**(2015) 02 KL CK 0004**

**In the High Court Of Kerala**

**Case No :** W.P.(C) No. 30080 of 2014 (H) and W.P.(C) No. 3541 of 2015 (P)

Inditrade Derivatives & Commodities Ltd. APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 25-02-2015

**Acts Referred:**

Finance Act, 1994 — Section 72A, 94

**Citation :** (2015) 40 STR 880

**Hon'ble Judges :** A.K. Jayasankaran Nambiar, J.

**Bench :** Single Bench

**Advocate :** Jose Jacob, Advocate, for the Appellant; John Varghese, Standing Counsel, for the Respondent

## Judgement

A.K. Jayasankaran Nambiar, J.—In both these writ petitions, the petitioners challenge Rule 5A of the Service Tax Rules, 1994 as ultra vires to the Finance Act, 1994, as amended. The main ground of challenge against Rule 5A is that the audit that is contemplated under the said Rules is contrary to the provisions of Section 72A of the Finance Act, 1994 as amended. The petitioner questions the competence of the Comptroller and Auditor-General of India (CAG)/Departmental Audit Committee to look into the accounts of a private assessee. It is pointed out that the Delhi High Court, as well as the Calcutta High Court, have taken a view that no audit of private assessee can be undertaken by the Comptroller and Auditor-General of India/Departmental Audit Committee and that the said Courts have held Rule 5A of the Service Tax Rules to be ultra vires the rule making power conferred under Section 94 of the Finance Act, 1994. Learned Standing counsel for the Department would, however, point out that against the judgment of the Delhi High Court, the Department has preferred an appeal before the Supreme Court, and the judgment of the Delhi High Court has been stayed by the Supreme Court. That apart, I notice that in Association of Unified Tele Services Providers and Others Vs. Union of India (UOI), , the Supreme Court, while dealing with the powers of the CAG in relation to accounts of Union and States, has clarified that the CAG has a duty to examine and satisfy itself that all the Rules and procedures, in respect of Telecom Service Providers in revenue sharing contracts with the State, are being met by the service providers as a whole. Thus, it is clear from the said judgment that, although in the context of cases involving natural resources, a right was recognized in the CAG to audit the accounts of private persons who were obliged to make payments to the Central Government pursuant to contracts entered into with the Central Government. In the light of the said judgment, I am not inclined to stay the operation of Rule 5A of the Service Tax Rules, for the time being. However, as the petitioners want to have the said issue examined before this Court, the writ petitions are admitted solely for the purposes of examining, in detail, the contentions regarding the validity of Rule 5A of the Service Tax Rules. I make it clear that the prayer of the petitioners to grant a stay of further proceedings, pursuant to the show cause notices issued to them by the respondents, is not granted and the petitioners are relegated to the alternate remedy of pursuing the show cause notices before the authorities under the Finance Act, 1994, as amended. The writ petitions are admitted only for the purpose of examining the issue of validity of Rule 5A of the Service Tax Rules and the interim order dated 19-1-2015, as extended on 29-1-2015, is hereby vacated.