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

+ **W.P. (C) No. 7460/2017 & C.M. No. 30756/2017 (stay)**

APHRO ECOMMERCE SOLUTIONS
PRIVATE LIMITED

..... Petitioner

Through: Mr. K. Parameshwar, Advocate with
Mr. Udit Gupta, Mr. Anup Jain, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Gogna, CGSC for UOI.
Mr. Harpreet Singh, Sr. Standing Counsel with
Ms. Namrata Bharti, Advocate for R-3&4.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

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25.08.2017

C.M. No. 30757/2017 (exemption)

1. Allowed subject to all just exceptions

W.P. (C) No. 7460/2017

2. Notice. Mr. Rajesh Gogna, learned CGSC, accepts notice for the Union of India. Mr. Harpreet Singh, learned Senior Standing Counsel, accepts notice for the Respondents No. 3 and 4.

3. The question raised in the present petition concerns Rule 96A of the Central Goods and Services Tax Rules, 2017 and Circular No. 4/4/2017-

W.P. (C) No. 7460/2017

Page 1 of 3

GST issued by the Central Board of Excise and Customs (GST Policy Wing), in terms of which any person exporting goods or services without payment of integrated tax is required to furnish a bond or a letter of undertaking ('LUT') in Form GST RFD-11. Where the exporter has an export turnover of less than Rs. 1 crore, the bond has to be accompanied by a bank guarantee in a sum that normally does not exceed 15% of the bond amount. Para 4 of said Circular reads as under:-

“4. A clarification has been sought as to whether bond to be furnished for exports is a running bond (with debit/ credit facility) or a one-time bond (separate bond for each consignment/export). It is observed consignment wise bond would be a significant compliance burden on the exporters. It is directed that the exporters shall furnish a running bond, in case he is required to furnish a bond, in FORM GST RFD -11. **The bond would cover the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself. The exporter shall ensure that the outstanding tax liability on exports is within the bond amount.** In case the bond amount is insufficient to cover the tax liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability.” (emphasis supplied)

4. The Petitioner states in para 2 of the petition that it is a web developer and IT software solution services provider in the international and domestic market. Prior to the implementation of the Integrated Goods and Service Tax Act, 2017 ('IGST Act'), there was no service tax on the export of services provided by the Petitioner. Post the IGST Act, the export services provided by the Petitioner are covered under 'zero rated supply' under Section 16(1)(a) of the IGST Act. In order to avail of the input tax credit, the Petitioner, being a new entrepreneur with an export turnover of less than

Rs.1 crore per annum, has to necessarily furnish a bond with a bank guarantee. Such a condition does not apply to an exporter with an annual turnover exceeding Rs. 1 crore. This is the Petitioner's understanding.

5. However, para 4 of the above Circular envisages that the bond has to be for a sum equal to the export tax liability. The question is, when it is 'zero rated supply', is there a necessity to furnish a bond with a bank guarantee? And if so, for what amount?

6. The learned counsel for the Respondent states that he would have to seek a clarification on this aspect and requests for a short adjournment.

7. List on 13th September, 2017.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 25, 2017
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