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

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W.P.(C) 5709/2017

J K MITTAL & COMPANY

..... Petitioner

Through : Mr. J.K. Mittal, Advocate/ Petitioner
in person with Mr.Rajveer Singh,
Mr.Hitender Mehta, Mr.Rajesh
Kumar, Mr.Atul Krishnan,
Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Sanjeev Narula, CGSC with
Mr.Abhishek Ghai, Advocate for R1/
UOI.
Mr.Gautum Narayanan, ASC for
GNCTD/R2 with Mr. R.A. Iyer,
Advocate.
Ms. Priyanka Rani, Legal Assistant,
Department of Trade & Taxes,
GNCTD.

WITH

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W.P.(C) 6017/2017

LEGALANCE IP CORP LLP

..... Petitioner

Through : Ms. Vanita Bhargava, Mr.Ajay
Bhargava, Mr.Abhishek Rastogi,
Ms.Rashmi Deshpande, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Sanjeev Narula, CGSC with

Mr.Abhishek Ghai, Advocate for R1/
UOI.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
% **18.07.2017**

CM APPL. No. 25008/2017 (Exemption) in W.P.(C) 6017/2017

1. Allowed, subject to all just exceptions.

CM APPL. No. 25011/2017 in W.P.(C) 5709/2017

2. For the reasons stated therein, the application is allowed. The amended writ petition is taken on record.

W.P.(C) 5709/2017 & W.P.(C) 6017/2017

3. Mr. Sanjeev Narula, learned Central Government's Standing Counsel accepts notice in the amended writ petition being W.P.(C) 5709/2017 and also notice of W.P.(C) 6017/2017 on behalf of Union of India/Respondent No. 1 as well as the GST Council. Mr. Gautam Narayanan, ASC accepts notice for the GNCTD.

4. Reply to the writ petitions be filed within six weeks and in any event not later than 25th August, 2017.

5. Rejoinder thereto, if any, be filed before the next date of hearing.

6. List for hearing on 14th September, 2017 at 2.15 pm.

CM APPL. No. 23814/2017 (STAY) IN W.P.(C) 5709/2017

CM APPL. No. 25007/2017 (STAY) in W.P.(C) 6017/2017

7. Mr. Narula, learned CGSC for Union of India has produced a Press Release which the Court finds has been issued by the Press Information Bureau, Ministry of Finance, Government of India on the ‘position regarding applicability of GST on Legal Services provided by individual Advocates including Senior Advocates and a Firm of Advocates.’

8. During the course of hearing, several questions arose as regards the said Press Release itself. Mr. Narula, sought further time to seek instructions on those questions. In particular,

(i) whether there were any further recommendations of the GST Council on ‘legal services’ after what had been recommended at the 14th Meeting of the GST Council held on 19th May, 2017.

(ii) Under what authority of law, such a ‘Press Release’ could be issued and by whom and the legal sanctity thereof.

(iii) Whether on a reading of Article 279 A of the Constitution read with any of the provisions of the CGST, IGST and DGST Acts, the recommendations of the GST Council could be modified, clarified, amended etc by a notification/notice/circular of ‘press release’ and, if so, by whom?

9. Mr Narula also sought time to produce the GST Council’s recommendations on issuance of Notification No. 12/2017 – Central Tax (Rate) dated 28th June, 2017 issued under sub-Section (1) of Section 11 of

the CGST Act exempting certain services from the ambit thereof.

10. As regards, the issue raised on Section 22(2) of the CGST Act, as noted in the Court's order dated 12th July, 2017, Mr. Narula wants time to ascertain if under the Finance Act, 1994, a lawyer or law firm who got registered could opt to de-register or surrender the registration and if a mechanism was devised for such purpose.

11. Mr. Narula handed over a note of 'written submission on behalf of Respondent No. 1' signed by the Commissioner, Central Tax Commissionerate, New Delhi. Considering the importance of the issues in this petition, which involve the interpretation of the relevant provisions of the Constitution of India, and the concerned statutes, the Court would expect each of the Respondents to file a para wise reply to the petition and also specifically answer the queries as noted in the Court's order dated 12th July, 2017 and this order.

12. A responsible officer of the Ministry of Finance as well as the concerned department of the GNCTD will file the respective reply affidavits on behalf of Respondent No.1 and GNCTD. Likewise, the reply on behalf of the GST Council should be filed separately through its Additional Secretary.

13. Considering that the Respondents are seeking more time to address the important legal and constitutional issues that arise in these petitions and it is asserted in the Court on behalf of the Respondents that as to date, in fact, no coercive action is taken against the lawyers, law firms or providers of

legal services, Limited Liability Partnerships (LLPs), for non-compliance with the legal requirement of the CGST, IGST and DGST, the Court directs that till further orders:

(i) no coercive action would be taken against advocates, law firms of advocates including Limited Liability Partnerships (LLPs) of advocates providing legal services for non compliance with any legal requirement under the CGST, DGST, or IGST Act; and

(ii) Any advocate, law firm of advocates, LLPs of advocates who are providers of legal services, who have registered under the CGST, DGST, or IGST Act from 1st July, 2017 will not be denied the benefit of this interim order.

(iii) In view of the Press Release issued by the Ministry of Finance as shown to the Court today, and the instructions given to Mr. Narula to the effect that the legal position that existed under the Finance Act, 1994 as regard legal services being amenable to service tax under the reverse charge mechanism continuing even under the CGST, DGST or IGST Acts, till further orders, all legal services provided by advocates, law firms of advocates, or LLPs of advocates will be continued to be governed by the reverse charge mechanism unless of course any such legal service provider wants to take advantage of input tax credit and seeks to continue with the voluntary registration under Section 25 (3) of the CGST Act and the corresponding provisions of IGST or DGST Act.

14. A copy of this order be given Dasti under the signatures of Court Master to the parties.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 18, 2017/j