W.M.P.Nos.32140, 32141 & 32144 of 2016
in W.P.Nos.37510, 37511 & 37515 of 2016

T.S.SIVAGNANAM, J.,

Heard Mr.S.Krishnanandh, learned counsel for the petitioner, in all the above petitions.

2. It is submitted by the learned counsel for the petitioner, in all the petitions, that the legal issue involved in these cases are covered by a decision of the Hon'ble Division Bench of the Delhi High Court, in the case of **Intercontinental Consultants and Technocrats Pvt. Ltd., v. Union of India,** reported in **2013 (29) STR 9 (Del)** holding that Rule 5 (1) of the Service Tax (Determination of Value) Rules, 2006, is repugnant to Sections 66 and 67 of the Finance Act, 1994 and accordingly, the same had been struck down. Further, in the appeal filed by the Revenue before the Hon'ble Supreme Court, no stay has been granted.

3. In the light of the above position, the Hon'ble Division Bench, in W.P.Nos.10765 to 10766 of 2016, has granted an order of interim stay, by order, dated 04.04.2016 to the following effect:-

> "Heard Mr.Krishna Srinivas, learned counsel for the petitioner and Mr.A.P.Srinivas, learned Standing Counsel for the Department.

2. The show cause notices, impugned in these writ petitions, have been issued under Rule 5(1) of the Service Tax (Determination of Value) Rules, 2006. But, a Bench of the Delhi High Court has declared the said Rule, by its decision in ***Intercontinental Consultants and Technorats Pvt. Ltd. Vs. Union of India [2012 SCC Online Del. 5958],*** to be ultra vires and unconstitutional.

3. Though the Supreme Court has ordered notice in the special leave petition in S.L.P.(Civil)No.10918 of 2013, no stay appears to have been granted. In view of the observations made by the Supreme Court in paragraph 22 of its decision in ***Kusum Ingots & Alloys Ltd. Vs. Union of India [2004 (6) SCC 254],*** the declaration of a provision of law by any High Court, which has jurisdiction, to be unconstitutional, would have effect through out the territory of India. Therefore, it is upto the Union of India to move their applications for stay before the Supreme Court in the pending special leave petition, as otherwise all such notices issued through out India are liable to be stayed.

4. Therefore, there will be an interim stay. Post after two weeks for counter."

4. Hence, following the above order, there will be an order of interim stay, in these petitions also. Mrs. Hema Muralikrishnan,

learned Senior Panel Counsel, accepts notice for the respondent and seeks time to file counter, in all these matters. The respondent is granted eight weeks time to file counter. The WMPs are ordered accordingly.

5. Since the legal issue involved is now seized off by the Hon'ble Division Bench, in the above referred to writ petitions, which are for declaratory reliefs, the orders passed in those writ petitions will have a direct bearing on the impugned orders in these writ petitions. That apart, the order of the Hon'ble Supreme Court would also have a direct effect on the matters.

6. In the light of the above reasons, the Registry is directed to list these writ petitions, along with W.P.Nos.10765 to 10766 of 2016, before the Hon'ble Division Bench, after obtaining necessary orders from My Lord, The Hon'ble The Chief Justice.

26.10.2016

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T.S.SIVAGNANAM, J.,

srk

W.M.P.Nos.32140, 32141 & 32144 of 2016
in W.P.Nos.37510, 37511 & 37515 of 2016

26.10.2016