(2014) 03 DEL CK 0326

In the Delhi High Court

Case No : W.P. (C) 1262/2013, CM Appl. 2402/2013

M/s. Balaji Mariline Pvt. Ltd. APPELLANT

Vs

Joint Commissioner, Service Tax RESPONDENT

Date of Decision : 03-03-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Finance Act, 1994 — Section 67

Citation : (2014) 03 DEL CK 0326

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : J.K. Mittal and Mr. Varun Gaba, Advocate for the Appellant; Rahul Kaushik, Advocate for the Respondent

Judgement

1. The petitioner in these three petitions under Article 226 of the Constitution of India are aggrieved by various show cause notices issued by the Service Tax Department in terms of Section 67 of the Finance Act, 1994 read with Rule 5 (1) of the Service Tax (Determination of Value) Rules framed in terms of the said Act. The petitioner contends that the amounts sought to be brought to tax are only reimbursement of expenses and cannot be subjected to service tax.

2. This Court notices that in a recent decision - Intercontinental Consultants and Technorats (P.) Ltd. Vs. Union of India, , the validity of Rule 5 (1) was examined. This Court then held that the Rule is ultra vires and unenforceable. This position was not disputed by the counsel for the Service Tax Department who points to us that the said judgment and order were carried in appeal and leave granted under Article 136 of the Constitution (SLP No.32257/2013) on 10.02.2014.

3. The writ petitioner also relies upon the Board''s Circular No. 119/13/2009-S.T. dated 21.12.2009 issued in this regard directing the relevant authorities not to raise demands on reimbursement.

4. In view of the above position and in view of the subsequent development, this

Court hereby directs the respondents not to proceed further in terms of the impugned show cause notices or draw or enforce any demand against the petitioner. The respondents would, however, be at liberty to initiate proceedings in the event of and having regard to the final orders of the Supreme Court in the pending appeal (C.A. No.2013/2014).

5. The Writ Petitions are disposed of in the above terms.