

\$~32, 31, 33 to 42



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

+ W.P.(C) 2138/2019 & CM APPL. 19531/2023(Direction)

M/S T.R. SAWHNEY MOTORS PVT.LTD. Petitioner

Through: Mr. J. K. Mittal alongwith Ms.
Aashna Suri, Advs.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Siddharth Khatana, Adv.
for UOI.
Ms. Suhani Mathur, Mr. Jatin
Kumar Gaur, Advs. for Mr.
Harpreet Singh, Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% **29.08.2023**

1. The petitioners seek an appropriate declaration being entered by the Court holding that Rule 5A of the **Service Tax Rules 1994**¹ would be ultra vires the provisions of the **Finance Act 1994**². A further declaration is sought that Rule 5A has lapsed and does not survive after the introduction of the **Central Goods and Services Tax Act 2017**³.

2. For the sake of brevity and since the challenge flows on identical lines in all the writ petitions, we propose to notice the salient facts as obtaining in the lead writ petition alone. As would be evident from the record of that petition, the petitioners have sought the aforesaid declarations in light of a letter of 20 February 2019 which

¹ the Rules

² the Act

³ CGST



purports to initiate proceeding verification/audit records and documents.

3. It becomes pertinent to note that the validity of Rule 5A(2) of the Rules and in terms of which audit and inspection is sought to be initiated came to be struck down as being ultra vires the Act by a Division Bench of our Court in **Travelite (India) v. Union of India**⁴.

4. Subsequently and it would appear from the record that the respondents in order to validate the action initiated in terms of Rule 5A(2) introduced clause (k) in Section 94 of the Act. Clause (k) as introduced in that provision sought to confer a power to frame rules in respect of imposition of service tax on persons for the proper levy and collection of tax, of duty, furnishing of information, keeping records as well as the manner in which such records would be verified. It however becomes pertinent to observe that the power to conduct a special audit and which was guided by Section 72A of the Act remained untouched.

5. Taking note of the aforesaid statutory changes, a Division Bench of this Court in **Mega Cabs Private Limited v. Union of India & Ors**⁵ held that notwithstanding the amendments so introduced, the position would remain the same as held in *Travelite* and consequently declared the amended Rule 5A(2) as ultra vires the Act.

6. Presently and as things stand, we are informed that the decisions in *Travelite* and *Mega Cabs* form subject matter of appeals which are pending before the Supreme Court where the aforesaid judgments have been stayed.

7. Subsequently and once the Act came to be repealed consequent to the advent of CGST, an issue appears to have been addressed with

⁴ 2014 SCC Online Del 3943

⁵ 2016 SCC Online Del 3630



respect to the validity of proceedings pending or to be initiated under the Rules. This Court was called upon by the respondents to hold that the proceedings initiated under Rule 5A(2) and which may pertain to or be pending on the date when CGST came into effect would stand saved by virtue of Section 174 of the CGST. The Division Benches of this Court in **Aargus Global Logistics Private Limited v. Union of India & Anr⁶** and **Vianaar Homes Private Limited v. Assistant Commissioner, Central Goods and Services Tax & Ors⁷** proceeded to accept the submission addressed on behalf of the respondents and held that the proceedings which had already been initiated or which related to a period prior to the repeal of the Act would stand saved.

8. However, it appears that the decisions in *Travelite* and *Mega Cabs* were not brought to the notice of the Division Benches and the matters appear to have been argued as if Rule 5A continued to exist on the statute book. That would clearly appear to be a factual inaccuracy.

9. We are further and prima facie of the opinion that notwithstanding the judgments in *Travelite* and *Mega Cabs* having been placed in abeyance, the declaration of invalidity would not stand effaced.

10. Since Mr. Singh, learned Standing Counsel was indisposed and had circulated a motion for adjournment, let this batch be called again on 05.10.2023 in the category of “End of Board” matters.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

AUGUST 29, 2023
SU

⁶ 2020 SCC Online Del 2295

⁷ 2020 SCC Online Del 1394