

**GIB/DL/Vianaar/03.11.2020/HC-147**

**High Court Category :** Service Tax

**State :** Delhi

**Order No.:** GIB/DL/Vianaar/03.11.2020/HC-147

**Name of Entry :**

M/s Vianaar Homes Pvt. Ltd

**Date :** 03-11-2020

**Breif Issue :**

**Facts & Issue Involved:**

The petitioner M/s Vianaar Homes Pvt. Ltd. is a company engaged in the business of construction of residential complexes since its incorporation. The officers of Central Goods and Service Tax, Audit-II (“**Respondents**”) visited the business premises of the Petitioner, directed the production of certain documents and sought information in relation to the disputed period i.e. 2014-15 to 2016-17 (upto June, 2017)

In addition, thereto, the officers also demanded information pertaining to several group companies of the Petitioner. Despite Petitioner’s compliance with the above and submission of the requisite information, the officers visited the business premises again. Their conduct exhibited the intention to continue with the visits, conduct audit/verification proceedings, and give further directions for production of documents and information.

The Petitioner has challenged the letter dated November 11, 2019 by virtue of which the Respondents have commenced the audit/verification, on the ground that the same is void ab initio, being wholly without jurisdiction as well as without any statutory or legal authority.

The issued involved :

"whether the audit/verification by revenue, contemplated under Rule 5A of Service Tax Rules, is saved despite the repeal of Chapter V of the Finance Act".

**Decision of Advance Ruling Authority :**

**Decision:**

The Hon'ble Delhi High Court in W.P. (C) 2245/2020 & CM APPL. 7832/2020 dated November 3, 2020 held as under:

- Upheld audit-initiation and held that the Service Tax Audit can be conducted under GST regime.
- The Court observed that the repeal of the Chapter V of the Finance Act and re-enactment of the new CGST Act is simultaneous. According to the legislature, the repeal along with re-enactment was necessary to update the law to make it most suitable to the contemporary concept of indirect taxation. However, it did not mean that all investigations, enquiries, audits, assessment proceedings, adjudications and other legal proceedings which form the subject matter of the Service Tax Rules stood abrogated the moment the new law was enacted, or that the officers carrying out the above exercise were stripped of their power to continue with the same because the Service Tax Rules were purportedly not saved.
- And that the obligation to pay service tax arose at the time of rendering taxable service, which fell during the disputed period, at which time Chapter V of the Finance Act was very much in force.
- Thus, the HC opined that the Central Goods and Services Tax Rules, 2017 ("CGST Rules") cannot be understood to have superseded the Service Tax Rules. The service tax rules will continue to govern and apply for the purpose of Chapter V of the Finance Act. Any interpretation to the contrary would do violence to the repeal and saving clause and Section 6 of the General Clauses Act, 1897 ("General Clauses Act").
- While emphasizing the expression "including scrutiny and audit" and "any other legal proceedings", Hon'ble Delhi High Court held that the saving clause is framed in the widest possible language. Section 24 of the General Clauses Act introduces a concept of extending the life of rules, regulations and by-laws made under the old Act and the purpose of same is to uninterruptedly continue the subordinate legislation that may be made under the Central Act which is repealed and re-enacted, with or without modification. The repealing Act often comes with saving clauses to preserve certain provisions, which if allowed to be obliterated with the repealed Act, would not only destroy the continuity of the object and purpose of the repealing Act, but wreck great hardship and injustice. Thus, general saving statutes such as the General Clauses Act take care of this situation. Section 24 of the General Clauses Act has to be read along with the re-enacted Act in order to comprehend whether the rules framed under the old Act are kept alive even after the repeal of the old Act.