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

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Date of decision: 11.04.2023

+ **W.P.(C) 12638/2019 & CM APPL. 51623/2019**

MATRIX FOREX SERVICES PVT. LTD. Petitioner

Through: Mr Sanjeev Anand, Senior Advocate
with Mr Sameer Sood and Ms
Madhumita Singh, Advocates.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Ms Sonu Bhatnagar, Senior Standing
Counsel for R-1/UOI with Ms
Anushree Narain, Ms Venus Mehrotra
and Ms Nishtha Mittal, Advocates.
Mr Harpreet Singh, Senior Standing
Counsel with Ms Suhani Mathur, Mr
Jatin Kumar Gaur and Mr Vinod
Bhati, Advocates for R-2 & 3.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The petitioner – a company incorporated under the Companies Act – is engaged in the business of foreign exchange. Prior to the Central Goods and Services Tax Act, 2017 (hereafter '**the CGST Act**') coming into force, the petitioner was registered with the concerned authorities, for the purposes of service tax, as a service provider providing 'banking and financial service' and 'legal consultancy service'.

2. The Petitioner has filed the present petition impugning letters dated 29.07.2019 and 30.07.2019 (hereafter '**the impugned letters**') issued by respondent no. 3 (the Assistant Commissioner of Central GST Audit-II, Delhi) calling upon the petitioner to make service tax payments along with applicable interest and penalty for the period of Financial Years 2014-15 to 2017-18 (April-June). The petitioner also impugns a Demand Cum Show Cause Notice No. 47/2019-20 dated 18.10.2019 (hereafter '**the impugned SCN**') proposing imposition of the aforesaid levies.

3. By virtue of Section 173 of the CGST Act, Chapter-V of the Finance Act, 1994 (Act 32 of 1994) (hereafter '**the Finance Act**'), was omitted. The petitioner claims that as on 01.07.2017 – the date on which the CGST Act came into force – there were no proceedings pending under Chapter-V of the Finance Act, in respect of the petitioner. The petitioner claims that no investigation, inquiry, assessment proceedings or any other proceedings under Chapter-V of the Finance Act, were pending against the petitioner as on 01.07.2017. It is the petitioner's case that no fresh proceedings for assessment or recovery of service tax under Chapter-V of the Finance Act are maintainable against the petitioner because Chapter-V of the Finance Act stands omitted. The petitioner contends that the proceedings now initiated by issuance of the impugned SCN and the impugned letters are not saved under Section 174 of the CGST Act.

4. At the outset, it is relevant to refer to Section 173 and Sub-sections (1), (2) and (3) of Section 174 of the CGST Act; the same set out below:

“173. Amendment of Act 32 of 1994.— Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

174. Repeal and saving. — (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not--

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(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; or

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.”

5. It is apparent from a plain reading of Section 174(2) of the CGST Act that the amendment to the Finance Act by omission of Chapter-V of the Finance Act would not affect the operation of the amended Act (Finance Act) and it would also not affect any obligation or liability ‘accrued’ or ‘incurred’ under the Finance Act.

6. Clause (d) of Section 174(2) of the CGST Act also expressly provides that the amendment to the Finance Act would not affect any duty, tax, surcharge, fine, penalty or interest as ‘*due or may become due*’ under the amended Act. Thus, on a plain reading of Section 174 of the CGST Act, it is clear that the obligation of the petitioner to pay the service tax due in respect of the Financial Years 2014-15 to 2017-

18 (April – June) is not affected in any manner by the omission of Chapter-V of the Finance Act by enactment of Section 173 of the CGST Act.

7. The said issue is also covered by the decisions of the Coordinate Bench of this Court in *Aargus Global Logistics Pvt. Ltd. v. Union of India & Anr.:* (2020) 83 GSTR 400 and *Vianaar Homes Pvt. Ltd. v. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II, Delhi & Ors.:* W.P.(C) No.2245/2020, decided on 03.11.2020.

8. In *Aargus Global Logistics Pvt. Ltd.(supra)*, this Court had observed as under:

“13. The submission of learned Senior Counsel for the Petitioner is that Chapter V of the Finance Act, 1994 - which brought in the service tax regime, stands omitted. Thus, the provisions of Chapter V of the Finance Act, 1994 do not survive the enactment of the CGST Act. He further submits that Clauses (d) and (e) of Sub Section (2) of Section 174 have to be read in conjunction. Therefore, what is not affected by the omission of Chapter V of the Finance Act, 1994, is the "duty, tax, surcharge, fine, penalty, interest" which were due, or may become due even after the enactment of the CGST Act and the omission of Chapter V of the Finance Act, 1994. He submits that such "duty, tax, surcharge, fine, penalty, interest" could be only in respect of, and arising out of proceedings already initiated, and ongoing proceedings on the date of enactment of the CGST Act. In this regard, learned Senior Counsel for the Petitioner has laid special emphasis on the use of the words "in respect of the any **such** duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid" contained in Clause (e), as also the words "and any such investigation, inquiry, verification" used in the same clause. We cannot agree with this submission of learned Senior Counsel for the Petitioner. Clause (e) expressly empowers the Competent Authorities to initiate and institute even fresh proceedings under

the omitted chapter V of the Finance Act, 1994 and the rules framed thereunder, despite the said omission by Section 173 of CGST Act. This is clear from the use of the expression "**may be instituted, continued or enforced**" in Clause (e) of Section 174 (2) of the Act. Clause (d) of Section 174 (2) saves "**any duty, tax, surcharge..... as are due or may become due**" There is nothing to suggest that the "duty, tax, surcharge" etc. should relate to proceedings initiated under, *inter alia*, Chapter V of the Finance Act, 1994 before the coming into force of the CGST Act, and not to proceedings initiated under the enactments after the coming into force of the CGST Act. If this submission of the Petitioner were to be accepted, it would mean that all evasions of, *inter alia*, service tax and all infractions of the provisions of the Finance Act, 1994 which remained suppressed and uninvestigated up to the point of time when, *inter alia*, the said Chapter V of the Finance Act was omitted and CGST Act was enacted, would go un-investigated without the violators of the law being brought to justice. That, in our view, was clearly not the intent and there is nothing to show that the Parliament intended to grant blanket immunity to all assesseees whose past acts and omissions may, otherwise, fall foul of the provisions of, *inter alia*, Chapter V of Finance Act, 1994. On the contrary, it is clear to us that the intention of the Parliament was clearly to save not only ongoing investigation, inquiry, verification etc. but also to specifically enable the initiation of fresh investigation, inquiry verification etc. in respect of acts and omissions relating to *inter alia*, the erstwhile service tax regime."

9. In ***Vianaar Homes Pvt. Ltd.*** (*supra*), this Court had rejected the contention that Rule 5A of the Service Tax Rules, 1994 did not survive the omission of Chapter V of the Finance Act in respect of the period prior to the enactment of the CGST Act.

10. Mr. Sanjeev Anand, learned senior counsel appearing for the petitioner earnestly contended that the said decisions did not address the important aspects of controversy or discuss the relevant authorities. He submitted that although the decision of the Supreme Court in ***Bansidhar & Ors. v. State of Rajasthan & Ors.: (1989) 2***

SCC 557 was referred in *Vianaar Homes Pvt. Ltd. (supra)* but there was no discussion in respect of the said decision. He also submitted that the decision of the Supreme Court in *State of Odisha & Anr. v. Anup Kumar Senapati & Anr.: (2019) 19 SCC 626* was also not considered.

10.1 The decision in the case of *Bansidhar & Ors. (supra)* concerned the challenge to the legality of proceedings for fixation of a ceiling of agricultural holdings initiated under the Rajasthan Tenancy Act, 1955 (hereafter '**the 1955 Act**'). The appellants in that case had contended that the proceedings under the 1955 Act could not be initiated and continued after the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereafter '**the 1973 Act**') came into force. The 1973 Act repealed the Section 5(6A) and Chapter-III-B of the 1955 Act.

10.2 A large number of cases were decided in accordance with Chapter III-B of the 1955 Act prior to 01.01.1973, the date on which the 1973 Act came into force. However, 8494 cases for determining the ceiling areas under Chapter-III-B of the 1955 Act, which were initiated and were sought to be continued under Chapter-III of the repealed 1955 Act after 01.01.1973.

10.3 In the aforesaid context, one of the contentions advanced by the appellants, was that even if Section 6 of the Rajasthan General Clauses Act, 1955 is attracted, the cases did not involve any rights, 'accrued' or obligations 'incurred' so as to attract the provisions of the 1955 Act. In the said context, the Court had observed as under:

“30. For the purposes of these clauses the “right” must be “accrued” and not merely an inchoate one. The distinction between what is and what is not a right preserved by Section 6 of the General Clauses Act, it is said, is often one of great fineness. What is unaffected by the repeal is a right ‘acquired’ or ‘accrued’ under the repealed statute and not “a mere hope or expectation” of acquiring a right or liberty to apply for a right.”

10.4 However, having observed as above, the Supreme Court held that the right of the State to the excess land was not an inchoate right under the 1955 Act and the liability of the owner to surrender the excess land was a ‘liability incurred’ under the provisions of the said 1955 Act.

11. On the strength of the said decision in ***Bansidhar & Ors.*** (*supra*), Mr. Anand contended that there was no accrued right in favour of the State under Chapter-V of the Finance Act as there were no proceedings pending under the said Act on 01.07.2017.

12. The said aforesaid contention is insubstantial. The understanding that any right for recovery of service tax would accrue to the State only on initiation of proceedings is erroneous. The petitioner, as an assessee, had the obligation to pay the correct service tax as due under Chapter-V of the Finance Act. This obligation was crystallized prior to the enactment of the CGST Act and this obligation and a corresponding duty for the authorities to initiate proceedings for the enforcement of the said obligations would survive the omission of Chapter-V of the Finance Act.

13. As noted above, Mr. Anand also referred to the decision in the case of *State of Odisha & Anr. (supra)* and drew the attention of this Court to paragraph 30 of the said decision which is set out below:

“30. The provisions contained in Section 6 of the General Clauses Act stipulate that by the repeal of enactment, the benefit given to the person concerned shall not be affected. However, the repeal shall not revive anything not in force or existing at the time at which the repeal takes place. The previous operation of any enactment or anything is duly done or suffered thereunder shall not be affected or any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. However, the best guide is found in what has been saved is by reference to the repealing provisions in the order of 2004 which are clear and unambiguous.”

14. We are unable to appreciate as to how the above quoted passage from the decision in the case of *State of Odisha & Anr. (supra)* is applicable to the facts of the present case. It is also relevant to refer to the passage from Principles of Statutory Interpretation, 14th Edition by Justice G.P. Singh as referred to by the Court in the said decision. The relevant extract from the passage as quoted in the aforesaid judgment is set out as below:

“.....“The distinction between what is, and what is not a right preserved by the provisions of Section 6, General Clauses Act is often one of great fineness. *What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere “hope or expectation of”, or liberty to apply for, acquiring a right. A distinction is drawn between a legal proceeding for enforcing a right acquired or accrued and a legal proceeding for acquisition of a right. The former is saved whereas the latter is not.....*”

15. The aforesaid passage makes it amply clear that any legal proceeding for enforcement of a right would be unaffected by the repeal of the statute. However, any hope or expectation of acquiring a

right under a repealed provision may be affected. In the present case, there is no dispute that the impugned SCN was issued in exercise of the duty to ensure compliance with the provisions of Chapter-V of the Finance Act. As stated above, the petitioner has an obligation to correctly pay the service tax under Chapter-V of the Finance Act and the proceedings initiated by the impugned SCN are merely to ensure discharge of the said obligation.

16. We find no merit in the contention that the issues sought to be raised by the petitioner are not covered by the earlier decisions of this Court in *Aargus Global Logistics Pvt. Ltd. (supra)* and *Vianaar Homes Pvt. Ltd. (supra)*.

17. The petition is accordingly dismissed. The pending application is also dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 11, 2023

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