

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 14195 of 2019****[On note for speaking to minutes of order dated 22/08/2019 in  
R/SCA/14195/2019 ]**

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M/S MARWADI SHARES AND FINANCE LTD.

Versus

UNION OF INDIA

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Appearance:

MR BHARAT RAICHANDANI WITH MR ADITYA R PARIKH(8769)

ADVOCATES for the Petitioner(s) No. 1

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 1

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE A.C. RAO

Date : 30/08/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

By this note for speaking to minutes, it is pointed out that inadvertently, the name of Mr. Bharat Raichandani is not indicated in the appearance for the petitioner along with the learned counsel Shri Aditya R. Parikh.

The Registry shall add the name of Mr. Bharat Raichandani along with Mr. Aditya Parikh as the learned counsel appearing for the petitioner in our order dated 22<sup>nd</sup> August 2019 passed in the Special Civil Application No.14195. The necessary addition shall be effected and a fresh writ of the order shall be issued.

(J. B. PARDIWALA, J)

(A. C. RAO, J)

CHANDRESH

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 14195 of 2019**

M/S MARWADI SHARES AND FINANCE LTD.

Versus

UNION OF INDIA

Appearance:

ADITYA R PARIKH(8769) for the Petitioner(s) No. 1

**CORAM:HONOURABLE MR.JUSTICE J.B.PARDIWALA**  
and  
**HONOURABLE MR.JUSTICE A.C. RAO****Date : 22/08/2019****ORAL ORDER**  
**(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1.00. Let **NOTICE** be issued to the respondents **returnable on 17/10/2019.**

2.00. The subject matter of challenge in the present writ application is the very same challenge which is pending before this Court in the case of OWS Warehouse Services LLP Versus Union of India, Special Civil Application No.16226 of 2018.

3.00. Our attention has been drawn to one interim order dated 17/10/2018 passed by the Co-ordinate Bench in the case of OWS Warehouse Services LLP (supra). The interim order reads thus :

*"5. Counsel for the petitioner submitted that thereafter, Rule 5A of the Service Tax Rules, 1994*

*was amended. The amended Rule also came to be challenged before the Delhi High Court in case of Mega Cabs Pvt. Ltd. v. Union of India. The Delhi High Court again struck down the Rule in judgment reported in 2016 (43) S.T.R. 67 (Del.). Counsel candidly stated that the Supreme Court has stayed the judgment of the Delhi High Court in case of Mega Cabs Pvt. Ltd. by an order dated 26.09.2016.*

*6. Quite apart from these legal controversies, counsel for the petitioner raised an additional contention that with the introduction of the Goods and Service Tax Act, the Finance Act, 1994 and the Service Tax provisions made thereon, stand repealed. He referred to Section 174 of the Central Goods and Service Tax Act, 2017 ("the CGST Act" for short) and contended that the Saving Clause contained therein would not save Rule 5A of the Service Tax Rules, 1994, so as to enable the respondents to initiate fresh proceedings for audit under the said Rule.*

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*7. Section 173 of the CGST Act provides that save and otherwise provided in the said Act, Chapter V of the Finance Act, 1994, shall be omitted. Section 174 of the CGST Act contains Repeal and Saving Clauses. Subsection (1) thereof provides that save and otherwise provided, on and from the date of commencement of the said Act, several Acts mentioned therein would stand*

*repealed. Subsection (2) of Section 174 is a Saving Clause and it inter alia provides that the amendment of the Finance Act, 1994 to the extent mentioned in Subsection (1) of Section 173, shall not revive anything not in force or existing at the time of such amendment or repeal. Clause (e) of this Saving Clause reads as under;*

*“(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;”*

8. A perusal of the said clause of Subsection (2) of Section 174 and other clauses would, prima facie, show that there was no saving of Rule 5A in such manner that fresh proceedings for audit could be initiated in exercise of powers under the said Rule. We, therefore, have serious doubts whether,

*with the aid of Rule 5A of the Service Tax Rules, 1994, the CAG can carry out compulsory Service Tax audit of private agencies like the petitioner.*

*9. Under the circumstances, issue Notice, returnable on 28.11.2018. By way of ad-interim relief, the impugned order dated 09.10.2018 is stayed. In other words, the CAG shall not carry out any further Service Tax audit of the petitioner. Direct service permitted."*

4.00. Let there be Ad-interim Relief in terms of para 9(c).

**D.S. Permitted.**

Sd/-

**(J. B. PARDIWALA, J)**

Sd/-

**(A. C. RAO, J)**

RAFIK..

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THE HIGH COURT  
OF GUJARAT

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