



Dimensions – 89th Edition

Judgment under Pre-GST era

***M/s. Vianaar Homes Private Limited v. Assistant Commissioner (Circle-12), Central Goods & Services Tax, Audit-II, Delhi & Ors.*¹**

Issue for Consideration

Whether the audit / verification under rule 5A² of the Service Tax Rules, 1994 (“STR, 1994”) read with section 174(2)(e) of the CGST Act, 2017 pertaining to the pre-GST period can be conducted by the officers of the GST audit division (“GST officers”)?

Discussion

- The Petitioner is engaged in the business of construction of residential complexes.
- GST officers visited the premises of the Petitioner in January and February 2020 to conduct audit / verification of the Petitioner and its group Companies for the period FY 2014-15 to June 2017 (“disputed period”).
- The Petitioner challenged the action of GST officers on the ground that the same is without jurisdiction and without legal / statutory authority.

- The contention of the Petitioner was that Rule 5 of STR, 1994 stands omitted by virtue of section 173 of the CGST Act, 2017 and the savings clause under section 174 of the CGST Act, 2017. Further, section 6 of the General Clauses Act, 1897 (“GCA, 1897”) saves only those duty / tax that stood incurred under section 72 or 73 of the Finance Act, 1994 and not under rule 5A of STR, 1994.
- After hearing the contentions of the Petitioner and the Respondent and after perusing the relevant provisions the Hon’ble High Court observed as follows:
 - The High Court judgment in the case of *Aargus Global Logistics Pvt. Ltd. v. Union of India and Anr.*³ has rejected the argument that rule 5A of STR, 1994 does not survive after the enactment of CGST Act, 2017 and concluded that the intention of the Parliament was to save not only the ongoing but also the initiation of fresh investigation, verification etc. under the erstwhile Service Tax regime.

¹ TS-944-HC-2020(DEL)-ST

² Rule 5A(1) of STR, 1994 - An officer authorised by the 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.

³ [2020] 116 Taxmann.com 381 (Delhi)



- Reliance placed by the Petitioner on the case of *Kolhapur Canesugar Works v. Union of India*⁴ and *Air India v. Union of India*⁵ is misplaced as the context of the judgment and the facts of the case are different from the present matter as section 174 of the CGST Act, 2017 expressly saves all pending and new proceedings initiated under the erstwhile Service Tax regime and allows the operation of section 6 of GCA, 1897 unlike the facts in the case of *Kolhapur Canesugar Works (supra)* and *Air India (supra)*.
- Section 174 of the CGST Act, 2017 as well as section 6 of the GCA, 1897, save the institution of verification and audit proceedings which is governed by rule 5A of STR, 1994.
- Section 24 of the GCA, 1897, extends the life of rules, regulations and by-laws made under the old Act and the purpose of the section is to uninterruptedly continue the subordinate legislation made under the repealed act which is re-enacted, with or without modification.
- CGST Rules, 2017, stand on a different footing separate and distinct from the STR, 1994 Hence, in the absence of legislative intent to supersede STR, 1994 by CGST Rules, 2017, mere bringing into force of the CGST Rules, 2017 would not mean that the STR, 1994, is not saved.
- The repeal of the pre-GST indirect tax laws and the re-enactment of the GST law was simultaneous. However, such a decision would not mean that all investigations, audits, and other legal proceedings under the STR, 1994 stood abrogated the moment GST law was enacted, or that the officers were stripped of their power because the STR, 1994 was purportedly not saved.
- CGST Rules, 2017 cannot be understood to have superseded the STR, 1994, and STR, 1994, will continue to govern and apply for the purpose of Chapter V of the Finance Act, 1994.
- Section 174(2) of the CGST Act, 2017, refers to the deletion of Chapter V of the Finance Act 1994 as an “amendment”, which would mean and include a “repeal”, as per the judgment in the case of *Parle Biscuits (P) Ltd. v. The State of Bihar and Ors.*⁶, and thus would be covered under the ambit of section 24 of the GCA, 1897.
- The proviso to section 3 of CGST Act, 2017 stipulates that the Central Excise Officer (“CEO”) appointed under the Central Excise Act, 1944, is deemed to be an officer under the provisions of the CGST Act, 2017. Hence, the CEO continues to be vested with the powers under the Central Excise Act, 1944, and concurrently are deemed to be officers under the CGST Act, 2017 as well.
- If the GST officers carrying out scrutiny and audit are vested with such powers under the Central Excise Act, 1944, then, they are well within their powers to perform such scrutiny and audit.
- The audit / verification is a process prior to adjudication. Hence, if such audit / verification leads to any tax not paid or short paid, the adjudicatory process would follow. Therefore, it cannot be construed that Service tax shall become due only consequent to the exercise of powers under sections 72 and 73 of the Finance Act, 1994.
- The liability and obligation to pay tax accrued in terms of the provisions of the Finance Act, 1994 whenever a taxable event i.e. the rendering of service occurred, which is during the disputed period when Chapter V of Finance Act, 1994 was in force.
- If service tax has not been paid or short paid, the department would acquire the right to recover the said tax either by best judgment assessment or by initiating recovery proceedings.
- The words ‘such duty’ appearing in section 174(2) of the CGST Act, 2017 cannot be

⁴ (2000) 2 SCC 536

⁵ (1995) 4 SCC 734

⁶ (2005) 9 SCC 669



construed to mean **only** that which forms the subject matter of proceedings under section 72 and 73 of the Finance Act, 1994 but would include inquiry, verification (including scrutiny and audit) initiated prior to action under section 72 and 73 of the Finance Act, 1994.

- A contrary interpretation would mean that all cases of duty evasion, where the adjudicatory process has not commenced, would be ignored which is clearly not the intent of the saving clause.
- Having regard to the language used in the saving clause of the CGST Act, 2017 as well as section 6 and 24 of the GCA, 1897, and the legislative intent behind the repeal and enactment, rule 5A of STR, 1994 framed under the repealed Chapter V of the Finance Act, 1994, is saved.

Judgment

The Hon'ble High Court held that rule 5A of the STR, 1994 is saved under the CGST Act, 2017 and does not stand omitted after the enactment of GST Act.

Dhruva Comments:

Similar judgments have been passed by the High Courts in the case of *Matrika Infrastructure Private Limited v. Union of India & Others Indore*⁷, *Aargus Global Logistics Pvt. Ltd. v. Union of India & Anr.*⁸ and *Suresh Kumar Singhal v. Union of India*⁹ wherein it has been held that proceedings such as investigation, audit etc. pertaining to the pre-GST regime is saved and can be initiated under the GST law.

The repeal and savings clause under section 174 of the CGST Act, 2017 gives wide powers to the department to initiate and continue any proceedings under any act, rule etc. of the pre-GST regime unless specifically restricted by section 174 of the CGST Act, 2017 or under the provisions of the erstwhile regime.

⁷ 2019 (8) TMI 396

⁸ 2020 (3) TMI 811

⁹ 2019 (4) TMI 522





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