$~52.

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

\+ W.P.(C) 13350/2019

INTERTEK INDIA PVT. LTD. ..... Petitioner

Through: Mr. P.K. Sahu, Advocate.

versus

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS(CBIC) & ANR. ..... Respondents

Through: Mr. Harpreet Singh and Ms. Suhani Mathur, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **18.12.2019**

1. The petitioner has preferred the present writ petition to assail the summons dated 23.09.2019 issued by respondent No. 2 at the petitioner's Gurugram Office situated at Plot No. 290, Udyog Vihar, Phase-2, Gurugram, Haryana. The said summons, in its opening, inter alia, states:

> "*Whereas a case against/about M/s Intertek India Pvt. Ltd. under Section(s) 14 of the Central Excise Act, 1944, Section 83 of the Finance Act, 1944 and Section 70 of CGST Act 2017 read with Rule 132 of CGST Rules,2017 is being enquired by me/under my orders.*"

2. From the above, it would be seen that the summons relate to conduct of an inquiry by respondent No. 2. The petitioner has also placed on record – though not assailed, the communication dated 05.11.2019 addressed, inter

alia, to its Delhi Office as well as to its Director Sh. Sanjay Joshi in furtherance of the summons dated 23.09.2019, once again, requiring the petitioner and its Director to provide the documents enumerated in the said communication. The challenge to the summons dated 23.09.2019 is premised on the plea of the petitioner that Rule 5A of the Service Tax Rules, 1994 has been struck down by this Court in ***Mega Cabs (P) Ltd. vs. Union of India,*** 2016 (43) STR 667 (Del.). The said decision, we are informed, is under challenge before the Supreme Court and has been stayed by the Supreme Court.

3. Mr. Singh, who appears on advance notice, points out that the summons has been issued in furtherance of inquiry/ investigation proceedings being undertaken in respect of the short payment of service tax/ reversal of CENVAT credit. He has specifically drawn our attention to Section 174(2)(e) of the Central Goods and Services Act, 2017. Section 174 deals with repeal and savings. It provides that repeal of the several acts enumerated in Sub-section (1) thereof which includes the Finance Act, 1994, whereby service tax was introduced and levied, shall not:

> "*(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;*"

4. He, therefore, submits that the respondents are entitled to undertake investigation and inquiry in relation to the non-reversal of the CENVAT credit allegedly illegally taken by the petitioner. He points out that the summons has not been issued for the purpose of conduct of audit. He also points out that Rule 5A of the Service Tax Rules, inter alia, permitted the audit party deputed by Comptroller and Auditor General of India (CAG) to conduct an audit and it is only that part of Rule 5A that has been struck down by the Division Bench of this Court in ***Mega Cabs*** (supra). Para 45 of the said decision, which contains the conclusions drawn by the Court, has been referred to which, inter alia, reads as follows:

> *"(i) declares Rule 5A(2) as amended in terms of Notification No. 23/2014–Service Tax, dated 5th December, 2014 of the Central Government, to the extent that it authorises the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of the documents mentioned therein on demand is ultra vires the FA and, therefore, strikes it down to that extent."*

5. Having heard learned counsel for the petitioner and Mr. Singh, who appears on advance notice, we find no merit in this petition. Reliance placed by the petitioner on ***Mega Cabs*** (supra) is misplaced, firstly, on account of the fact that the said decision has been stayed by the Supreme Court; and, secondly, on account of the fact that the Division Bench only declared that Rule 5A(2) as amended, to the extent that it authorized the officers of the Service Tax Department, the audit party deputed by a Commissioner or the CAG to seek production of documents therein on demand as ultra vires the Finance Act. It does not interfere with the power of the authorities vested by Sub-Rule (1) of Rule 5A and the power of the respondents to conduct

investigation and inquiry. To us, it appears to be incomprehensible that in respect of any breach or violation of the service tax laws, whereby the assessee may have taken any undue advantage, inter alia, by non-reversing the CENVAT credit, should get away without the same being investigated or inquired into.

6. We, therefore, do not find any merit in this petition.

7. Dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

DECEMBER 18, 2019
B.S.Rohella