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**W.P. 380 (W) of 2019**

**M/s. Gitanjali Vacationville Private Limited & anr.  
Vs.  
The Union of India & anr.**

Mr. Arijit Chakraborty,  
Mr. Bhaskar Sengupta .... For the petitioners.

Mr. Kausik Chanda, Ld. A.S.G.,  
Mr. Debashis Basu ... for UOI.

Mr. K. K. Maiti,  
Ms. Sanjukta Gupta  
.... For Customs and Central Excise.

A Notice dated August 24, 2018 and the subsequent reminders thereto dated November 28, 2018 and December 7, 2018 issued by the respondent no.2 are under challenge in the present writ petition on the ground that, they were issued without jurisdiction.

Learned Advocate appearing for the petitioners submits that, the Central Goods and Services Tax Act, 2017 repeals Chapter V of the Finance Act, 1994. By the impugned notice and the two subsequent reminders, the authorities are proposing to conduct an audit under the provisions of the Chapter V of the Finance Act, 1994. He refers to Sections 173 and 174 of the Act of

2017 and submits that, the provisions of Chapter V of the Finance Act, 1994 stands omitted. An audit contemplated under Chapter V of the Finance Act, 1994 is not saved by the provisions of Section 174 of the Act of 2017. He relies upon **2018 (17) G.S.T.L. 21 (Cal.) ( Infinity BNKE Infocity Pvt. Ltd. Versus Union of India)** and submits that, in similar circumstances, the Court was pleased to grant an order of stay. He refers to **2018 (19) G.S.T.L. 27 (Guj.) ( OWS Warehouse Services LLP Versus Union of India)** and submits that, the Gujarat High Court also granted stay in respect of proceedings under Rule 5A of the Service Tax Rules, 1994.

Learned Additional Solicitor General appearing for the respondents submits that, the final orders of this Court relating to challenge under Rule 5A of the Service Tax Rules, 1994 were set aside by the Hon'ble Division Bench. He relies upon the judgment and order dated December 6, 2018 passed in **MAT No.914 of 2018 with CAN 6339 of 2018 (Union of India & Ors. Versus Infinity Infotech Parks Ltd. and Anr.)** as well as **MAT No.915 of 2018 with CAN 6338 of 2018 (Union of India & Ors. Versus Magnacon**

**Electrical (India) Ltd.)** and submits that, the matters have since been remanded for fresh consideration. He submits that, in view of **Infinity Infotech Parks Ltd. (supra) and Magnacon Electrical (India) Ltd. (supra)**, the Court should not grant any interim relief.

Learned Advocate appearing for the petitioners submits in reply that, the provisions of Rule 5A of the Service Tax Rules, 1994 are not under challenge in the present writ petition. The present writ petition is founded upon the lack of jurisdiction of the authorities in proposing to undertake an audit under the Service Tax Act, 1994. Sub-Rule 2 of Rule 5 of the Service Tax Rules, 1994 were challenged in various writ petitions before this Court. Two of the writ petitions being **Infinity Infotech Parks Ltd. (supra) and Magnacon Electrical (India) Ltd. (supra)** were disposed of by the Single Judge. Appeals carried therefrom were disposed of by the judgment and order dated December 6, 2018. By such judgment and order, the Appeal Court set aside the judgment and order passed by the Single Judge and remanded the matter for fresh consideration. All points raised in the writ petition have been kept open for

decision.

***Infinity BNKE Infocity Pvt. Ltd. (supra)***  
***and OWS Warehouse Services LLP (supra)*** are  
interim orders.

***Infinity BNKE Infocity Pvt. Ltd. (supra)***  
was rendered by this Court without the benefit of ***Infinity  
Infotech Parks Ltd. (supra) and Magnacon  
Electrical (India) Ltd. (supra)***. Moreover, in ***Infinity  
BNKE Infocity Pvt. Ltd. (supra)***, the petitioner therein  
sought a declaration that Sub-Rule 2 of Rule 5A of Service  
Tax Rules, 1994 was arbitrary and in conflict with the  
provisions of Section 72 A of the Finance Act, 1994. Such  
challenge is not there in the present writ petition. It  
appears from ***OWS Warehouse Services LLP (supra)***,  
the provisions of such Rule 5A of the Service Tax Rules,  
1994 as amended was under challenge therein also. In  
any event the same is an interim order without the writ  
petition being disposed of finally.

As noted above, in the facts of the present  
case, the petitioner is aggrieved by the authorities  
invoking the provisions of the Act of 1994 in proposing to  
conduct an audit subsequent to the coming into effect of

the Act of 2017. Sections 173 and 174 of the Act of 2017 requires considerations. Sections 173 and 174 are as follows:

*“173. Amendment of Act 32 of 1994 – 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 10 of 1897. Act, 1897 with regard to the effect of repeal.”*

The provisions of Chapter V of the Finance Act, 1994 stands omitted by Section 173 of the Act of 2017 save as otherwise provided under the Act of 2017. Therefore, if any provision of the Act of 2017 allows the applicability of the Chapter V of the Finance Act, 1994, then notwithstanding the omission of the Chapter V of the Finance Act, 1994 under Section 173 the same continues to apply.

Section 174 is the repeal and saving provisions. Sub-Section 1 of Section 174 repeals the provisions of the various statutes as mentioned therein. Sub-Section (2) of Section 174 stipulates that, notwithstanding the repeal of the Acts mentioned in Sub-Section (1) of Section 174 and the amendment of the Finance Act, 1994 to the extent mentioned in Sub-Section (1) of Section 174 or Section 173, it shall not affect any pending investigation, enquiry, verification or other legal proceedings and that, such proceedings may be instituted, continued or enforced as if such Act had not been

repealed.

Prima facie, reading Sections 173 and 174 of the Act of 2017 it appears that, an enquiry or an investigation or even a legal proceeding under the Act of 1994 is permissible notwithstanding the coming into effect of the Act of 2017. The authorities are proposing undertake an audit for the period when the Act of 1994 was applicable. The authorities are entitled to do so.

In such circumstances, I am not minded to grant any interim order as prayed for.

It would be appropriate to permit the parties to file affidavits.

Let affidavit-in-opposition be filed within four weeks from date. Reply thereto, if any, be filed within two weeks thereafter.

List the writ petition under the heading “Hearing” in the Monthly Combined List of March, 2019.

Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.

**( Debangsu Basak, J. )**