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

\+ **W.P.(C) 5709/2017 & CM No. 23814/2017 (stay)**

J K MITTAL & COMPANY ..... Petitioner

Through : Mr. J. K. Mittal, Mr. Hitender Mehta and Mr. Atul Krishna, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through : Mr. Sanjeev Narula and Mr. Abhishek Ghai, Advs. for R-1.
Mr. Gautam Narayan, Additional Standing Counsel for GNCT of Delhi.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% 12.07.2017

1. Notice. Mr. Sanjeev Narula, learned counsel accepts notice on behalf of Union of India (Respondent No. 1) and Mr. Gautam Narayan, learned Additional Standing Counsel accepts notice on behalf of Govt. of NCT of Delhi (GNCTD) (Respondent No. 2).

2. Notice will issue to Respondent No.3 i.e. the Goods and Service Tax Council (GST Council) through its Secretary. Petitioner is permitted to additionally serve the notice *dasti* on the Secretary to the GST Council.

3. This petition is by J. K. Mittal & Company, which is a proprietary concern of which Mr. J. K. Mittal, Advocate, who appears in person, is the

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Sole Proprietor. The Petitioner states that he provides legal services including consultancy, opinion, drafting, appearances before Courts etc. Mr. Mittal states that although he has an office only in Delhi, he represents his clients throughout the country before various High Courts and Tribunals outside Delhi.

4. The grievance of the Petitioner is that contrary to the recommendations of the GST Council (Respondent No. 3) at its 14th meeting held on 19th May, 2017 and 16th meeting held on 11th June 2017, Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 as well as Notification No. 13/2017-State Tax (Rate) dated 30th June, 2017, have been issued respectively, by the Union of India (Respondent No. 1) and the GNCTD (Respondent No. 2), which are *per se* in violation of the Central Goods and Service Tax Act 2017 (CGST Act), the Delhi Goods and Service Tax Act 2017 (DGST Act) read with Article 279 A of the Constitution of India and have adverse consequences to lawyers in general including himself. Accordingly, in this petition the constitutional validity of the aforesaid notifications is challenged.

5. In addition, the petition also challenges Notification No.5/2017-Central tax dated 19th June, 2017 issued by the Union of India and Notification No. F3(10)/Fin(Rev-I)/2017-18/DS-VI/340 dated 22nd June, 2017 issue by the GNCTD essentially on the ground that these notifications are contrary to the recommendations of GST Council. The petition also challenges the constitutional validity of Section 9 (4) of CGST Act, Section 5(4) of The Integrated Goods and Services Tax Act, 2017 (IGST Act) and Section 9 (4)

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of DGST Act. He points out that this provision was not to be found in the model laws prepared by the GST Council. It seeks to collect GST on 'reverse charge' basis from a person registered under the CGST Act, IGST Act or DGST Act in respect of goods supplied and services received by such person from a person who has not been so registered. Mr Mittal submits that this provision lacks a proper corresponding machinery provision to facilitate its implementation, and is therefore ultra vires the statute. According to him this provision is incapable of being complied with and is bound to cause undue hardship to the persons registered under the aforementioned three statutes.

6. In addition the above main points of challenge, in support of his plea for urgent interim relief Mr Mittal submits that under Article 279 A of the Constitution of India, the GST Council is a constitutional body. Article 279 A (4) (c) of the Constitution of India states that the GST Council "shall make recommendations to the Union and the States on the model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax…" Consistent with this requirement a number of provisions of the CGST Act including Section 9 (1), 9 (2), 9 (3) and 9 (5) envisage notifications being issued by the central government "on the recommendations of the Council." The categorical averment is that the impugned notifications are in violation of this mandatory statutory requirement inasmuch as the GST Council had recommended that legal services as a whole would be amenable to GST only on 'reverse charge' basis. To make good this assertion, Mr. Mittal draws the attention of the

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Court to the document titled "SERVICES UNDER REVERSE CHARGE AS APPROVED BY GST COUNCIL". Row 3 of this chart reads as under:-

"SERVICES UNDER REVERSE CHARGE AS APPROVED BY GST COUNCIL

The fitment of rates of services were discussed on 19 May 2017 during the 14th GST Council meeting held at Srinagar, Jammu & Kashmir. The Council has broadly approved the GST rates for services at Nil, 5%, 12%, 18% and 28%. The list of services that will be under reverse charge as proved by the GST Council is given below. The information is being uploaded immediately after the GST Council's decision and it will be subject to further vetting during which the list may undergo some changes. The decisions of the GST Council are being communicated for general information and will be given effect to through gazette notifications which shall have force of law.

S. No.	Service	Provider of service	Percentage of service tax payable by Service Provider	Recipient of Service	Percentage service tax payable by any person other Service Provider
3	Services provided or agreed to be provided by an individual advocate or firm of advocates by way of all legal services directly or indirectly	An individual advocate or firm of advocates	Nil	Any business entity	100%

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7. In contrast, Notification No.13/2017-Central Tax (Rate), dated 28th June, 2017 in relation to the above entry reads as under:

"GSR ..... (E).- In exercise of the powers conferred by sub-section (3) of section 9 of the Central Goods and Services Tax Act 2017 (12 of 20 17), the Central Government on the recommendations of the Council hereby notifies that on categories of supply of services mentioned in column (2) or the Table below supplied by a person as specified in column (3) of the said Table, the whole of central tax leviable under section 9 of the said Central Goods and Services Tax Act, shall be paid on reverse charge basis by the recipient of the such services as specified in column (4) of the said Table:-

S. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
2	Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory including **where contract for provision of such service** has been entered through another advocate or a firm of advocates or by a firm of advocates, by way of legal services to a business entity.	An individual advocate including a senior advocate or firm of advocates	Any business entity located in the taxable territory

8. Notification No.13/2017-State Tax (Rate), dated 30th June, 2017 issued by the GNCTD is on the same lines. The case of Mr. Mittal is that the expression "provision of such services" following the expression "located in the taxable territory" restricts the exemption to only 'representational

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services' provided by a legal practitioner before any court, tribunal etc. and not to all legal services provided by such legal practitioner or a firm.

9. A further difficulty expressed by Mr. Mittal is that he and certain other lawyers had, in compliance with the provisions of the Finance Act 1994 (FA), got themselves registered way back in 2011 under FA as service providers. After a period of about six months the provision of legal services was notified as being taxable under 'reverse charge' basis. However, there was no provision in the FA to allow for de-registration. Thus Mr Mittal's FA registration continues. Mr. Mittal draws attention to Section 22(2) of the CGST Act, which reads as under:-

> "22 (2) Every person who, on the day immediately preceding the appointment day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day."

10. He submits that the mere clarification that all legal services are amenable to GST on reverse charge basis may not solve his problem. A legal practitioner like himself who is already registered under the FA would have to be exempted from registration under the GST laws under Section 23 (2) read with Section 22 (2) of the CGST and the corresponding provisions of the IGST Act and DGST Act.

11. One of the central issues that requires to be addressed is whether the impugned Notification No.13/2017 dated 28th and 30th June, 2016 cover all legal services not restricted to representational services rendered by legal practitioners. The ancillary question is whether there is any requirement of registration by legal practitioners and/or firms rendering legal services under

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the CGST Act or the IGST Act or the DGST Act even if they are earlier registered under the FA?

12. Mr. Mittal has pointed out that under Section 25 (3) of the CGST Act, it is open to a person, though not liable to be registered under Section 22 or Section 24 of the CGST Act to get himself registered voluntarily under the CGST Act. However, Mr. Mittal is clear that as far as he is concerned, he does not wish to be so registered. His concern is that since his registration under the FA continues, by virtue of Section 22 (2) of the CGST Act he is under an obligation to get registered under the CGST Act and thereby be subject to a whole series of legal obligations including having to pay tax on reverse charge basis under Section 9 (4) of the CGST Act and DGST Act and Section 5(4) of the IGST Act. He states that the prevalent uncertainty is causing great inconvenience to him and other legal practitioners in the matter of receiving and rendering services.

13. Both Mr. Narula, learned counsel appearing on behalf of the Union of India and Mr. Gautam Narayan, learned counsel for the GNCTD seek a short adjournment to take instructions from the respective governments to clarify the legal position in respect of the above impugned notifications. In particular they seek time to obtain a clarification whether all legal services (not restricted to representational services) provided by legal practitioners and firms would be governed by the reverse charge mechanism under the CGST Act, the DGST Act and the IGST Act. They also seek time to obtain clarification regarding the requirement of persons already registered under

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the FA Act being liable to get registered under the CGST Act, the IGST Act or the DGST Act.

14. In view of the above submissions it is plain that as of date there is no clarity on whether all legal services (not restricted to representational services) provided by legal practitioners and firms would be governed by the reverse charge mechanism. If in fact all legal services are to be governed by the reverse charge mechanism than there would be no purpose in requiring legal practitioners and law firms to compulsorily get registered under the CGST, IGST and/or DGST Acts. Those seeking voluntary registration would anyway avail of the facility under Section 25 (3) of the CGST Act (and the corresponding provision of the other two statutes). There is therefore *prima facie* merit in the contention of Mr Mittal that the legal practitioners are under a genuine doubt whether they require to get themselves registered under the three statutes. In the circumstances, the Court directs that no coercive action be taken against any lawyer or law firms for non-compliance with any legal requirement under the CGST Act, the IGST Act or the DGST Act till a clarification is issued by the Central Government and the GNCTD and till further orders in that regard by this Court.

15. It is clarified that any lawyer or law firm that has been registered under the CGST Act, or the IGST Act or the DGST Act from 1st July, 2017 onwards will not be denied the benefit of such clarification as and when it is issued.

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16. It is further clarified that if an appropriate clarification is not able to be issued by the Respondents 1 and 2 by the next date, the Court will proceed to consider passing appropriate interim directions.

17. List on 18th July, 2017.

18. Order be given *dasti* under the signature of Court Master.

sd/-

S.MURALIDHAR, J

sd/-

PRATHIBA M. SINGH, J

JULY 12, 2017
dk & j

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