

## Service tax audit under GST is permissible – High Court, Calcutta

### Background

Calcutta High Court has recently held that if any of the provisions of Central Goods and Services Tax, Act 2017 allows applicability of the Finance Act (Service Tax provision), 1994, then notwithstanding the omission of the provision of Finance Act, 1994, the same would continue to apply.

Thus an inquiry or an investigation or even a legal proceeding under the erstwhile service tax law will continue to be permissible.

### Facts of the case

Gitanjali Vacationville Pvt. Ltd. (petitioner)<sup>1</sup>, filed a writ petition before the Hon'ble High Court, Calcutta challenging the proposal to conduct service tax audit under the erstwhile service tax law.

The petitioner had contended that by virtue of section 173 and 174 of the Central Goods and Services Tax Act, 2017 (CGST Act), the provisions of the erstwhile service tax law stands omitted and the audit proposed to be conducted is not saved by the provisions of section 174 of the CGST Act.

### High Court decision

Relying on the provisions of the CGST Act, 2017, the Hon'ble High Court made the following observations –

- Provisions under the service tax law stand omitted by section 173
- Section 174 is the repeal and saving provisions

- Sub-section (2) of section 174 stipulates that, notwithstanding repeal of the service tax law, it shall not affect any pending investigation, inquiry, verification or other legal proceedings and that such proceedings may be instituted, continued or enforced as if such Act had not been repealed.

Accordingly, the court held that the inquiry, investigation or even a legal proceeding is permissible notwithstanding that the GST law has come into effect from July 2017.

### Our comments

The above judgement has reconfirmed the earlier judgement of the High Court of Guwahati<sup>2</sup> in case of Laxmi Narayan Sahu, where it was held although Chapter V of the Finance Act of 1994 stood omitted under Section 173, but the savings clause provided under section 174(2)(e) will enable the continuation of the investigation, enquiry, verification, etc., that were made/to be made under Chapter V of the Finance Act of 1994.

In case of an audit by Controller and Auditor General, High Court of Gujarat<sup>3</sup> had raised doubts as to whether, saving provision under section 174(2) of the CGST Act, 2017 would aid in carrying compulsory audit under Rule 5A of the Service Tax Rules, 1994 and accordingly had granted interim relief.

<sup>1</sup> Gitanjali Vacationville Pvt. Ltd [2019-VIL-17-CAL dated 15 January 2019]

<sup>2</sup> Laxmi Narayan Sahu 2018-TIOL-2238-HC-GUW-ST dated 12 October 2018

<sup>3</sup> OWS Warehouse Services LLP 2018-VIL-463-GUJ dated 17 October 2018

#### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071.  
Tel: +91 80 3980 6000

#### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

#### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

#### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

#### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

#### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

#### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

#### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

#### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

#### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000