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

\+ **W.P.(C) 7332/2015**

INDIA INFRASTRUCTURE & LOGISTICS PVT LTD .... Petitioner

Through: Mr. Kavin Gulati, Senior Advocate with Mr. Soumik Ghosal, Mr. K. Kunal & Mr. M. Rastogi, Advocates

versus

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

Through: Mr. Amit Mahajan, CGSC
Mr. Harpreet Singh, Senior Standing Counsel for DGCEI
Mr. Ashok Singh, Advocate for Respondent No.5

CORAM: JUSTICE S.MURALIDHAR
JUSTICE VINOD GOEL

O R D E R

% **22.05.2017**

1. The Petitioner, India Infrastructure and Logistics Pvt. Ltd., a private Container Train Operator (PCTO), has engaged the Indian Railways (Respondent No. 5) for hauling their Containers on the Indian Railways Network. The Petitioner pays 'haulage charges' to the Railways for such transportation of 'Containers' in terms of a Concession Agreement and various Circulars issued by the Railways from time to time.

2. The challenge in this petition is to a Clarification issued on the basis

of decision taken by the Central Board of Excise and Customs (CBEC) (Respondent No. 4) and the consequential Show Cause Notice (SCN) issued by the Directorate General of Central Excise Intelligence (DGCEI) (Respondent No. 2) seeking to raise Service Tax demand on the Petitioner for the period 1st October 2012 to 31st December 2014 on 'Haulage Charges' paid to the Railways by re-classifying is as 'Support Services' and thereby, invoking the reverse charge mechanism contained under Chapter V of Finance Act, 1994 and the Rules framed thereunder.

3. At the previous hearing on 20th April 2017, it had been pointed by Mr. Kavin Gulati, learned Senior Advocate appearing for the Petitioner, that the Respondents had come out with a circular in terms of which the impugned SCN would have to be withdrawn. An adjournment was sought by learned counsel for Respondents to seek instructions.

4. Today, upon instructions, Mr Harpreet Singh, learned counsel for the Respondents agrees that there is such a Circular No. 334/8/2016-TRU dated 29th February, 2016, which clarifies that the services provided by the Indian Railways to CTOs is a service of 'Transport of Goods by Rail' and, therefore, eligible for abatement of tax treatment i.e., for abatement @ 70% of the value of haulage charges collected from the Petitioner.

5. Inasmuch as the impugned SCN dated 23rd March, 2015 which seeks to raise a demand of service tax by treating 'haulage' as 'support services' stands negated by the aforementioned Circular, the Court quashes the impugned SCN dated 23rd March, 2015.

6. The writ petition is disposed of in the above terms.

S.MURALIDHAR, J

VINOD GOEL, J

MAY 22, 2017
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