



2018-TIOL-1789-HC-KOL-ST

IN THE HIGH COURT OF CALCUTTA

WP No.29554 (W) of 2017

M/s INFINITY BNKE INFOCITY PVT LTD

Vs

UNION OF INDIA AND ORS

Debangsu Basak, J

Dated: August 30, 2018

Appellant Rep by: Mr J K Mittal, Mr Paritosh Sinha, Mr Amitava Mitra, Mr P Chaturvedi

Respondent Rep by: Mr Kaushik Chandra, Ld ASG, Mr Dibashis Basu, Mr Tapan, Bhanja, Mr Trivesh Goswami, Mr Amitabrata Ray, Mr Bhaskar Prasad Banerjee

ST - Access to a registered premises and Audit of records - Interim stay granted till November 30, 2018 or until further orders whichever is earlier - Writ petition to be listed for hearing in November 2018: High Court [para 4, 6]

Interim Stay granted

Case Laws Cited:

(Travelite (India) Vs. Union of India) - 2014-TIOL-1304-HC-DEL-ST ...Para 2...referred

(Mega Cabs Pvt. Ltd. Vs. Union of India) - 2016-TIOL-1061-HC-DEL-ST...Para 2, 4...relied upon

JUDGEMENT

Per: Debangsu Basak:

1. The petitioner seeks a declaration that sub-rule (2) of Rule 5A of the Service Tax Rules, 1994 as substituted by notification no. **23/24/ST** dated December 25, 2014 is arbitrary and in conflict with provisions of Section 72A of the Finance Act, 1994. The petitioner also seeks a declaration that, the provisions of clause (k) of subsection (2) of Section 94 of the Finance Act, 1994 is unguided and gives uncontrolled power of delegation. The third prayer is with regard to a notice dated February 16, 2015.

2. Learned advocate for the petitioner submits that, the issue of vires of similar provisions of the Finance Act, 1994 initially came up for consideration before the Delhi High Court in 2014 (35) S.T.R. 653 (*Travelite (India) Vs. Union of India*) = **2014-TIOL-1304-HC-DEL-ST**. Such provisions were held to be ultra vires. He submits that, an appeal is pending against such judgment and order of the Delhi High Court before the Hon'ble Supreme Court of India. Subsequently, the provisions as impugned in the present writ petition were introduced. The same was struck down by the Delhi High Court in 2016 (43) STR 67 (*Mega Cabs Pvt. Ltd. Vs. Union of India*) = **2016-TIOL-1061-HC-DEL-ST**. He submits that, since the provisions have been struck down, the notice impugned herein issued on such basis needs to be quashed also.

3. Learned Additional Solicitor General appearing for the respondent no.1 seeks direction for filling affidavits.

4. Since sub-rule 2 of Rule 5A of the Service Tax Rules, 1994, as substituted by notification dated December 25, 2014 was declared ultra vires by Mega Cabs Pvt. Ltd. (supra), it would be appropriate to grant interim stay of the proceedings. Such stay will continue till November 30, 2018 or until further orders whichever is earlier.
5. Let affidavit-in-opposition be filed within four weeks from date. Reply thereto, if any, be filed within two weeks thereafter.
6. List the writ petition under the heading "For Hearing" in the monthly list of November 2018.
7. Urgent website certified copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

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