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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (T) No. 28 of 2017

M/s Brahma Builders & Developers, a partnership firm duly constituted, having its offices at Church Road, Goverdhanpur, Raigarh through its authorized signatory and accountant Satish Kumar Dubey, S/o Shri B. N. Dubey, aged about 38 years R/o Kalindi Heights, Miththumuda Chowk, Raigarh, (Chhattsigarh)

---- Petitioner

Versus

1. Union of India through the Secretary, Revenue, Department of Revenue, North Block, New Delhi.
2. Commissioner of Central Excise and Service Tax, Central Excise Building, Tikrapara, Raipur, District Raipur, (Chhattsigarh)

---- Respondents

For Petitioner	:	Smt. Smiti Sharma, Advocate
For Respondent no.1	:	Shri N. K. Vyas, Assistant Solicitor General
For Respondent no.2	:	Shri Vinay Pandey, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

20/04/2017

This writ petition is filed leving challenge to the provisions of the Finance Act, 1994 to the extent that Construction of Residential Complexes Code is brought under the purview of the liability to Service Tax in terms of the Finance Act, 1994.

2. The stage at which this writ petition is filed is only the issuance of Exhibit P-1, show cause notice, reading of which will show that it contains different assertions and allegations against the writ petitioner which have to be answered on the basis of facts and materials. The Authority to issue exhibit P-1 is not challenged and cannot be challenged because Exhibit P-1 has been issued by the competent authority. That being so, the natural and proper hierarchy through which the answer to the show cause notice has to go is the regular mode of assessment and the appeals or revisions arising therefrom as the case may be. Obviously, therefore, any objection to the show cause notice as may be raised by the petitioner has to be answered by the authority dealing with the reply to the show cause notice.

3. It is pointed out by the learned counsel for the petitioner that in so far as the eligibility to tax under Finance Act, 1994 is concerned, the issue stands as of now in favour of the petitioner through the judgment of the Delhi High Court rendered on 03.06.2016 in WPC No. 2235/2011. The learned Assistant Solicitor General points out that the said judgment has been challenged before the Hon'ble Supreme Court of India and special leave has been granted. It is also pointed out that the said matter is tagged along with Civil Appeal No. 5690 of 2012 for consideration.

4. In the aforesaid factual matrix, all that is required at this point of time is to preserve the contention of the petitioner to enjoy the benefit of the judgment of the Delhi High Court as noted above subject to the verdict that may be handed down by the apex Court, provided that judgment applies to the facts of the case of the petitioner. It will be now upon the petitioner to object to the show cause notice. The authority considering the objections to the show cause notice will obviously consider the said objections as enjoying by the laws.

5. Writ petition is ordered accordingly without entertaining the challenge to the statutory provisions as of now.

Sd/-	**Sd/-**
(Thottathil B. Radhakrishnan)	**(P. Sam Koshy)**
CHIEF JUSTICE	**JUDGE**

Bhola