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

+ W.P.(C) 2245/2020, C.M.Appls. No. 7832/2020, 7833/2020

VIANAAR HOMES PRIVATE LIMITED ..... Petitioner

Through: Mr. Raghvendra Singh, Adv.

versus

ASSISTANT COMMISSIONER (CIRCLE-12), CENTRAL GOODS  
& SERVICES TAX & ORS. .... Respondents

Through: Mr. Harpreet Singh, Sr. Standing  
Counsel with Ms. Suhani Mathur,  
Adv.

**CORAM:**

**HON'BLE MS. JUSTICE HIMA KOHLI**

**HON'BLE MS. JUSTICE ASHA MENON**

**ORDER**

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**27.02.2020**

**C.M. Appl.No. 7832/2020 (exemption)**

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

**W.P.(C) 2245/2020 & C.M.Appl. No.7833/2020 (interim relief)**

1. The present petition has been placed before this Bench on an urgent basis, as the roster Bench is not available.
2. The petitioner seeks issuance of a writ of certiorari, for quashing the notice/letter dated 01.11.2019, issued by the respondent No.1 intimating that they propose to conduct an audit/verification of documents/records for the financial years 2014-15 to 2016-17 or for the period since last audited, “*in terms of Rule 5(A) of Service Tax Rules, 1994, read with Section 174(2)(e)*”

*of the Central Goods and Services Tax Act, 2017*’.

3. Mr. Raghvendra Singh, learned counsel for the petitioner, submits that on 21.01.2020, respondents No.2 to 4 had visited the business premises of the petitioner and directed production of documents and information in terms of the impugned letter. They had also sought additional information pertaining to several group companies of the petitioner. Thereafter, the respondents No.2 to 4 visited the business premises of the petitioner on 17.02.2020 and 24.02.2020 and had directed production of several additional documents/information, as set out in paras 6 and 7 of the writ petition. Aggrieved by the said action, the present petition has been filed.

4. The present petition is accompanied by an application for staying the operation of the impugned notice/letter dated 01.11.2019 and the actions taken by the respondent in pursuance thereto. Learned counsel for the petitioner states that under Section 174 (2)(e) of the CGST Act, 2017, which is the repeal and saving clause, Rule 5A of the Service Tax Rules, 1994 has not been saved and having regard to the fact that the said provision only saves a proceeding that has already been instituted at the time of repeal or omission of the 1994 Act and not thereafter, the respondents cannot be permitted to conduct an audit/verification of the accounts of the petitioner for the relevant financial years. In support of the said submission, learned counsel cites interim orders passed by a Division Bench of this Court in T.R. Sawhney Motors (P.) Ltd. vs. Union of India, reported as **(2019) 110 taxmann.com 145 (Delhi)**, **R/Special Civil Application No.16226/2018** entitled M/s. OWS Warehouse Services LLP Through Asadullah Siddique S/O Vasiullah Siddique vs. Union of India, decided by a Division Bench of

the Gujarat High Court on 17.10.2018 in and Sulabh International Social Service Organization vs. Union of India, reported as **(2019) 105 taxmann.com 301 (Jharkhand)**.

5. On the other hand, Mr. Singh, learned counsel for the respondents opposes the prayer made in the interim application and states that an entirely different view has been taken by a co-ordinate Bench of this Court in a recent judgment dated 18.12.2019 in **W.P. (C) 13350/2019**, entitled as Intertek India Pvt. Ltd. vs. Central Board of Indirect Taxes And Customs (CBIC) & Anr., which is much closer on facts. He canvasses that Section 174(2)(e) of the CGST Act, 2017 makes it clear that repealing of the Finance Act, 1994 shall not affect of any investigation, inquiry, verification and any other legal proceeding that “*may be instituted*” or continued or enforced, as if the said Act has not been amended or repealed. He therefore submits that it cannot be urged that repeal of Rule 5A of the Service Tax Rules, 1994 would enure to the benefit of the appellant.

7. Having heard learned counsel for the parties, *prima facie*, we are of the view that no interim relief of the nature as prayed for, can be granted without calling for a reply by the respondent. We are also not persuaded to come to the aid of the petitioner right away for the reason that it has taken almost three months reckoned from 01.11.2019, to approach the court for relief and that too at the nick of the time.

8. Issue notice. Learned counsel for the respondent accepts notice. Reply be filed within two days.

9. List for consideration before the roster Bench on 04.03.2020.

**HIMA KOHLI, J**

**ASHA MENON, J**

**FEBRUARY 27, 2020**

Jitender/s

*W.P.(C) 2245/2020*

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