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

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\+ **W.P.(C) 1538/2016**

ELDECO INFRASTRUCTURE & PROPERTIES LTD. ..... Petitioner

Through Mr Puneet Agarwal, Ms P Roy and Mr Pawan Arora, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr Vivek Goyal, CGSC with Mr Arun Kumar, Govt. Pleader for R1.
Ms Sonia Sharma, Senior Standing Counsel for R2.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **22.02.2016**

CM 6629/2016 (for Exemption)

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 1538/2016 & CM 6628/2016 (for stay)

3. The short issue that arises in this Petition concerns the power of the Comptroller & Auditor General of India (CAG) to conduct an audit of the accounts of the Petitioner in terms of Rule 5A (2) of the Service Tax Rules 1994 ('Service Tax Rules') read with Section 94 (2) (a) of the Finance Act, 1994.

4. Although, the challenge is raised in this Petition to the validity of the aforementioned Rule 5A of the Service Tax Rules, counsel for the Petitioner informs the Court that the Petitioner has no objection to providing the CAG the documents sought by it in terms of Rule 5A (2) as long as it does not insist on visiting the premises of the Petitioner to carry out an audit.

5. Rule 5A (2) as amended recently dated 5th December, 2014 reads as under:-

> "5A (2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-
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> (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
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> (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and
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> (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),
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> for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be."

6. It is seen that documents sought by the CAG from the Petitioner have been listed in Annexure A to its letter dated 28th September, 2015 to the Petitioner. Admittedly some of the said documents have already been provided by the Petitioner.

7. In view of the statement made by the learned counsel for the Petitioner, it is directed that within two days, the office of the CAG will inform the

Petitioner the documents it seeks from the Petitioner in exercise of its powers under Section 5A (2) of the Service Tax Rules 1994. It is made clear that the documents sought should be in terms of clauses (i) to (iii) of Rule 5 A (2) of the Service Tax Rules. Within a period of 15 days thereafter, the Petitioner will provide the documents sought by the CAG.

8. Subject to compliance by the Petitioner with the above direction, the CAG will not be permitted to insist on visiting the premises of the Petitioner for conducting any audit in exercise of the powers under Rule 5A (2) of the Service Tax Rules.

9. The Court leaves open the question whether an entity like the Petitioner can be subject to audit by the CAG in terms of Rule 5A (2) of the Service Tax 1994 for examination in an appropriate case.

10. The writ petition and the application are disposed of in the above terms.
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S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 22, 2016
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