):

M/S.INDITRADE DERIVATIVES AND COMMODITIES LTD.
(EARSTWHILE M/S JRG WEALTH MANAGEMENT LTD)
XXXVI/202, J.J. COMPLEX, DIARY METHANAM ROAD
KOCHI 24,
REPRESENTED BY ITS AUTHORISED SIGNATORY MR. SAMSON K.J
MANAGING DIRECTOR.

BY ADV. SRI.JOSE JACOB

RESPONDENT(S):
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1. **UNION OF INDIA**
   REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE
   DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI 110001.

2. **COMMISSIONER OF CENTRAL EXCISE,**
   CUSTOMS & SERVICE TAX
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
   CUSTOMS AND SERVICE TAX, C.R BUILDING, I.S PRESS ROAD
   KOCHI 682018.

3. **SUPERINTENDENT (AUDIT),**
   OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
   CUSTOMS, AND SERVICE TAX, C.R BUILDING
   I.S PRESS ROAD, KOCHI 682018.

BY ADV. SRI.JOHN VARGHESE,SC,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2015, ALONG WITH 3541/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 30080 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE NOTICE INTIMATING CONDUCTING OF GENERAL AUDIT DATED 25-01-2013

EXHIBIT P2 TRUE COPY OF THE AUDIT REPORT DATED 20-05-2013

EXHIBIT P3 TRUE COPY OF THE REPLY TO AUDIT REPORT 21-08-2013

EXHIBIT P4 TRUE COPY OF THE SHOW CAUSE NOTICE 02-09-2014

RESPONDENT(S)' EXHIBITS

EXHIBIT R2(A) TRUE COPY OF THE ORDER OF THE HONOURABLE SUPREME COURT IN SLP(C)NO.34872/14 DATED 18/12/14

EXHIBIT R2(B) TRUE COPY OF THE AMENDMENT TO RULE 5A(2) OF THE SERVICE TAX RULES, 1994 ISSUED BY THE CENTRAL BOARD OF EXCISE AND CUSTOMS DATED 5/12/14.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.30080 OF 2014 (H)
&
W.P.(C).NO.3541 OF 2015 (P)

Dated this the 25th day of February, 2015

J U D G M E N T

In both these writ petitions, the petitioners challenge Rule 5A of the Service Tax Rules, 1994 as ultra wires to the Finance Act, 1994, as amended. The main ground of challenge against Rule 5A is that the audit that is contemplated under the said Rules is contrary to the provisions of Section 72A of the Finance Act, 1994 as amended. The petitioner questions the competence of the Controller and Auditor General of India [CAG]/Departmental Audit Committee to look into the accounts of a private assessee. It is pointed out that the Delhi High Court, as well as the Calcutta High Court, have taken a view that no audit of private assessee can be undertaken by the Controller and Auditor General of India/Departmental Audit Committee and that the said Courts have held Rule 5A of the Service Tax Rules to be ultra wires the rule making power conferred under Section 94 of the Finance Act, 1994. Learned Standing counsel for the Department would, however, point out that against the judgment of the Delhi High

Court, the Department has preferred an appeal before the Supreme Court, and the judgment of the Delhi High Court has been stayed by the Supreme Court. That apart, I notice that in **<u>Association of Unified Tele Services Providers and Others v. Union of India and Others - [(2014) 6 SCC 110]</u>**, the Supreme Court, while dealing with the powers of the CAG in relation to accounts of Union and States, has clarified that the CAG has a duty to examine and satisfy itself that all the Rules and procedures, in respect of Telecom Service Providers in revenue sharing contracts with the State, are being met by the service providers as a whole. Thus, it is clear from the said judgment that, although in the context of cases involving natural resources, a right was recognized in the CAG to audit the accounts of private persons who were obliged to make payments to the Central Government pursuant to contracts entered into with the Central Government. In the light of the said judgment, I am not inclined to stay the operation of Rule 5A of the Service Tax Rules, for the time being. However, as the petitioners want to have the said issue examined before this Court, the writ petitions are admitted solely for the purposes of examining, in detail, the contentions regarding the validity of Rule 5A of the Service Tax Rules. I make it clear that the prayer of the petitioners to grant a stay of further proceedings, pursuant to the show cause notices issued to them by the respondents, is not granted and the petitioners are relegated to the alternate remedy of pursuing the show cause notices before the authorities under the Finance Act, 1994, as amended. The writ petitions are admitted only for the purpose of examining the issue of validity of Rule 5A of the Service Tax Rules and the interim order dated 19.1.2015, as extended on 29.1.2015, is hereby vacated.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp