

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11930 OF 2015

M/s. All India Association of
Authorized Money Changers &
Money Transfer Agents

.. Petitioners

Vs.

The Union of India & Ors.

.. Respondents

.....

Mr. V. Sridharan, Senior Counsel a/w. Mr. Prakash Shah i/b. M/s.
PDS Legal, Advocate for the Petitioner.

Mr. Pradeep S. Jetly a/w. Ms. Shalaka Gujar, Advocate for the
Respondents.

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**CORAM : S.C. DHARMADHIKARI AND
PRAKASH D. NAIK, JJ.**

DATED : APRIL 3, 2017.

P.C. :

By this writ petition under Article 226 of the
Constitution of India, the petitioners are seeking following two
reliefs:

*“(a) that this Hon'ble Court be pleased to declare that
the impugned Circular No.180/06/2014-ST dated
14.10.2014 issued by the Respondent No.3 is
without jurisdiction, is ultra vires the Finance
Act, 1944, and is of no effect and accordingly, set
aside the same;*

(b) *that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioners case and after going into the validity and legality thereof to quash and set aside the impugned Circular No.180/06/2014-ST dated 14.10.2014 issued by the Respondent No.3 to the extent it levy's service tax on consideration received by the agents for rendering service to an overseas entity."*

2 The petitioners before us are association of authorized money changers and money transfer agents.

3 They are aggrieved and dissatisfied with the circular, the details of which are set out in prayer Clause (a) above essentially because the process of money transfer as explained in the writ petition from paragraph 3.2 onwards till upto 5.2 does not attract the levy of service tax.

4 They rely on a circular issued by respondent no.3 on 10th July, 2012, copy of which is at **Annexure "C"** to the paper book.

5 The argument before us is that though there is no change in law, still another circular No.180/6/2014-ST dated 14th October, 2014 has been issued. This impugned circular supersedes the earlier circular.

6 The essential argument is that the services rendered by the petitioners associate through its members do not attract the service tax.

7 We had on the earlier occasion, invited attention of Mr. Jetly to the affidavit-in-reply filed in this writ petition wherein the revenue supported the impugned circular.

8 We have also invited his attention to page no.48 of the paper book, which is paragraph 4 of the affidavit-in-reply. Paragraph 4 reads as under:

“4 For the intervening period i.e. from 01-07-2012 to 13-10-2014, Service Tax on such services was exempted vide Notification No.19/2015-ST dated 14-10-2015, issued in exercise of the powers conferred by Section 11C of the Central

Excise Act, 1944 (1 of 1944) as made applicable to like matters in Service Tax vide section 83 of the Finance Act, 1994 (32 of 1994). This exemption was given because of the generally prevalent practice of non-levy of Service Tax on the services provided by the Indian Bank or other entity acting as an agent to the [MTSO], in relation to remittance of foreign currency from outside India to India even though this services was liable to service tax, which was not being paid according to the said practice.”

9 The justification that is provided in the subsequent paragraph is that the circular was issued only to clarify the legal position.

10 Mr. Shah appearing for the petitioners contends otherwise. He would submit that though the entire sequence of transactions in remittance of money from the overseas customer through the MTSO route never attracts the levy, still the revenue is seeking to displace its own circular clarifying the legal position.

11 Mr. Jetly had sought time on the earlier occasion to take instructions.

12 Today, he has produced a copy of memorandum dated
3rd February, 2017.

13 That office memorandum purports to state that
circulars and instructions issued by the Board are not binding on
the Court or the assessee. The circulars and instructions issued
by the Board are binding in law on the authorities unless they are
in conflict with the statutory provisions.

14 In paragraph 3 of this office memorandum, the
revenue reiterates the position that its subsequent circular dated
14th October, 2014 is binding on the revenue authorities as it
correctly interprets the statutory provisions as explained in this
office memorandum of even date namely 6th January, 2017.

15 Today, it is agreed by both sides that there are several
members of the petitioners association, but, they have not been
assessed to tax. In the event they are assessed to service tax, we
are clarifying that such office memorandum as addressed to Mr.
Jetly in reply to his communication with the Revenue officials can
never bind the statutory authorities. The Central Government
cannot direct the assessing officer to take a particular view of the

matter as that would be a direct interference with his powers as an assessing officer. He has to exercise the powers in accordance with law. In the event, there are circulars issued and prior to the impugned one, then, they would continue to bind the Assessing Officer and others unless the revenue officials are able to point out that they are plainly inconsistent or in conflict with the provisions of law. Therefore, we clarify that the assessing officer should not be influenced by any directions and contents of the office memorandum. He should not go by the subsequent circular dated 14th October, 2014 which supersedes the earlier circular of 10th July, 2012. He must allow the assessee to raise all contentions and consider them in accordance with law. Presently, we do not see any reason to clarify other issues because that would be purely academic.

16 Writ Petition is disposed of accordingly. No order as to costs.

17 All contentions raised in the writ petition are kept open.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)