

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 4448 of 2021

Madhu Sudan Mittal, aged about 65 years, son of Late Satya Narayan Mittal, resident of 'Sukriti', Cosy Corner, Burdwan Compound, Lalpur, P.O. and P.S. – Lalpur, District – Ranchi, Jharkhand-834001

... .. **Petitioner**

Versus

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, P.O. and P.S. – New Delhi (GPO), District – New Delhi, 110001.
2. Central Board of Indirect Taxes & Customs, through its Chairman, North Block, P.O. and P.S. – New Delhi (GPO), District – New Delhi, 110001.
3. Commissioner of Central Goods and Services Tax and Central Excise, Jamshedpur Commissionerate, having its office at Outer Circle Road, Bistupur – 831001, P.O. and P.S. – Bistupur, Town – Jamshedpur, District – Singhbhum East, Jharkhand.
4. Assistant Commissioner of Central Goods and Services Tax and Central Excise, Bistupur South Range, having its office at Outer Circle Road, Bistupur – 831001, P.O. and P.S. – Bistupur, Town – Jamshedpur, District – Singhbhum East, Jharkhand.
5. Superintendent, Central Goods and Services Tax and Central Excise, Bistupur South Range, having its office at Outer Circle Road, Bistupur – 831001, P.O. and P.S. – Bistupur, Town – Jamshedpur, District – Singhbhum East, Jharkhand.

... .. **Respondents**

CORAM : **HON'BLE THE CHIEF JUSTICE**
 HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner	: Mr. Sumeet Gadodia, Advocate
For the Respondents	: Mr. P.A. S. Pati, Advocate
	: Mrs. Ranjana Mukherjee, Advocate

C.A.V. on 01.09.2022

Pronounced on 15.09.2022

Per Sujit Narayan Prasad, J.

Heard the parties.

2. The instant writ petition has been filed under Article 226 of the Constitution of India wherein following prayers have been made :-

- (i) For the issuance of an appropriate writ/order/direction for quashing the Notification No.18/2016-ST dated 1.3.2016 (Annexure-3) and Notification No. 9/2016-ST dated 1.3.2016 (Annexure-4) to the extent that it seeks to recover service tax directly from Senior Advocates for the legal services provided by them and to the further extent that it envisages the relationship between a Senior Advocate and an advocate / firm as that of a client and counsel, as being arbitrary, unreasonable, patently illegal and thus violative of Articles 14 and 19(1)(g) of the Constitution of India.
- (ii) In the alternative to prayer (i), for the issuance of an appropriate writ/order/direction or a writ in the nature of declaration declaring that Notification No.18/2016-ST dated 1.3.2016 (Annexure-3) and Notification No.9/2016-ST dated 1.3.2016

(Annexure-4), in letter and spirit had never been given effect to in view of judicial pronouncements and stay orders passed by various Hon'ble Courts which consequently resulted into payment of service tax by the service recipient for the legal services availed by them from Senior Advocates.

(iii) In the alternative to prayer (iii), for the issuance of an appropriate writ/order/direction or a writ in the nature of declaration, declaring that Notification No.34/2016-ST dated 6.6.2016 (Annexure-6) and Notification No.32/2016-ST also dated 6.6.2016 (Annexure – 7) which incorporated amendments by way of substitution were clarificatory in nature and thus have retrospective effect from 1.4.2016 in as much as it nullifies the effect of Notification No.18/2016-ST dated 1.3.2016 (Annexure-3) and Notification No.9/2016-ST dated 1.3.2016 (Annexure-4).

(iv) For the issuance of an appropriate writ/order/direction or a writ in the nature of declaration, declaring that for the period 1.4.2016 to 5.6.2016, the burden of service tax on legal services provided by Senior Advocates is to be borne by the service recipient in full under reverse charge mechanism and not by Senior Advocates directly in

terms of the order dated 18.9.2017 passed in W.P.(C) No.2891 of 2016, W.P.(C) No.2892 of 2016 and W.P.(C) No.4186 of 2016 by the Hon'ble Delhi High Court (Annexure-9);

- (v) For the issuance of an appropriate writ / order / direction for quashing and setting aside the notice to show cause cum demand dated 20.10.2021 (Annexure-21) in as much as the same is *inter alia* in contravention to authoritative judicial pronouncements and the said show cause notice is also further barred by limitation and has been issued in a prejudged and predecided manner.

3. The brief facts of the case, as per the pleadings made in the writ petition, which are required to be enumerated read as under :-

The writ petitioner happens to be a Senior Advocate practicing in this Court and being aggrieved with the Notification No.18/2016-ST dated 1.3.2016 as under Annexure-3 and Notification No. 9/2016-ST dated 1.3.2016 as under Annexure-4 to the extent that it seeks to recover service tax directly from Senior Advocates for the legal services provided by them and to the further extent that it envisages the relationship between a Senior Advocate and an advocate / firm as that of a client and counsel.

Prior to the amendment of the Finance Act, 1994 in 2012, services in relation to advice, consultancy or assistance in any branch of law, and representational services before any court, tribunal or authority were defined as 'taxable service' under Section 65(105)(zzzzm) of the Finance Act, 1994. However, pursuant to Notification No.20/2012-ST dated 05.06.2012, Section 65 ceased to have effect from 01.07.2012. Thereafter, Section 66B was brought into force whereby all services other than those specified in the negative list (Section 66D) were exigible to service tax.

The Central Government has also published sometime in the year 2012 a notification in exercise of power conferred by Section 68(2) of the Finance Act, 1994, as contained in Notification No.30/2012-ST dated 20.06.2012, which specified that in respect of certain taxable services specified in paragraph 1 of the said notification, the extent of service tax payable by the person providing the service and the person receiving the service would be such as provided in the table II of the notification.

The Central Government, in exercise of power conferred upon it by Section 93(1) of the Finance Act, 1994, published Notification No.25/2012 dated 20.06.2012 exempting certain services from the ambit of Section 66B of the Finance Act, 1994. Serial No.6 of the said notification exempted services provided by an individual as an advocate or a partnership firm

of advocates by way of legal services to an advocate or partnership firm of advocates providing legal services, any person other than a business entity or a business entity with a turnover up to Rupees ten lakh in the preceding financial year.

According to the writ petitioner, from conjoint reading of the Mega RCM Notification and Mega Exemption Notification, it would be evident that legal services provided by an individual advocate/firm of advocates to another advocate / firm of advocates, to any person other than a business entity or business entity with turnover of up to Rupees ten lakhs in the preceding year were to be exempted from the ambit of service tax. With respect to legal services provided to a business entity with a turnover of above Rupees ten lakhs, the service tax liability is to be borne by service recipients under the Reverse Charge Mechanism.

It is the further case of the writ petitioner that the provision for payment of Service Tax under Reverse Charge Mechanism was specifically introduced keeping in view that Senior Advocates / Advocates are seated as an officer of the court and in order to enable them to effectively discharge duties as an officer of the court, they were absolved of the compliances and rigors under the Finance Act, 1994 and the Rules made thereunder.

However, the respondents, in an attempt to arbitrarily change the existing mechanism, amended the aforementioned

notifications vide (i) Notification No.18/2016-ST dated 01.03.2016 (First RCM Amendment Notification) that amended the Mega RCM Notification and (ii) Notification No.9/2016-ST dated 01.03.2016 (First Exemption Amendment Notification) that amended Mega Exemption Notification. Therefore, in terms of the First RCM Amendment Notification, the services provided by a Senior Advocate were allegedly brought outside the ambit of the Mega RCM Notification. The said notification came into force on 01.04.2016. The relevant portion of the First RCM Amendment Notification is reproduced below which reads as under :-

“1. In the said notification,-

(a) in paragraph 1, in clause (A),-

(i)

(ii)

(iii) in sub-clause (iv), for item (B), the following shall be substituted namely :-

“(B) a firm of advocates or an individual advocate other than senior advocate, by way of legal services, or”;

(b) in paragraph (II), in the TABLE,-

(i)

(ii)

(iii) against Sl. No.5, for the entry under column (2), the following shall be substituted, namely,-

“in respect of services provided or agreed to be provided by a

firm of advocates or an individual advocate other than a senior advocate by way of legal services”;

Similarly, the First Exemption Amendment Notification, Notification No.9/2016-ST dated 01.03.2016, limited the exemption given to the services provided by Senior Advocates. The said notification envisaged the relationship between a Senior Advocate and an advocate/firm as that of a client and counsel. The relevant portion of the First Exemption Amendment Notification is reproduced below which reads as under :

“1. In the said notification,-

(a) in the first paragraph,-

(i) in entry 6, for clause(b) and clause (c), the following clauses shall be substituted, namely,-

“(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a senior advocate by way of legal services to a person other than a person ordinarily carrying out any activity relating to industry commerce or any other business or profession;”

Therefore, the writ petitioner, being aggrieved with the terms of amendment notification by which the respondents have arbitrarily and unreasonably sought to recover service tax directly from Senior Advocates for the legal services provided by them, has approached to this Court by filing writ petition under Article 226 of the Constitution of India.

4. Mr. Sumeet Gadodia, learned counsel for the petitioner, has submitted that the issue has already been considered by Delhi High Court in ***W.P.(C) 2891/2016 [Delhi High Court Bar Association and Another v. Union of India and Others]*** appended as Annexure-5 to the Paper Book, wherein an *ad interim* order has been passed staying the operation of the execution of para 1(a)(i)(b) of Notification No.9/2016-ST, para 1(a)(iii) and (b)(iii) of Notification No.18/2016-ST and para 2(1)(a) of Notification No.19/2016-ST and directing the respondents to continue the Reverse Charge Mechanism for payment of service tax for Senior Advocates under Notification No.30/2012-ST.

5. The respondent Central Goods and Services Tax & Central Excise has been called upon and in terms thereof, a counter affidavit has been filed.

6. Mr. P.A.S.Pati, learned counsel appearing for the respondent Central Goods and Services Tax and Central Excise, has submitted that Notification No.30/2012-ST dated 20.06.2012 has already been amended by virtue of Notification

No. 18/2016-ST dated 01.03.2016.

Further, Notification No.34/2016-ST dated 06.06.2016 has again amended Notification No.30/2012-ST dated 20.06.2012, in respect of legal services Reverse Charge Mechanism with effect from 06.06.2016.

In the backdrop of such amendment, submission has been made that liability of payment of service tax on legal services provided by a Senior Advocate falls under Forward Charge Mechanism for the period from 01.04.2016 to 05.06.2016 and, therefore, the demand notice has been issued for the said period.

It has further been stated that against the imposition of Service Tax on Forward Charge Basis, a large number of writ petitions were filed in the High Courts of Calcutta, Kerala, Gujarat, Telangana & Andhra Pradesh, Allahabad, Madras, Punjab & Haryana and Delhi as also appeal was filed before the Hon'ble Apex Court and the Hon'ble Apex Court has transferred all these cases pending in several High Court to Delhi High Court vide ***Transfer Petition (s) (Civil) 820-829/2016 [Union of India and Another v. Kavin Gulati etc. with T.P.(C) No.16/2017 dated 18.08.2017]***.

The Delhi High Court disposed of all the writ petitions vide final order dated 18.09.2017 upholding its interim order dated 01.04.2016 that service tax on the said service would be collected on Reverse Charge Mechanism basis for the period

01.04.2016 to 05.06.2016, as has been stated in the counter affidavit that the issue has not finally been adjudicated as yet.

7. The respondents have come out with the stand in the counter affidavit as under paragraph 8 thereof that the Notification No.30/2012-ST dated 20.06.2012; Sl. No.05 of the said notification provides for payment of 100% service tax liability by the recipient of service under Reverse Charge Mechanism (RCM). However, Notification No.18/2016-ST dated 01.03.2016 amended the Notification No.30/2012-ST dated 20.06.2012 due to which, in respect of legal services which were covered under full reverse charge, has been amended as under :-

Particulars	Percentage of Reverse Charge
Service by a firm of advocates or an individual advocate other than senior advocate , by way of legal services	100%

Further, Notification No.34/2016-ST dated 06.06.2016 has again amended Notification No.30/2012-ST dated 20.06.2012 due to which, in respect of legal services Reverse Charge Mechanism has been amended with effect from 06.06.2016 as under :-

Particulars	Percentage of Reverse Charge
Service by an individual advocate or a firm of advocates by way of legal	100%

services other than representational services by senior advocates	
Service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing.	100%

Therefore, stand has been taken in the counter affidavit that the liability of payment of service tax on legal services provided by a Senior Advocate falls under Forward Charge Mechanism for the period from 01.04.2016 to 05.06.2016.

8. Mr. Sumeet Gadodia, learned counsel appearing for the writ petitioner, submits that Notification No.30/2012-ST dated 20.06.2012 has been amended by way of substitution by virtue of two consecutive notifications, i.e., Notification No. 18/2016-ST dated 01.03.2016 and Notification No.34/2016-ST dated 06.06.2016, and since these amendments have been made by way of substitution, the said amendments will be applicable from the date of the original document i.e., from the date of issuance of Notification dated 20.06.2012, and in that view of the matter, the demand notice issued by the authority, which is impugned in this writ petition, is not fit to be sustainable.

9. It is not in dispute that if any amendment is being made by way of substitution, it will relate back to the original document, reference in this regard may be made to the judgment rendered by Hon'ble Apex Court in ***Zile Singh v. State of Haryana and Others* [(2004) 8 SCC 1]**, wherein at paragraphs 17 to 21 it has been held which reads as under :-

“17. Maxwell states in his work on *Interpretation of Statutes* (12th Edn.) that the rule against retrospective operation is a presumption only, and as such it “may be overcome, not only by express words in the Act but also by circumstances sufficiently strong to displace it” (p. 225). If the dominant intention of the legislature can be clearly and doubtlessly spelt out, the inhibition contained in the rule against perpetuity becomes of doubtful applicability as the “inhibition of the rule” is a matter of degree which would “vary *secundum materiam*” (p. 226). Sometimes, where the sense of the statute demands it or where there has been an obvious mistake in drafting, a court will be prepared to substitute another word or phrase for that which actually appears in the text of the Act (p. 231).

18. In a recent decision of this Court in *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India* [(2003) 5 SCC 23] it has been held

that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory

basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

19. The Constitution Bench in *Shyam Sunder v. Ram Kumar* [(2001) 8 SCC 24] has held: (SCC p. 49, para 39)

“Ordinarily when an enactment declares the previous law, it requires to be given retroactive effect. The function of a declaratory statute is to supply an omission or to explain a previous statute and when such an Act is passed, it comes into effect when the previous enactment was passed. The legislative power to enact law includes the power to declare what was the previous law and when such a declaratory Act is passed, invariably it has been held to be retrospective. Mere absence of use of the word ‘declaration’ in an Act explaining what was the law before may not appear to be a declaratory Act but if the court finds an Act as declaratory or explanatory, it has to be construed as retrospective.” (p. 2487).

20. In *Bengal Immunity Co. Ltd. v. State of Bihar* [AIR 1955 SC 661] , *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637] was cited with approval. Their Lordships have said:

“It is a sound rule of construction of a statute firmly established in England as far back as 1584 when *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637] was decided that—

‘... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico.*' ”

21. In *Allied Motors (P) Ltd. v. CIT* [(1997) 3 SCC 472] certain unintended consequences flowed from a provision enacted by Parliament. There was an obvious omission. In order to cure the defect, a proviso was sought to be introduced through an amendment. The Court held that literal construction was liable to be avoided if it defeated the manifest object and purpose of the Act. The rule of reasonable interpretation should apply.

“A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.”

In the backdrop of the aforesaid proposition laid down by Hon'ble Apex Court, it is to be looked into by this Court as to whether the amendments which have been brought by virtue of Notification No. 18/2016-ST dated 01.03.2016 and Notification No.34/2016-ST dated 06.06.2016 are by way of substitution and if yes, what would be its consequence?

10. This Court deems it fit and proper to first consider Notification No. 30/2012-ST dated 20.06.2012 to answer the aforesaid issue. The aforesaid notification is quoted hereunder:-

**“[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]**

**Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 30/2012-Service Tax**

New Delhi, the 20th June, 2012

GSR.....(E).—In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), and in supersession of (i) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 15/2012-Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 213(E), dated the 17th March, 2012, and (ii) notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 36/2004-Service Tax, dated the 31st December, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 849 (E), dated the 31st December, 2004, except as respects things done or omitted to be done before such supersession, the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:—

I. The taxable services,—

(A) (i)

(ii)

(iii)

(iv) provided or agreed to be provided by,-

(A) an arbitral tribunal, or

(B) an individual advocate or a firm of advocates by way of support services, or

(C)

(1)

(2)

(v)

(B)

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Table

Sl. No.	Description of a service	Percentage of service tax payable by the person providing service	Percentage of service tax payable by the person receiving the service
1	in respect of services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	Nil	100%
2	in respect of services provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road	Nil	100%
3	in respect of services provided or agreed to be provided by way of sponsorship	Nil	100%
4	in respect of services provided or agreed to be provided by an arbitral tribunal	Nil	100%
5	in respect of services provided or agreed to be provided by individual advocate or a firm of advocates by way of legal services	Nil	100%
6	in respect of services provided or agreed to be provided by Government or local authority by way of support services excluding,- (1) renting of immovable property, and (2) services specified in subclauses (i), (ii) and (iii) of clause (a) of section 66D of the Finance Act,1994	Nil	100%
7	(a) in respect of services provided or agreed to be provided by way of renting of a motor vehicle designed to carry passengers on Nil 100 % abated value to any person who is not engaged in the similar line of business (b) in respect of services provided or agreed to be provided by way of renting of a motor vehicle	60%	40%

	designed to carry passengers on non abated value to any person who is not engaged in the similar line of business		
8.	in respect of services provided or agreed to be provided by way of supply of manpower for any purpose	25%	75%
9.	in respect of services provided or agreed to be provided in service portion in execution of works contract	50%	50%
10	in respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	Nil	100%

Explanation-I. - The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.

Explanation-II. - In works contract services, where both service provider and service recipient is the persons liable to pay tax, the service recipient has the option of choosing the valuation method as per choice, independent of valuation method adopted by the provider of service.

2. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334/1/2012- TRU]

(Raj Kumar Digvijay)

Under Secretary to the Government of India”

11. Further, the Central Government, vide Notification No.25/2012 dated 20.06.2012, exempted the following taxable services from the whole of the service tax leviable thereon under Section 66B of the Act, 1994. Notification No.25/2012 dated 20.06.2012 is quoted hereunder for ready reference :-

**“[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]**

**Government of India
Ministry of Finance
(Department of Revenue)
Notification No. 25/2012-Service Tax**

New Delhi, the 20th June, 2012

G.S.R.(E).- In exercise of the powers conferred by sub-section (1) of section 93 of the Finance Act, 1994 (32 of 1994) (hereinafter referred to as the said Act) and in supersession of notification number 12/2012- Service Tax, dated the 17th March, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 210 (E), dated the 17th March, 2012, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the following taxable services from the whole of the service tax leviable thereon under section 66B of the said Act, namely:-

....

6, Services provided by-

(a) an arbitral tribunal to –

(i) any person other than a business entity; or

(ii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year; or

(c) a person represented on an arbitral tribunal to an arbitral tribunal;

...

3. This notification shall come into force on the 1st day of July, 2012.

[F.No. 334/1/2012- TRU]

(Raj Kumar Digvijay)
Under Secretary to the Government of India”

Thus, it is evident that the Central Government, vide Notification No.25/2012 dated 20.06.2012 exempted certain services from the ambit of Section 66B of the Finance Act, 1994. Serial No.6 of the said notification exempted services provided by an individual as an advocate or a partnership firm of advocates by way of legal services to an advocate or partnership firm of advocates providing legal services, any person other than a business entity or a business entity with a turnover up to Rupees ten lakh in the preceding financial year.

12. For the present, the relevant provision which is the subject matter of the question is Clause 6 which stipulates about the taxable services and relevant are 6 (b)(i), (b)(ii) and (b)(iii) which are quoted as under :-

“6, Services provided by–

(a) ...

(b) an individual as an advocate or a partnership firm of advocates by way of legal services to,-

(i) an advocate or partnership firm of advocates providing legal services;

(ii) any person other than a business entity; or

(iii) a business entity with a turnover up to rupees ten lakh in the preceding financial year;

(c)”

The provision as contained in Notification No.30/2012 dated 20.06.2012 has been amended by virtue of Notification No.18/2016-ST dated 01.03.2016 by way of substitution. The

aforesaid notification is necessary to be reproduced herein,
which reads as under :-

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
NOTIFICATION No. 18/2016-Service Tax**

New Delhi, the 1st March, 2016

G.S.R.____(E).-In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(a) in paragraph I, in clause (A),-

(i) sub-clause (ib) shall be omitted;

(ii) for sub-clause (ic), the following shall be substituted, namely:-

“(ic) provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to a lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998);”;

(iii) in sub-clause (iv), for item (B), the following shall be substituted, namely:-

“(B) a firm of advocates or an individual advocate other than senior advocate, by way of legal services, or”;

(b) in paragraph (II), in the TABLE,-

(i) Sl. No. 1B and the entries relating thereto shall be omitted;

(ii) against Sl. No. 1C, for the entry under column (2), the following shall be substituted, namely:-

“in respect of services provided or agreed to be provided by a selling or marketing agent of lottery tickets in relation to lottery in any manner to a lottery distributor or selling agent of the State Government under the provisions of the Lottery (Regulations) Act, 1998 (17 of 1998)”;

(iii) against Sl. No. 5, for the entry under column (2), the following shall be substituted, namely:-

“in respect of services provided or agreed to be provided by a firm of advocates or an individual advocate other than a senior advocate by way of legal services”;

(iv) against Sl. No. 6, in column (2), the words “by way of

support services” shall be omitted.

2. This notification shall come into force on the 1st day of April, 2016.

[F.No. 334 /08/ 2016-TRU]

(K. Kalimuthu)

Under Secretary to the Government of India

Subsequently, the said notification has further been amended by way of substitution vide Notification No.34/2016-ST dated 06.06.2016, which reads as hereunder:-

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]**

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
NOTIFICATION No. 34/2016-Service Tax**

New Delhi, the 6th June, 2016

G.S.R.____(E).- In exercise of the powers conferred by sub-section (2) of section 68 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2012-Service Tax, dated the 20th June, 2012, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 472 (E), dated the 20th June, 2012, namely:-

1. In the said notification,-

(a) in paragraph I, in clause (A),-

(i) in sub-clause (iv), for item (B), the following item shall be substituted, namely:-

“(B) an individual advocate or a firm of advocates by way of legal services other

than representational services by senior advocates, or”;

(ii) for sub-clause (iva), the following sub-clauses shall be substituted, namely:-

“(iva) provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, to such business entity who is litigant, applicant, or petitioner, as the case may be”;

(ivb) provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;”

(b) in paragraph (II):-

(i) in the TABLE, against Sl. No. 5, for the entry under column (2), the following entry shall be substituted, namely:-

“in respect of services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly”;

(ii) after Explanation II., the following shall be inserted, namely:-

“Explanation III. – The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.”.

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(Anurag Sehgal)
Under Secretary

13. Thus, it is evident that both the amendments, i.e., amendment dated 01.03.2016 and 06.06.2016, are by way of substitution.

Since both the amendments are by way of substitution and the amendment by way of substitution relates back to the original document, as has been held by Hon'ble Apex Court in ***Zile Singh v. State of Haryana*** (Supra) and ***Government of India and Others v. Indian Tobacco Association [(2005) 7 SCC 396]***, both the amendments by way of substitution of the provision as contained in the original notification will be deemed to have applicable with effect from the date of notification dated 20.06.2012.

14. Since both the amendments relate back to the original document, according to our considered view, the demand notice issued by the authority concerned for payment of service tax on legal services provided by a Senior Advocate for the period from 01.04.2016 to 05.06.2016 is held to be not sustainable in the eyes of law.

15. In consequence thereof, the demand notice dated 20.10.2021 is quashed and set aside.

16. In the result, the instant writ petition stands allowed to the extent of quashing of demand notice dated 20.10.2021.

17. Pending interlocutory application, if any, also stands disposed of.

(Dr. Ravi Ranjan, C.J.)

I agree

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

Birendra/**A.F.R.**

