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

\+ W.P.(C) 10325/2018 & CM Nos.40261-62/2018

VIRENDRA JAIN ..... Petitioner

Through : Mr. Rajesh Manchanda, Adv.

versus

UNION OF INDIA & ANR. ..... Respondents

Through : Mr. Abhay Prakash Sahay, CGSC for R-1.
Mr. Sanjeev Narula, Sr. Standing Counsel for Revenue with Mr. Sunil Dalal and Mr. Abhishek Ghai, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **28.09.2018**

We have heard counsel for the petitioner. In these proceedings, the order in original passed by the Principal Commissioner of Central Goods and Services Tax, who has completed the assessment for erstwhile Central Finance Act, 1994, holding the petitioner to be liable to pay the service tax to the tune of Rs.1,95,10,053/-, has been questioned. It is contended that the premise on which the service tax was assessed and demanded is non-existent because : firstly, the accommodation entry activity through which the petitioner was taxed under Section 68 of the Income Tax Act, has been set aside and the matter is at large and secondly, that the taxable event is inapplicable having regard to the period in question and that the assessment to service tax on the basis that the petitioner's activity falls within the rubric of banking and financial services.

This court has heard counsel for the petitioner. It is evident that the petitioner has approached this court directly without exhausting the appellate remedies. Though this court does entertain proceedings under Article 226 of the Constitutional of India where jurisdictional issues are involved, at the same time such jurisdiction is exercised in a circumscribed manner, especially where final assessments have taken place. In this case, the order in original was made on 30.05.2018. As to whether the petitioner's activity was subject to service tax levy for one or the other reason as well as the question as to whether he was given adequate opportunity to represent his case, are the subject of appellate proceedings.

In these circumstances, this court is not inclined to entertain this petition but would rather prefer the present writ petitioner to exhaust his appellate remedies. In case, the petitioner approaches the appellate Commissioner within four weeks, the appeal shall be considered on the merits subject to fulfilment of the pre-deposit conditions.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 28, 2018

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