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

Date of Decision: 06.03.2020

+ W.P.(C) 2580/2020

AARGUS GLOBAL LOGISTICS PVT. LTD. Petitioner

Through: Mr. G. Saikumar and Ms. Soumya
Saikumar, Advocates.

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. T.P. Singh, Sr. Central Govt.
Counsel for R-1.
Ms. Sonu Bhatnagar, Sr. Standing
Counsel for R-2 with Ms. Anushree
Narain and Ms. Venus Mehrotra,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

VIPIN SANGHI, J. (Oral):

C.M. No. 9012/2020 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 2580/2020 & C.M. No. 9011/2020

3. Petitioner has preferred the present petition to seek directions quashing Rule 5A of the Service Tax Rules, 1994 by declaring that it is in conflict with various provisions of the Finance Act, 1994, and it is beyond the rule-making power of Respondent No. 1 and ultra vires the Finance Act, 1994.

In the alternative, the Petitioner seeks a writ of Certiorari declaring Rule 5A of the Service Tax Rules, 1994 as having lapsed w.e.f. 01.07.2017 i.e. after introduction of the Central Rules and Services Tax Act (CSGT), 2017, on the premise that there is no saving of the said provision under the CGST Act. Petitioner also assails the notices dated 06.11.2019 and 13.01.2020 issued by Respondent No. 2 requiring the Petitioner to provide several documents and records, on the ground that the same is without jurisdiction and authority of law.

4. The case of the Petitioner is that it is a company engaged in the business of providing freight forwarding services to its clients. It has offices across the country, including at Delhi, Gujarat, Haryana, Karnataka etc. For the purpose of service tax, the Petitioner had a centralized registration with the service tax department at Delhi. Petitioner states that it regularly paid taxes and filed service tax returns.

5. The Petitioner states that according to the Respondents, the impugned notice issued on 06.11.2019, was actually not served on the Petitioner. This notice has been filed along with the writ petition and the same reads as follows:

*“M/s Aargus Global Logistics Pvt Ltd.
(STC NO. AAACP3701AST001)
150, AGL Chambers
Village Kapashera, New Delhi-110037.*

*Subject: Intimation for verification of Financial Records –
Service Tax for the period from 2014-15 (Oct 2014) to 2017-18
(June 2017)-reg.)*

Sir,

The Service Tax verification of accounts/records of your above unit for the period 2014-15 to 2017-18 (upto June 2017) or for the period since last audited is to be done. In this regard, you are requested to furnish the following documents also within 07 working days from the date of receipt of this letter:

g) Copies of Balance Sheet, Trial Balance and Annual Financial Statement for the year 2014-15 to 2017-18 (June).

h) Copies of ST-3 Returns and Cenvat Register for the year 2014-15 to 2017-18 (upto June 2017).

l) Annual Returns submitted to the Registrar of Companies, Sales Tax Returns, Income Tax Returns along with Annexure for the financial years year 2014-15 to 2017-18 (upto June 2017).

m) Returns if any submitted to Banks/financial Institutions for the period year 2014-15 to 2017-18 (upto June 2017).

n) Cost, Audit, Tax Audit and Internal Audit Reports, wherever applicable for the period 2014-15 and 2017-18 (upto June 2017).

2. It may please be noted that non-furnishing of information/documents within the stipulated time may attract penal action under Section 77 of the Finance Act, 1994 read with Section 174 (2) (e) of the Central Goods and Service Tax Act, 2017.

3. It is also requested to designate a person (employee of the company/registered concern) for coordinating with the Audit team and communicate the name, designation and contact numbers and e-mail id of the person so designated.

4. It is further requested that full co-operation may be extended to the Audit party in carrying out the audit and keep all the relevant records ready so that the audit can be conducted

smoothly.

5. In case of any difficulty, you can get in touch with the undersigned through the telephone number/fax/email mentioned below.

The receipt of this letter may please be acknowledged.

*Sd/-
Assistant Commissioner”*

(Emphasis supplied)

6. The Petitioner further states that it received the second impugned notice dated 13.01.2020, which was accompanied with the first impugned notice dated 06.11.2019. The second notice dated 13.01.2020 reads as follows:

*“M/s Aargus Global Logistics Pvt Ltd.
(STC NO. AAACP3701AST001)
150, AGL Chambers
Village Kapashera, New Delhi-110037.*

Subject: Intimation for verification of financial Records Service Tax for the period from 2014-15 (Oct-2014) to 2017-18 (June 2017)-reg.

*Sir,
Please refer to this office letter of even no. 6397 dated 06/11/2019 (copy Enclosed) on the above subject vide which the financial records for service tax audit/Central Excise Audit were sought.*

In this regard, it is to inform that the same have not been received by this officer so far. It is, therefore, once again requested to furnish the requisite records within 5 working days. If the documents are not submitted within time, then penalty under Section 77 of the finance act 1994 read with section 174 (2)(e) of the Central Goods and Service Tax Act 2017 will be

imposed.

Encl. as above

*Sd/-
Assistant Commissioner”*

7. We may at this stage itself notice that though the first prayer of the Petitioner as stated hereinabove, is that Rule 5A of the Service Tax Rules, 1994 be declared to be in conflict with the provisions of the Finance Act, 1994 and beyond the rule making power of Respondent No. 1, there is no specific submission advanced in this regard. The feeble submission advanced by learned Senior Counsel for the Petitioner is that the rule making power does not specifically grant the power to the Central Government to make a rule of the kind framed in Rule 5A. At this stage itself, we may take note of the rule making power contained in the Finance Act, 1994 as also Rule 5A. Section 94 of the Finance Act, 1994 contains the rule making power of the Central Government which reads as follows:

“94. (1) The Central Government may, by notification in the Official Gazette, make rules **for carrying out the provisions of this Chapter.**

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) collection and recovery of service tax under sections 66 and 68;

(aa) determination of the amount and value of taxable service, the manner thereof, and the circumstances and conditions under which an amount shall not be a consideration, under section 67;]

(b) the time and manner and the form in which application for registration shall be made under [sub-sections (1) and (2) of] section 69;

(c) the form, manner and frequency of the returns to be furnished under sub-sections (1) and (2) and the late fee for delayed furnishing of return under sub-section (1) of section 70;]

(cc) the manner of provisional attachment of property under sub-section (1) of section 73C;

(ccc) publication of name of any person and particulars relating to any proceeding under sub-section (1) of section 73D;]

(d) the form in which appeal under section 85 or under sub-section (6) of section 86 may be filed and the manner in which they may be verified;

(e) the manner in which the memorandum of cross-objections under sub-section (4) of section 86 may be verified;

(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service;]

(eeee) the manner of recovery of any amount due to the Central Government under section 87;]

(f) provisions for determining export of taxable services;

(g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;

(h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India;

(hh) rebate of service tax paid or payable on the taxable services used as input services in the manufacturing or processing of goods exported out of India under section 93A;]

(hhh) the date for determination of rate of service tax and the place of provision of taxable service [under section 66C];]

(i) provide for the amount to be paid for compounding and the manner of compounding of offences;

(j) provide for the settlement of cases, in accordance with sections 31, 32 and 32A to 32P (both inclusive), in Chapter V of the Central Excise Act, 1944 (1 of 1944) as made applicable to service tax vide section 83.]

(k) imposition, on persons liable to pay service tax, for the proper levy and collection of the tax, of duty of furnishing information, keeping records and the manner in which such records shall be verified;*

(l) make provisions for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of CENVAT credit) on provider of taxable service or exporter, for dealing with evasion of tax or misuse of CENVAT credit;

(m) authorisation of the Central Board of Excise and Customs or [Principal Chief Commissioners of Central Excise or] Chief Commissioners of Central Excise to issue instructions, for any incidental or supplemental matters for the implementation of the provisions of this Act;

(n) any other matter which by this Chapter is to be or may be prescribed.]

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date

* Clause (k) of Section 94 (2) is as it existed upon the passing of the Finance Act, 1994.

not earlier than the date on which the provisions of this Chapter come into force.

(4) Every rule made under this Chapter, [Scheme framed under section 71 and every notification] issued under section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.”

8. Rule 5A of the Service Tax Rules, 1994 reads as follows:

*“5A. **Access to a registered premises.** (1) An officer authorised by the [Principal Commissioner or Commissioner] in this behalf shall have access to any premises registered under these rules for the purpose of carrying out any scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.*

(2) Every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994,-

(i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;

(ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and

(iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),

for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.”

9. From Section 94 of the Finance Act, 1994 it would be seen that the Central Government has been empowered to make Rules for carrying out the provision of Chapter 5 of the Finance Act, 1994, which contains the provisions in relation to levy of service tax. Therefore, the Central Government is empowered to make rules with a view to enforce and recover service tax. Sub-Section (2) of Section 94 opens with the words “*In particular, and without prejudice to the generality of the foregoing power....*”.

10. The specific aspects in respect of which the Rules may be framed as enumerated in clauses (a) to (m) of Section 94(2) do not take away the general and omnibus power to make Rules conferred by the opening words of Section 94 (2). The Parliament consciously while enumerating the specific matters in respect of which Rules may be framed, preserved the general Rule making power of the Central Government. The only statutory limitation placed on the said Rule making power is that the Rule(s) should be framed for the purpose of enforcing the service tax regime. Therefore, the power of the Central Government to frame rules for carrying out the provisions of the service tax regime was exhaustive, and there is absolutely nothing to suggest that the said power did not encompass the power to frame

a Rule of the kind as Rule 5A, as framed w.e.f. 28.12.2007.

11. Turning to Rule 5A, we notice all that it does is to empower an Authorized Officer - as authorized by the Commissioner, to have access to any premises registered under Service Tax Rules for the purpose of carrying out scrutiny, verification and checks as may be necessary to safeguard the interest of Revenue. It also obliges every assessee to, on demand, make available to the officer empowered under Sub Rule (1), or the audit party deputed by the Commissioner, or the Comptroller and Auditor General of India, or Cost Accountant or Chartered Accountant nominated under Section 72 (A) of the Finance Act, 1994 to produce the enumerated records and documents for scrutiny of the officer or audit party, or Cost Accountant or Chartered Accountant within the specified time limit. Without such power in the Authorized Officer, and corresponding obligation on the assessee, it goes without saying that it would be practically impossible for the officers charged with the responsibility of enforcing the Finance Act, 1994, to effectively enforce the provisions of the said Act. The power vested in the Competent Authorities to recover service tax not levied or paid, or short levied or short paid, or erroneously refunded [under Section 73 of the Finance Act, 1994] would remain a dead letter, if the Competent Authority under the Act is not empowered in terms of the Rule 5A. The said Rule 5A is, even otherwise, relatable to Clause (k) of Section 94 (2), since the said Rule – while casting an obligation on the assessee to produce the records, he is obliged to maintain under the Finance Act, 1994, simultaneously empowers the Competent Authorities to ensure compliance of the said obligation. Thus, we reject the submission of learned senior counsel for the

Petitioner that the Central Government lacked the authority and competence to frame Rule 5A.

12. The next submission of learned counsel for the Petitioner is that rule 5A of the Service Tax Rules does not survive the enactment of the CGST Act. In this regard, learned Senior Counsel for the Petitioner has drawn our attention to Sections 173 and 174 of the CGST Act, which read as follows:

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

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 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, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (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** (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;

(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 with regard to the effect of repeal."

(Emphasis supplied)

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 uninvestigated 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.

14. The further submission of learned Senior Counsel for the Petitioner is that there is no provision in Section 174 to save the Service Tax Rules, as it is only Chapter V of the Finance Act, 1994 which has been saved for the specific purposes mentioned in Clauses (a) to (f) of Section 174 (2). The failure of the Parliament to mention the word “*Rules*”, along with the Finance Act, 1994 in Section 174 (2), according to the Petitioner, means that the Service Tax Rules were not saved even for the purpose of enforcing the saving provisions. We find this submission to be completely meritless.

Firstly, the Parliament omitted Chapter V of the Finance Act, 1994 by amending the same. No part of the Finance Act, 1994 was repealed by the provision of the CGST Act. This omission came into effect only from the date of enforcement of the CGST Act and not earlier. Therefore, Chapter V of the Finance Act, 1994 remained on the statute book till the enforcement of the CGST Act. Secondly, even this Amendment of the Finance Act, 1994 (by Section 173 of the CGST Act) saves what was otherwise provided in the Act, which included what is provided in Section 174. Therefore, to the extent the provisions of Chapter V of the Finance Act, 1994 are saved, they do not stand omitted by amendment of the Finance Act, 1994. Thirdly, the Rules under Chapter V of the Finance Act, 1994, were framed, as noticed hereinabove, to carry out the provisions of Chapter V of the Finance Act, 1994. The rules are subordinate legislation and without the said Rules, the provisions of Chapter V of that Act itself could not be worked. The Service Tax Rules were framed under Chapter V of the Finance Act, 1994. Those rules are, therefore, saved by Clause (b) of Section 174 (2) which states that, inter alia, anything duly done under the Chapter V of the Finance Act, 1994 shall not be affected by the amendment of the Finance Act, 1994. Thus, the amendment of the Finance Act, 1994 does not affect the Service Tax Rules. Fourthly, Section 6 of the General Clauses Act which deals with “effect of repeal” reads as follows:

“6. Effect of repeal. —Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

(emphasis supplied)

15. From the above, it would be seen that the repeal of the Central Act, unless a different convention appears, shall not, inter alia, affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or regulation have not been passed. Far from exhibiting a different intention, Section 174 of the CGST Act expressly seeks to preserve the powers of the Competent Authorities to, inter alia, institute investigation, inquiry etc. In fact, even if Section 174 (2) of the CGST Act were not to expressly so provide, the said power of the

Competent Authorities stood preserved by virtue of Section 6 of the General Clauses Act.

16. The last submission advanced by learned Senior Counsel for the Petitioner is that under Sub-Clause (2) of Rule 5A, only specified documents could be called for and not the documents as sought by the Respondents vide the notice dated 06.11.2019, read with notice dated 13.01.2020. We do not find any merit in this submission as well. Rule 5A (2) of the Service Tax Rules, as noticed hereinabove, empowers the Competent Officer to demand records mentioned (sic: maintained) or prepared in terms of Sub Rule (2) of Rule 5. This takes us to Rule 5 (2) of the Service Tax Rules which reads as follows:

“(2) Every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

(i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-

[(a) providing of any service;]

(b) receipt or procurement of input services and payment for such input services;

(c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;

(d) other activities, such as manufacture and sale of goods, if any.

(ii) all other financial records maintained by him in the normal

course of business.”

17. Thus, the assessee is obliged to maintain and provide all the records prepared or maintained by it for accounting of transactions with regard to providing of any service; receipt or procurement of input services and payment for such input services; receipt, purchase, manufacture, storage, sale or delivery, as the case may be, in regard to inputs and capital goods; other activities such as manufacture and sale of goods, if any and; all other financial records maintained by him in the normal course of business. A perusal of the notice dated 06.11.2019 shows that the Respondents have called for records which the Petitioner is obliged to maintain in terms of Rule 5 of the Service Tax Rules. Therefore, we do not find merit in this submission either.

18. For all the aforesaid reasons, we do not find merit in this petition and the same is dismissed.

19. The Petitioner is directed to comply with the aforesaid notices within next two weeks.

VIPIN SANGHI, J

SANJEEV NARULA, J

MARCH 06, 2020

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