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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **W.P.(C) 145/2017**

NAVAL GROUP INSURANCE FUND ..... Petitioner
Through: Mr. R. Sudhinder and Ms. Prarna Amitabh, Advocates.

versus

UNION OF INDIA, MINISTRY OF FINANCE & ANR. ..... Respondents
Through: Mr. Kavindra Gill, Advocate for UOI.
Mr. Harpreet Singh, Senior Standing Counsel for Respondent No.2 with Ms. Namrata Bhati, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R
% **03.05.2017**

CM No. 718/2017 (for exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 145/2017 & CM No. 717/2017 (for stay)

2. This is a petition by the Naval Group Insurance Fund seeking the quashing of a Show Cause Notice ('SCN') dated 4th October, 2016 issued by the Respondent No.2 Commissioner of Service Tax, requiring the Petitioner to show cause why service tax of Rs.18,07,75,046 together with interest be not demanded from the Petitioner for rendering services for the period 1st April, 2011 to 31st March, 2015 under the proviso to Section 73(1) of the

Finance Act, 1994.

3. The Petitioner is a Naval Group Insurance Fund ('NGIF') constituted under the executive order of the President of India created for the benefit of Navy personnel and to provide for compensation in the eventuality of death, disability and retirement. It is stated that the NGIF was set up as a Society under the Society Registration Act, 1860 and is a non-profit Society. The handbook of the Naval Group Insurance Scheme lays down the guidelines and methodology for claiming benefit from the NGIF by the serving and retired Navy personnel or their next kith and kin.

4. Notice in the present petition was issued on 9th January, 2017 and an interim order was passed that the Respondents will not pass any final orders pursuant to the aforementioned SCN. The matter was thereafter adjourned to 22nd March, 2017. Till date no counter affidavit has been filed by the Respondents. However, it has been explained by learned counsel for the Respondent No.2 that a reply was not filed in view of the passing of the Finance Act, 2017 whereby Section 105 has been inserted in the Finance Act, 2004 and which reads as under:

> "105. Special provision for exemption in certain cases relating to life insurance services provided to members of armed forces of Union-(1) Notwithstanding anything contained in section 66, as it stood prior to the 1st day of July, 2012, or in section 66B, no service tax shall be levied or collected in respect of taxable services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government, during the period commencing from the 10th day of September, 2004 and ending with the 1st day of February,

> 2017 (both days inclusive).
>
> (2) Refund shall be made of all such service tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.
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> (3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2017 receives the assent of the President."

5. While learned counsel for the Petitioner states that in view of the above provision the impugned SCN would not survive, learned counsel for the Respondent No.2 states that he has instructions to point out that of the sum of Rs.18,07,75,046 sought to be collected from the Petitioner as service tax, Rs.73,77,604 was towards 'service tax on provision of General Insurance Service', and Rs.40,25,575 towards 'Service Tax on provision of Banking and other Financial Services'. Rs.16,93,71,868 was towards 'Service Tax on provision of Life Insurance Services by NGIF 'to personnel of Navy & Coast Guard'

6. He states on instructions that while Section 105 exempts provision of Life Insurance Service to Navy personnel from payment of service tax, it does not extend the benefit to the members of the Coast Guard.

7. Clearly, therefore, the impugned SCN in its present form cannot be sustained as it includes components of service tax that fall outside the purview of Section 105 of the Finance Act, 1994 as inserted by the Finance Act, 2017.

8. Consequently while setting aside the impugned SCN dated 4th October 2016, the Court permits the Respondents to issue a fresh SCN after clearly setting out what the proposed demands are vis-a-vis the taxable services rendered by the Petitioner which do not include those falling outside the ambit of Section 105 of the Finance Act, 19994.

9. It is clarified that this Court has not expressed any opinion on the merits of the impugned SCN. It will be open to the Petitioner to point out to the Respondents that no part of the services rendered by it is amenable to service tax.

10. The writ petition is accordingly allowed in the above terms but with no order as to costs. The application is disposed of.

11. Order *dasti*.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 03, 2017/dn