Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 733 OF 2007

M/s. Pheroze Frarmroze & Co. ...Petitioner

Versus

The Union of India & Ors. ...Respondents

Mr. V. Sridharan, Senior Advocate, *a/w Mr. Prakash Shah & Mr. Jas Sanghavi, for Petitioner.*

Mr. Pradeep S. Jetly, *a/w Mr. Jitendra B. Mishra, for the Respondents Nos. 1 and 2.*

Ms. Prachi Sawant, *a/w Mr. Harsh Parte, i/b M/s. M. V. Kini, for the Respondent No. 3.*

CORAM: S.C. DHARMADHIKARI & G.S. PATEL, JJ.

DATED: 26th February 2016

PC:-

1. After this Petition was argued for some time and the attention of Mr. Jetly, learned Advocate appearing for Respondents Nos. 1 and 2 was invited to the essential controversy, it has been fairly stated that the same stands covered by a Circular bearing No. 80/10/2004-S.T. dated 17th September 2004 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi, particularly, paragraph 5 thereof at page 2. Thus, in case a part of airport / civil enclave premises are rented / leased out, the rental/lease charges would not be subjected to service tax as the activity of letting out premises is not rendering a service.

2. In terms of a Judgment of the High Court of Delhi reported in 2014 (35) Service Tax Reporter, page 659, this service was not brought to tax prior to 1st June 2007. Once the controversy pertains to the period prior to 1st June 2007, then, it is conceded that the act or transaction of the Petitioner cannot be brought to tax.

3. In view of this stand taken by the Respondents, we need not assign any elaborate and detail reasons.

4. The Petition is allowed by quashing and setting aside such of those demand notices by which a demand was raised on the Petitioner to pay the service tax. Thus, the letters dated 3rd August 2005 and 24th May 2006 issued by Respondents Nos. 2 and 3 respectively are quashed and set aside. There will be no order as to costs.

5. The bank guarantee, if any, furnished shall stand discharged and be returned to the Petitioner.

(G. S. PATEL, J.) **(S. C. DHARMADHIKARI, J.)**