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

\+ W.P.(C) 7507/2016

RATEGAIN TRAVEL TECHNOLOGIES (P) LTD. (DEMERGED ENTITY FROM) M/S. RATEGAIN IT SOLUTIONS PVT. LTD.
..... Petitioner

Through: Mr. Rajesh Jain, Advocate along with Mr. R.K. Sharma and Mr. Virag Tiwari, Advocate.

versus

UNION OF INDIA THROUGH COMMISSIONER SERVICE TAX (AUDIT-1)
..... Respondent

Through: Mr. Pramod Kr. Raj, Sr. Standing Counsel along with Mr. Deepak Anand, Jr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **24.08.2016**

The writ petitioner is aggrieved by issue of the show-cause notice dated 21.04.2016. It is contended that this show-cause notice is untenable besides the fact that the authority issuing it does not possess necessary jurisdiction to do so.

The last ground urged in support of the petition is that show-cause notice is time-barred.

The petitioner relied upon a Division Bench judgment of this court in ***Travelite (India) vs. Union of India,*** *2014 (35) S.T.R. 653 (Del.)* by which Rule 5A (2) of the Amended Service Rules was held to be ultra vires its parent statute- Finance Act, 1994. Having regard to circumstances, Section 72A conferred specific power limited by certain contingencies to carry out an audit. The Court held that in the circumstances, the exercise of rule making power cannot enlarge the power to audit which was otherwise unauthorised in the parent statute. The petitioner's counsels submits that having regard to the judgment, the impugned show-cause notice is invalid given that the materials on the basis of which said impugned notice has been issued, were secured in the course of the audit conducted previously when the rule was in existence.

At the first instance, the petitioner's argument seems attractive. However, two important aspects are to be kept in mind. Firstly, no statute is deemed to be ultra vires or void- it is actually upon the court declaring it to be so, that it is void (refer ***Gurdev Singh vs. The State of Punjab, 1997***).

Furthermore, the argument proceeds on the assumption that if material is procured in an illegitimate manner or a manner unauthorised by law, it is *per se* inadmissible. That rule prevails in United States where evidence or material procured illegally is inadmissible. However, in India that rule is inapplicable (K.R. Malkhani 1973); the Supreme Court has consistently ruled that so long as material is relevant, how it is sourced is immaterial and the courts would examine it provided it fulfils the test of relevance. In the circumstances, the argument that the materials on the basis of which the impugned show-cause notice was issued could not have been used is rejected.

As far as the issue of jurisdiction of the Principal Commissioner (auditor who issued show-cause goes), the court notices that there is no denial of the fact that the official who issued the show cause notice holds the rank of Principal Commissioner of Central Excise as defined by the Central Excise Act, 1944 read along with the rules. That he was assigned audit task is a matter of convenience; it in no way inhibits the officer from issuing the show-cause notice in exercise of primary authority concerned by the statute. Consequently, the argument about lack of authority/jurisdiction fails. So far as the last issue, i.e. of limitation is concerned, we are of the opinion that examination of that issue by this court would be premature. This task is best left to be examined by the concerned authority with regard to the facts it is also a mixed question of fact and law.

In the circumstances, the petitioner is granted one week to reply to the show-cause notice if not already filed. The writ petition is dismissed but with the above direction.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 24, 2016/*sapna*