IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.09.2022
Pronounced On	30.11.2022

CORAM

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.24996 of 2019
and
W.P.Nos.1185, 17359 & 18810 of 2018
and
W.P.Nos.21170, 26523, 26779, 28039, 28042, 28043, 28046, 28930, 28937, 14107, 4644 & 12149 of 2019
and
W.P.Nos.9114 & 18424 of 2020
and
W.P.Nos.6717, 6722, 6725, 6867, 6966, 7011, 8213, 8453, 8874, 9077, 10399, 14451, 16714, 7221, 7224, 7327, 7650, 7681, 6714, 6719, 6724, 6860, 6923, 6929, 6961, 7005, 18185, 25217, 16710, 8217, 8452, 8879, 9074, 9080, 9084 10398, 14585, 7172, 7179, 7183, 7325, 7648, 7679, 3627, 4114, 6498, 6652, 6775, 6658, 3637, 4117, 6493, 6641, 6772, 6653 & 7187 of 2021
and
W.P.Nos.67, 276, 423, 816, 1150, 1287, 5053, 279, 424, 11064, 11069, 11737, 17259, 811, 1155 & 1281 of 2022
and
W.P.(MD) Nos.14918, 14937, 5158, 14919 & 14938 of 2018
and
W.P. (MD) Nos.14855, 15134, 15152, 16034, 16045, 16060, 18353, 18948, 18958, 19517, 18954, 13912, 13915, 13925, 13929, 13932, 13920, 13935, 13934, 13940, 15302 & 18540 of 2020

and

W.P. (MD) Nos.20076, 7243, 9210, 9213, 9216, 9218, 9220, 1783, 2630, 2635, 2637, 3682, 6222, 6228, 6229, 6630, 6234, 6238, 1087, 1119, 1145, 1092, 1100, 1112, 1130, 1633, 1671, 14686, 14687, 20823, 22019, 16495, 16986, 10520, 4777, 1088, 20111, 17364, 3672, 10647, 10649, 11051, 9647, 10480, 1867, 5023, 13188, 14366, 16055, 17923, 21648, 21649, 21650, 21651, 22811, 22812, 22813, 22814, 22974, 22975, 23020 & 23035 of 2021

and

W.P. (MD) Nos.5225, 15108, 15109, 14734, 13121, 12757, 1392, 4357, 4350, 3136, 5108, 12877, 11792, 12562, 7386, 7538, 7767, 1391, 5326, 5327, 5328, 5329, 5330, 5331, 5332, 6597, 8852, 8853, 9216, 5457, 5458, 5459, 5460, 3675, 2087, 11277, 6274, 6275, 5584, 2127, 2152, 2153, 4295, 4296, 5753, 9142 & 1040 of 2022

&

W.M.P.Nos.1485, 20616, 20617, 34642, 34652, 39959, 22172, 22173 & 37850 of 2018

and

W.M.P.Nos.24576, 24577, 24578, 20370, 20373, 25887, 25889, 26160, 26161, 27660, 27662, 27665, 27668, 28676, 28680, 28687, 28690, 14164, 5258, 5260, 12427, 12429 & 12149 of 2019

and

W.M.P.Nos.11110, 11111, 22835 & 22832 of 2020

and

W.M.P.Nos.480, 3262, 3555, 3556, 7212, 7275, 7279, 7284, 7417, 7512, 7556, 22704, 22612, 22409, 22705, 22706, 22709, 22710, 22712, 22613, 3262, 22604, 8766, 9009, 9410, 9625, 10991, 15335, 15337, 15473, 17691, 7726, 7735, 7836, 8164, 8218, 7269, 7277, 7282, 7414, 7483, 7489, 7508, 7554, 19413, 26594, 26595, 17689, 8771, 9008, 9414, 9622, 9632, 9629, 10990, 14585, 7689, 7693, 7696, 7833, 8163, 8216, 4159, 4161, 4692, 7073, 7200, 7328, 4164, 4165, 4695, 7071, 7206, 7323, 7207& 7699 of 2021

and

W.M.P.Nos. 58, 479, 890, 1392, 2548, 2950, 5169, 3557, 308, 10654, 10655, 11197, 16584, 884, 1221 & 1388 of 2022

and

W.M.P.(MD) Nos.13467, 13468, 13497, 13498 & 5139 of 2018

and

W.M.P. (MD) Nos.12738, 12739, 12767, 12768, 15334, 15871, 15882, 16265, 15875, 11561, 11564, 11569, 11570, 11578, 11581, 11583, 11585, 11587, 11588, 11572, 11573, 11590, 11593, 11594, 11540, 11591, 11598, 11599, 12866, 12871, 15506 & 15508 of 2020

and

W.M.P. (MD) Nos.16777, 16778, 5535, 5537, 6937, 6938, 6940, 6942, 6943, 6944, 6946, 6947, 6950, 6951, 1520, 13720, 2174, 2171, 2183, 2184, 2185, 2186, 2961, 4823, 4829, 4830, 4833, 4834, 4842, 4850, 944, 972, 999, 950, 955, 966, 987, 1385, 1420, 5138, 5139, 11619, 11624, 17432, 18619, 18623, 13374, 13372, 13909, 13912, 13913, 8197, 8198, 3901, 3902, 943, 945, 16815, 14245, 14246, 2960, 8293, 8294, 8296, 8297, 8679, 8680, 7391, 7392, 8156, 8157, 1616, 4048, 4049, 10198, 10199, 11310, 11312, 12926, 12928, 14789, 18231, 18234, 18232, 18233, 18235, 18236, 18239, 18240, 19282, 19285, 19287, 19289, 19469, 19472, 19503 & 19515 of 2021

and

W.M.P. (MD) Nos.4246, 4248, 10807, 10808, 10810, 10815, 10513, 10515, 9321, 9322, 9050, 9053, 1235, 3682, 3684, 3675, 3677, 2732, 2735, 4162, 4163, 9138, 9139, 8389, 8392, 8903, 8906, 5136, 5600, 5601, 5699, 5697, 5839, 5840, 1230, 4327, 4329, 4334, 4336, 4332, 4333, 4338, 4340, 4335, 4337, 4339, 4341, 4342, 4343, 5099, 5100, 6432, 6433, 6438, 6439, 6577, 6578, 4420, 4422, 4421, 4423, 3196, 1790, 8030, 4875, 4878, 4518, 4521, 1848, 1864, 1881, 1882, 1885, 1887, 3649, 3650, 3651, 3654, 4601, 4602, 6540, 6541, 878 & 880 of 2022

W.P.Nos.24996 of 2019

1.M/s.Raju Construction,
Rep. by its Managing Partner,
R.Suresh Babu,
No.1/29, Pudu Reddiyur Post,
Pappireddipatti Taluk,
Dharmapuri District – 636 303.

2.M/s.Venkateswara Engineering Constructions,
Rep. by its Managing Director,
Madesan Sivaprakasam,
No.5, First Floor, Thandupathai Street,
Annasagaram (Post), Dharmapuri – 636 704,
Dharmapuri District.

3.M.Vediappan

4.V.Vengan ... Petitioners

Vs.

1.The Government of India,
Represented by its Secretary,
Ministry of Finance,
New Delhi - 110 001.

2.The Senior Intelligence Officer,
O/o. Directorate General of
GST Intelligence,
Trichy Regional Unit,
No.10B/5, First Street,
Jaya Nagar, K.K.Nagar Post,
Trichy – 620 021, Trichy District.

3.The Government of Tamil Nadu,
Represented by its Finance Secretary,
Fort St.George, Chennai – 600 009. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondent in respect of issue of the Notification No.6/2015-Service Tax, dated 01.03.2015 in respect of Serial No.1(ii) alone published in Gazette of India Extraordinary Part II – Section 3 – Sub Section (i) No.120 on 01.03.2015 and quash the same and consequently to direct the first respondent to grant exemption to the petitioner from paying the service tax in respect of the works contract service other than commercial nature rendered to the Government, Local Bodies, Statutory Authorities etc. with effect from 01.04.2015.

For P1, P2 & P4 :: Mr.S.Rajasekar

For R1 & R2 :: M/s.R.Hemalatha
Senior Standing Counsel

For R3 :: Mr.V.Ravi
Special Government Pleader

C O M M O N O R D E R

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

By this common, all these 226 Writ Petitions are being disposed of. These Writ Petitions are categorized as follows:-

Table No : 1

Challenge to Notification No.6/2015-ST, dated 01.03.2015	
Sl. No.	W.P.No.
1	W.P.No.21170 of 2019
2	W.P.No.26523 of 2019
3	W.P.No.26779 of 2019
4	W.P.No.28039 of 2019
5	W.P.No.28046 of 2019
6	W.P.No.28043 of 2019
7	W.P.No.28042 of 2019
8	W.P.No.28930 of 2019
9	W.P.No.28937 of 2019
10	W.P.No.9114 of 2020
11	W.P.No.816 of 2022
12	W.P.No.1150 of 2022
13	W.P.No.1287 of 2022
14	W.P.No.5053 of 2022
15	W.P.(MD) No.5225 of 2022
16	W.P.(MD) No.20076 of 2021
17	W.P.(MD) No.15108 of 2022
18	W.P.(MD) No.15109 of 2022
19	W.P.No.18424 of 2020
20	W.P.(MD) No.14734 of 2022
21	W.P.(MD) No.13121 of 2022
22	W.P.(MD) No.12757 of 2022
23	W.P.No.8213 of 2021
24	W.P.No.8453 of 2021
25	W.P.No.8874 of 2021
26	W.P.No.9077 of 2021
27	W.P.No.10399 of 2021

Challenge to Notification No.6/2015-ST, dated 01.03.2015	
28	W.P.No.14451 of 2021
29	W.P.No.16714 of 2021
30	W.P.(MD) No.1392 of 2022
31	W.P.(MD) No.4357 of 2022
32	W.P.(MD) No.4350 of 2022
33	W.P.(MD) No.3136 of 2022
34	W.P.(MD) No.5108 of 2022
35	W.P.(MD) No.12877 of 2022
36	W.P.(MD) No.11792 of 2022
37	W.P.(MD) No.12562 of 2022
38	W.P.(MD) No.6630 of 2021
39	W.P.(MD) No.7243 of 2021
40	W.P.(MD) No.9210 of 2021
41	W.P.(MD) No.9213 of 2021
42	W.P.(MD) No.9216 of 2021
43	W.P.(MD) No.9218 of 2021
44	W.P.(MD) No.9220 of 2021
45	W.P.(MD) No.7386 of 2022
46	W.P.(MD) No.7538 of 2022
47	W.P.(MD) No.7767 of 2022
48	W.P.(MD) No.1783 of 2021
49	W.P.(MD) No.2630 of 2021
50	W.P.(MD) No.2635 of 2021
51	W.P.(MD) No.2637 of 2021
52	W.P.(MD) No.3682 of 2021
53	W.P.(MD) No.6222 of 2021
54	W.P.(MD) No.6228 of 2021
55	W.P.(MD) No.6229 of 2021

Challenge to Notification No.6/2015-ST, dated 01.03.2015	
56	W.P.(MD) No.6234 of 2021
57	W.P.(MD) No.6238 of 2021
58	W.P.(MD) No.1087 of 2021
59	W.P.(MD) No.1119 of 2021
60	W.P.(MD) No.1145 of 2021
61	W.P.(MD) No.1092 of 2021
62	W.P.(MD) No.1100 of 2021
63	W.P.(MD) No.1112 of 2021
64	W.P.(MD) No.1130 of 2021
65	W.P.(MD) No.1633 of 2021
66	W.P.(MD) No.1671 of 2021
67	W.P.(MD) No.14686 of 2021
68	W.P.(MD) No.14687 of 2021
69	W.P.(MD) No.20823 of 2021
70	W.P.(MD) No.15134 of 2020
71	W.P.(MD) No.15152 of 2020
72	W.P.(MD) No.16034 of 2020
73	W.P.(MD) No.16045 of 2020
74	W.P.(MD) No.16060 of 2020
75	W.P.(MD) No.18353 of 2020
76	W.P.(MD) No.18948 of 2020
77	W.P.(MD) No.18958 of 2020
78	W.P.(MD) No.19517 of 2020
79	W.P.(MD) No.18954 of 2020
80	W.P.(MD) No.13912 of 2020
81	W.P.(MD) No.13915 of 2020
82	W.P.(MD) No.13925 of 2020
83	W.P.(MD) No.13929 of 2020

Challenge to Notification No.6/2015-ST, dated 01.03.2015	
84	W.P.(MD) No.13932 of 2020
85	W.P.(MD) No.13920 of 2020
86	W.P.(MD) No.13935 of 2020
87	W.P.(MD) No.13934 of 2020
88	W.P.(MD) No.13940 of 2020
89	W.P.No.7221 of 2021
90	W.P.No.7224 of 2021
91	W.P.No.7327 of 2021
92	W.P.No.7650 of 2021
93	W.P.No.7681 of 2021
94	W.P.(MD) No.22019 of 2021
95	W.P.(MD) No.1391 of 2022
96	W.P.No.67 of 2022
97	W.P.No.276 of 2022
98	W.P.No.423 of 2022
99	W.P.No.6717 of 2021
100	W.P.No.6722 of 2021
101	W.P.No.6725 of 2021
102	W.P.No.6867 of 2021
103	W.P.No.6966 of 2021
104	W.P.No.7011 of 2021
105	W.P.No.1185 of 2018
106	W.P.No.24996 of 2019
107	W.P.No.17359 of 2018
108	W.P.No.3627 of 2021
109	W.P.No.4114 of 2021
110	W.P.No.6498 of 2021
111	W.P.No.6652 of 2021

Challenge to Notification No.6/2015-ST, dated 01.03.2015	
112	W.P.No.6775 of 2021
113	W.P.No.6658 of 2021
114	W.P.No.7179 of 2021
115	W.P.(MD) No.14855 of 2020
116	W.P.No.9084 of 2021

Table No : 2

Challenge to Show Cause Notice / Notice			
Sl. No.	W.P.No.	Date of SCN / Not.	No. of Show Cause Notice
1	W.P.No.18810 of 2018 *	04.12.2017	C.No.IV/06/31/2017 - HPU
2	W.P.No.811 of 2022	20.10.2021	SCN.No.05/2021-ST
3	W.P.No.1155 of 2022	18.10.2021	SCN.No.13/2021-ST
4	W.P.No.1281 of 2022	20.10.2021	SCN.No.40/2021-ST
5	W.P.No.8217 of 2021	28.12.2020	SCN.No.57/2020-ST
6	W.P.No.8452 of 2021	24.12.2020	SCN.No.09/2020-ST
7	W.P.No.8879 of 2021	28.12.2020	SCN.No.12/2020-ST
8	W.P.No.9074 of 2021 #	24.12.2020	SCN.No.01/2020-ST
9	W.P.No.10398 of 2021	28.12.2020	SCN.No.10/2020-ST
10	W.P.No.14585 of 2021	28.12.2020	SCN.No.11/2020-ST
11	W.P.(MD) No.14918 of 2018	04.06.2018	SCN.No.13/2018-ST
12	W.P.(MD) No.14937 of 2018	04.06.2018	SCN.No.16/2018-ST
13	W.P.No.7172 of 2021	22.12.2020	SCN.No.04/2020-ST
14	W.P.No.7183 of 2021	23.12.2020	SCN.No.46/2020-ST
15	W.P.No.7325 of 2021	23.12.2020	SCN.No.10/2020-ST
16	W.P.No.7648 of 2021	23.12.2020	SCN.No.47/2020-ST
17	W.P.No.7679 of 2021	24.12.2020	SCN.No.06/2020-ST
18	W.P.No.279 of 2022	18.10.2021	SCN.No.11/2021-ST

Challenge to Show Cause Notice / Notice			
19	W.P.No.424 of 2022	21.10.2021	SCN.No.575/2021-ST
20	W.P.No.6714 of 2021	23.12.2020	SCN.No.05/2020-ST
21	W.P.No.6719 of 2021	28.12.2020	SCN.No.18/2020-ST
22	W.P.No.6724 of 2021	22.12.2020	SCN.No.05/2020-ST
23	W.P.No.6860 of 2021	29.12.2020	SCN.No.04/2020-ST
24	W.P.No.6923 of 2021	24.12.2020	SCN.No.08/2020-ST
25	W.P.No.6929 of 2021	01.03.2015	SCN.No.06/2015-ST
26	W.P.No.6961 of 2021	23.12.2020	SCN.No.07/2020-ST
27	W.P.No.7005 of 2021	21.12.2020	SCN.No.03/2020-ST
28	W.P.No.3637 of 2021	18.12.2020	SCN.No.35/2020-ST
29	W.P.No.4117 of 2021	29.12.2020	SCN.No.02/2020-ST
30	W.P.No.6493 of 2021	24.12.2020	SCN.No.15/2020-ST
31	W.P.No.6641 of 2021	23.12.2020	SCN.No.06/2020-ST
32	W.P.No.6772 of 2021	29.12.2020	SCN.No.13/2020-ST
33	W.P.No.6653 of 2021	28.12.2020	SCN.No.16/2020-ST
34	W.P.No.9080 of 2021	28.12.2020	SCN.No.21/2020-ST

* Notice – The petitioner was directed to pay a Rs.2,26,25,094/-.

Show Cause cum Demand Notice.

Table No : 3

Challenge to Order-In-Original			
Sl. No.	W.P.No.	Date of O.I.O.	No. of Order in Original
1	W.P.No.11064 of 2022	09.12.2021	O.I.O.No.18/2021-ST
2	W.P.No.11069 of 2022	21.12.2021	O.I.O.No.20/2021-ST
3	W.P.No.11737 of 2022	29.11.2021	O.I.O.No.16/2021-ST
4	W.P.No.17259 of 2022	20.04.2021	O.I.O.No.14/2021-ST

Challenge to Order-In-Original			
5	W.P.(MD) No.5457 of 2022	10.01.2022	O.I.O.No.39/2022-ST
6	W.P.(MD) No.5458 of 2022	06.01.2022	O.I.O.No.34/2022-ST
7	W.P.(MD) No.5459 of 2022	21.01.2022	O.I.O.No.62/2022-ST
8	W.P.(MD) No.5460 of 2022	03.01.2022	O.I.O.No.23/2022-ST
9	W.P.(MD) No.17364 of 2021	17.02.2021	O.I.O.No.09/2021-ST
10	W.P.No.16710 of 2021	24.10.2018	O.I.O.No.20/2018-ST
11	W.P.(MD) No.3675 of 2022	12.01.2022	O.I.O.No.12/2022-ST
12	W.P.(MD) No.2087 of 2022	12.01.2022	O.I.O.No.08/2022-ST
13	W.P.(MD) No.11277 of 2022	11.03.2022	O.I.O.No.37/2022-ST
14	W.P.(MD) No.6274 of 2022	08.03.2022	O.I.O.No.104/2022-ST
15	W.P.(MD) No.6275 of 2022	09.03.2022	O.I.O.No.110/2022-ST
16	W.P.(MD) No.3672 of 2021	29.01.2021	O.I.O.No.03/2021-ST
17	W.P.No.18185 of 2021	26.09.2021	O.I.O.No.04/2021-ST
18	W.P.No.25217 of 2021	10.06.2021	O.I.O.No.08/2022-ST

Table No : 4

Challenge to Notification No.6, dated 01.03.2015 & to Show Cause Notice / Notice			
Sl. No.	W.P.No.	Date of SCN / Not.	No. of Show Cause Notice
1	W.P.No.4644 of 2019	04.06.2018	SCN.No.19/2018-ST
2	W.P.No.12149 of 2019	06.06.2018	SCN.No.05/2018-ST
3	W.P. (MD) No.5584 of 2022	21.12.2020	SCN.No.27/2022-ST
4	W.P. (MD) No.10647 of 2021	28.04.2021	SCN.No.11/2021-ST
5	W.P. (MD) No.10649 of 2021	20.04.2021	SCN.No.10/2021-ST
6	W.P. (MD) No.11051 of 2021	23.04.2021	SCN.No.02/2021-ST
7	W.P. (MD) No.2127 of 2022	31.12.2020	C.No.V/15/34/2019-ST

	Challenge to Notification No.6, dated 01.03.2015 & to Show Cause Notice / Notice		
8	W.P. (MD) No.2152 of 2022	24.12.2020	SCN.No.15/2020-ST
9	W.P. (MD) No.2153 of 2022	24.12.2020	SCN.No.09/2020-ST
10	W.P. (MD) No.4295 of 2022	29.12.2020	SCN.No.129/2020-ST
11	W.P. (MD) No.4296 of 2022	21.12.2020	SCN.No.18/2020-ST
12	W.P. (MD) No.9647 of 2021	20.04.2021	SCN.No.11/2021-ST
13	W.P. (MD) No.10480 of 2021	17.07.2020	SCN.No.04/2020-ST
14	W.P. (MD) No.5753 of 2022	01.03.2022	SCN.No.05/2022-ST
15	W.P. (MD) No.9142 of 2022	30.12.2020	SCN.No.14/JC/ST/2020
16	W.P. (MD) No.1867 of 2021	30.12.2020	SCN.No.106/2020-ST
17	W.P. (MD) No.5023 of 2021	29.12.2020	SCN.No.02/2020-ST
18	W.P. (MD) No.13188 of 2021	28.04.2021	SCN.No.17/2021-ST
19	W.P. (MD) No.14366 of 2021	24.12.2020	SCN.No.12/2020-ST
20	W.P. (MD) No.16055 of 2021	24.12.2020	SCN.No.08/2020-ST
21	W.P. (MD) No.17923 of 2021	28.04.2021	SCN.No.14/2021-ST
22	W.P. (MD) No.21648 of 2021	31.12.2020	SCN.No.73/2020-ST
23	W.P. (MD) No.21649 of 2021	31.12.2020	SCN.No.145/2020-ST
24	W.P. (MD) No.21650 of 2021	31.12.2020	SCN.No.136/2020-ST
25	W.P. (MD) No.21651 of 2021	19.12.2020	SCN.No.81/2020-ST
26	W.P. (MD) No.18540 of 2020	21.10.2020	SCN.No.04/2020-ST
27	W.P.No.7187 of 2021	23.12.2020	SCN.No.46/2020-ST
28	W.P. (MD) No.22811 of 2021	19.12.2020	SCN.No.85/2020-ST
29	W.P. (MD) No.22812 of 2021	03.12.2020	SCN.No.83/2020-ST
30	W.P. (MD) No.22813 of 2021	19.12.2020	SCN.No.69/2020-ST
31	W.P. (MD) No.22814 of 2021	31.12.2020	SCN.No.142/2020-ST
32	W.P. (MD) No.22974 of 2021	19.12.2020	SCN.No.71/2020-ST
33	W.P. (MD) No.22975 of 2021	31.12.2020	SCN.No.140/2020-ST
34	W.P. (MD) No.23020 of 2021	19.12.2020	SCN.No.74/2020-ST
35	W.P. (MD) No.23035 of 2021	31.12.2020	SCN.No.135/2020-ST

	Challenge to Notification No.6, dated 01.03.2015 & to Show Cause Notice / Notice		
36	W.P. (MD) No.1040 of 2022	28.04.2021	SCN.No.09/2021-ST

Table No : 5

	Challenge to Notification No.6, dated 01.03.2015 & to Order – in - Original		
Sl. No.	W.P.No.	Date of O.I.O.	No. of Order in Original
1	W.P.(MD) No.5326 of 2022	03.01.2022	O.I.O.No.18/2022-ST
2	W.P.(MD) No.5327 of 2022	03.01.2022	O.I.O.No.11/2022-ST
3	W.P. (MD) No.5328 of 2022	06.01.2022	O.I.O.No.28/2022-ST
4	W.P. (MD) No.5329 of 2022	06.01.2022	O.I.O.No.36/2022-ST
5	W.P. (MD) No.5330 of 2022	10.01.2022	O.I.O.No.38/2022-ST
6	W.P. (MD) No.5331 of 2022	12.01.2022	O.I.O.No.11/2022-ST
7	W.P. (MD) No.5332 of 2022	21.01.2022	O.I.O.No.58/2022-ST
8	W.P. (MD) No.16495 of 2021	04.08.2021	O.I.O.No.15/2021-ST
9	W.P. (MD) No.16986 of 2021	22.01.2022	O.I.O.No.07/2022-ST
10	W.P. (MD) No.10520 of 2021	16.04.2021	O.I.O.No.09/2021-ST
11	W.P. (MD) No.6597 of 2022	09.11.2021	O.I.O.No.22/2021-ST
12	W.P. (MD) No.8852 of 2022	06.07.2022	O.I.O.No.06/2022-ST
13	W.P. (MD) No.8853 of 2022	10.01.2022	O.I.O.No.42/2022-ST
14	W.P. (MD) No.9216 of 2022	10.01.2022	O.I.O.No.37/2022-ST
15	W.P. (MD) No.4777 of 2021	29.01.2021	O.I.O.No.03/2021-ST
16	W.P. (MD) No.1088 of 2021	20.11.2020	O.I.O.No.19/2020-ST
17	W.P. (MD) No.20111 of 2021	01.10.2021	O.I.O.No.21/2021-ST
18	W.P. (MD) No.15302 of 2020	28.05.2020	O.I.O.No.05/2020-ST

Table No : 6

Challenge to Letter			
Sl. No.	W.P.No.	Date of Letter	Reference No.
1	W.P.No.14107 of 2019	04.04.2019	Ko.Ka./Service Tax / Ko.No.63/2017
2	W.P.(MD) No.5158 of 2018	11.01.2018	1610/BA/2017

Table No : 7

For Writ of Mandamus		
Sl. No.	W.P.No.	Prayer
1	W.P.(MD) No.14919 of 2018	For a direction to the first respondent Assistant Commissioner to recover the dues said to be payable by the petitioner from the second respondent Executive Engineer, Public Works Department by issuing recovery notice in terms of Section 87(b)(i) of the Finance Act, 1994.
2	W.P.(MD) No.14938 of 2018	

In some of the Writ Petitions, apart from the challenge to the Notification No.6/2015-ST dated 01.03.2015, Show Cause Notices / Notices, Orders-in-Original, Letter / Communications, the respective petitioners have also sought for the following reliefs:-

i. For a consequential direction to not only grant exemption to the petitioners from paying the service tax for the work contract service other than those

which are commercial in nature rendered to the Central / State Government, Local Statutory Authorities etc. but also to reimburse the service tax and interest thereon already paid by the petitioners to the Central Board of Indirect Taxes and Customs.

ii. For a direction to the the Central / State Government, Local Statutory Authorities etc. who have engaged service to directly pay the service tax and interest including the penalty, if any, to the Central Board of Indirect Taxes and Customs, in respect of the works contract service other than commercial nature rendered by the petitioner to the Government of Tamil Nadu / Government of India.

2. All these Writ Petitions deal with "service tax liability" of contractors who were specifically engaged by the Public Works Departments of both State & Central Government. The petitioners who are contractors were engaged by the Public Works Department of State & Central Government for construction of school buildings and etc. Ther services provided by the respective petitioners according to them were exempted from payment of service tax in terms of Entry 12(a), (c) & (f) in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012.

Relevant portion of the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012, under which, exemption was claimed by the respective petitioners, read as under:-

> 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
>
> **(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;**
>
> (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
>
> **(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;**
>
> (d) canal, dam or other irrigation works;
>
> (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
>
> **(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;**

3. The above Entry 12(a), (c) & (f) in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 was omitted by the impugned Notification No.6/2015-Service Tax, dated 01.03.2015. In view of the above, the service provided by the respective petitioners became liable to tax.

4. By subsequent Notification No.9/2016-Service Tax, dated 01.03.2016, Entry 12A was inserted after Entry 12 to Notification No.25/2012-Service Tax, dated 20.06.2012, with effect from 1st March, 2016. Entry 12A reads as under:-

> 12A. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
>
> (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
> (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
> (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

under a contract which had been entered into prior to the 1st March, 2015 and on which appropriate stamp duty, where applicable, had been paid prior to such date:

Provided that nothing contained in this entry shall apply on or after the 1st April, 2020.

5. The exemption which was withdrawn / omitted by the impugned Notification No.6/2015-Service Tax, dated 01.03.2015, was re-introduced only for contracts entered into prior to 1st March, 2015 with a caveat that the exemption was confined to the services provided to the Government, Local Authorities or Governmental Authorities by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of certain buildings as specified in the above Clauses (a), (b) and (c) to Entry 12A, on which appropriate stamp duty, where applicable, had been paid prior to such date.

6. Therefore, the petitioners have challenged the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 seeking to levy service tax for such services provided to the State / Central Government, a Local Authority or a Governmental Authority under the contracts signed

after issue of the impugned Notification No.6/2015-Service Tax, dated 01.03.2015. The case of the petitioners, in particular, is that the service tax ought not to have been imposed as the burden of collection has been fastened on the respective petitioners even though the amount has to be collected from the Government and remitted to the Government.

7. In exercise of power conferred under Section 93(1) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994), the Government had granted exemption in the public interest vide Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012. The withdrawal of exemption vide the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 should also be in the public interest and there is no public interest involved in withdrawing the above exemption when the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 was issued.

8. Mr.S.Muthuvenkatraman, the learned counsel for the petitioners in W.P.No.6493 of 2021 and others, submitted that one wing of the Government namely, Office of the Executive Engineer, Puducherry

Central Division, Central Public Works Department, vide Notice dated 11.01.2017 bearing reference File No.52(1)/2017/PCD/AB/67, has clarified that no service tax was payable for the services rendered upto 31.03.2020 and therefore, Puducherry Central Division will not reimburse the service tax paid by the contractors to the Central Board of Excise and Customs (CBEC) and that the contractors who are working under the Puducherry Central Division who generally executes work in respect of Education and Clinical need not pay service tax. However, the contractors were directed to continue to update / file the necessary Forms or Returns with Central Board of Excise and Customs (CBEC) as was required. Operative portion of the above Notice dated 11.01.2017 reads as under:-

> It is hereby brought to the notice of all concerned that as per M/o Finance Order no F.No.334/8/2016-TRU dated February 29th, 2016, exemption for services provided to the Government, a local authority or a governmental authority by way of construction of a civil structure or any other original works meant for use as an educational, clinical, art or cultural establishment or residential complex which was withdrawn in the year 2015-16 has since been restored and the exemption will be available till 31.03.2020.
>
> As per the above order of the M/o. Finance, no service tax was payable for rendering the above

services till 31.03.2020 and this office will henceforth not reimburse service tax paid by the contractor to the CBEC. In view of the above notification, contractors who are working under this Division, which generally executes work in respect of Education and Clinical need not pay service tax hence forth. However contractors may continue to update / file the necessary Form or Returns with CBEC as required.

This notice is brought to the attention of all contractors undertaking work in this Division.

9. Mr.S.Muthuvenkatraman, the learned counsel for the petitioners in W.P.No.6493 of 2021 and others, has placed reliance on the following decisions:-

i. **W.P.I.L. Ltd.** Vs. **Commissioner of Central Excise, Meerut, U.P.**, 2005 (181) E.L.T. 359 (S.C.)
ii. **India Cements Ltd.** Vs. **Commissioner of Central Excise, Trichy-I**, 2013 (297) E.L.T. 508 (Mad.)
iii. **Vadilal Chemicals Ltd.** Vs. **State of Andhra Pradesh**, 2005 (192) E.L.T. 33 (SC)
iv. **Uniworth Textiles Ltd.** Vs. **Commissioner of Central Excise, Raipur**, 2013 (288) E.L.T. 161 (S.C.)
v. **Anand Nishikawa Co. Ltd.** Vs. **Commissioner of Central Excise, Meerut**, 2005 (188) E.L.T. 149 (S.C.)
vi. **Ugam Chand Bhandari** Vs. **Commissioner of Central Excise, Madras**, 2004 (167) E.L.T. 491 (S.C.)
vii. **Gammon India Ltd.** Vs. **Commissioner of Central Excise, Goa**, 2002 (146) E.L.T. 173 (Tri. -

Mumbai)

viii. **Commissioner** Vs. **Gammon India Ltd.**, 2002 (146) E.L.T. A313 (S.C.)

ix. **Cement Marketing Corporation of India** Vs. **Assistant Commissioner of Sales Tax**, 1980 (6) E.L.T. 295 (S.C.)

10. It is submitted that under somewhat similar circumstances dealing with the exemption which was withdrawn, the Hon'ble Suprme Court in **W.P.I.L. Ltd.** case referred to *supra*, held that such exemptions are clarificatory in nature. A reference was made to the decision of this Court in **India Cements Ltd.** case referred to *supra* which followed the above decision of the Hon'ble Supreme Court in **W.P.I.L. Ltd.** case referred to *supra*.

11. A reference was also made to the decision of the Hon'ble Supreme Court in **Vadilal Chemicals Ltd.** case referred to *supra*, wherein, the Hon'ble Supreme Court has observed that "*It is true that on 17-3-2000, the Commissioner of Industries issued a circular cancelling eligibility certificates issued to industrial gases bottling units, mineral water and sand beneficiation units. But the Commissioner of Industries*

had also directed the cancellation of the temporary/final eligibility certificates issued to such industries with effect from 30-3-2000 and to inform the units to pay sales tax with effect from 31-3-2000 to the Commercial Tax Department. The cancellation was, therefore, given prospective effect. If DCCT wanted to rely on the circular, it had to give effect to it completely, and indisputably by 31-3-2000 the period of sales tax exemption was over for the appellant."

12. Insofar as the reference to the decision of the Hon'ble Supreme Court in **Uniworth Textiles Ltd.** case referred to *supra*, it was observed that there was no mis-utilization.

13. A reference to the decision of the Mumbai Tribunal in **Gammon India Ltd.** case referred to *supra* was made to state that the Government would have been aware of withdrawal of exemption under the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 and therefore, even though it was incumbent on the part of the petitioners to have obtained Registration, it was incumbent on the part of the Service Tax Department to ensure that the works carried on by the contractors in

the Central Public Works Department in the Union Territory of Pondicherry would have come to the knowledge of the Department.

14. It is submitted that most of the contractors are illiterate and/or semi literate persons who have may some progressed in their life but were unaware of changes. The Tender documents floated by the Public Works Department ought to have cautioned the petitioners who have executed contracts with the Central Public Works Department about the changes in the tax regime. It is submitted that service tax being the indirect tax, burden of proof is ultimately cast on the consumers. In these cases, it is the Government which is providing services which are falling in the negative list under Section 66D of the Finance Act, 1944 as defined in Section 65B of the Finance Act, 1944. Therefore, no useful purpose will be served by passing the incidence of the tax to Government which is providing services in the negative list.

15. Mr.S.Muthuvenkatraman, the learned counsel for the petitioners in W.P.No.6493 of 2021 and others submitted that some of the petitioners who have rendered services to the persons for whom the services were

rendered were non Government Organisations and therefore submits that insofar as those cases are concerned, the petitioners may be relegated to defend their case before the adjudicating authority.

16. Mr.S.Rajasekar, the learned counsel for the petitioners in W.P.No.24996 of 2019 and others, has drawn attention to the decision of the Hon'ble Supreme Court in **Dai-Ichi Karkaria Ltd.** Vs. **Union of India and others**, (2000) 4 SCC 57. The main attack is on the public interest involving in withdrawal of exemption. It is submitted that there are no records to substantiate if any public interest at all was involved while issuing the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 withdrawing the exemption in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012. A reference was made to paragraphs 11, 12 & 13 of the above decision which reads as under:-

> **11.** In the present case, by issuing a different set of notifications and granting exemption at different stages and limiting only to the extent of 75% (*sic* 25%) for the period from 30-12-1986 to 10-9-1987 and for the reasons stated earlier in the manner set out in the counter-affidavit clearly indicate that the Government has not taken into account all the relevant factors while issuing the impugned

notifications reducing the exemption to 25% for the aforesaid period. We may state that the Government has failed to discharge its statutory obligation while issuing the impugned notifications. Justifications offered, to say the least, is far too naive to be accepted. The reason set out does not carry the case of the State Government further at all.

12. However, Ms Nisha Bagchi sought to distinguish the different notifications by stating that different notifications issued subsequently are in respect of different commodities and it is always open to the Government to change its policy. Undoubtedly it is so, but those factors per se would not discharge the burden of the Government in establishing as to what public interest governed the Government in reducing the extent of exemption.

13. We have already held that the Government has failed to discharge that burden. In the result, we have no hesitation in quashing the amended notifications which are applicable for the period from 30-12-1986 to 10-9-1987 reducing the extent of exemption. The notification issued earlier on 10-9-1982 and modified in 1983 shall be effective till 10-9-1987. The appellants should be subject to duty only in accordance with those notifications issued under the Customs Act.

17. It is the case of the petitioners that levy of tax on services provided by the petitioners namely contractors to the Tamil Nadu Public Works Department was ultravirus Section 65B and Section 66B of the

Finance Act, 1944. It is submitted that the services provided by the petitioners to the Public Works Department ought to have been considered as services provided by the Government and therefore it is outside the purview of levy of service tax in view of the negative list in Section 66D read with definition of negative list in Section 65B(34) of the Finance Act, 1944.

18. It is submitted that no useful purpose is served by making the petitioners liable to pay service tax as the service tax is a destination-based tax and ultimately service tax is payable by collecting the same from the recipients of the services. It is submitted that the requirement to collect the service tax from the Government Departments and to remit the same to the Government for whom the work was being executed was arbitrary and therefore liable to be declared as ultravirus.

19. It is submitted that no useful purpose will be served by making the contractors collect the service tax and pay the same to the exchequer. Instead, the amount could have been directed to be collected from the recipients and therefore, the service tax for the services provided by the

petitioners should be exempted as the service provided by the recipients is in the negative list in Section 66D of the Finance Act, 1944.

20. It is submitted that the services provided to the various Government agencies are also on a non-commercial basis and therefore services provided to such Government agencies also should be exempted and not subject to tax. It submitted that it is for the above reason Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 was issued with effect from 01.07.2012.

21. It is further submitted that though the petitioners had requested the Department to reimburse the tax, the Department has refused to reimburse the tax forcing the petitioners to pay the tax out of their pocket. It is submitted that some of the petitioners had initially paid the service and are entitled for refund. It is submitted that if there was a public interest in forcing the petitioner to pay tax, there is no material to substantiate that the public interest had changed in 2015. It is submitted that merely because the Government wants to broaden the tax payers *ipso facto* would not mean that the public interest was being served by

withdrawing the exemption in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 vide impugned Notification No.6/2015-Service Tax, dated 01.03.2015.

22. It is submitted that the legislature has intended to levy service tax on these services when Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 was issued and therefore, the withdrawal of exemption is liable to be declared as arbitrary and contrary to Article 14 & 19 of the Constitution of India.

23. Mr.N.Subramaniyan, the learned counsel for the petitioners in W.P.No.1185 of 2018 and others, submitted that the State Government did not comply with the requirements of Rule 14(1) of the Tamil Nadu Transparency in Tenders Rules, 2000. As per Rule 14(1) of the Tamil Nadu Transparency in Tenders Rules, 2000, the tender documents shall clearly indicate the terms on which the tenderers will be required to quote their price which should be inclusive of all costs of delivery at the final destination such as transportation, payment of duties and taxes leviable, insurance and any incidental services and giving the break up thereof. It

is submitted that the petitioners are forced to pay the service tax for the services rendered by them.

24. A reference was also made to Article 289(2) of the Constitution of India which reads as under:-

> **289. Exemption of property and income of a State from Union taxation.—**
>
> (1) The property and income of a State shall be exempt from Union taxation.
>
> (2) Nothing in clause (1) shall prevent the Union from imposing, or authorising the imposition of, any tax to such extent, if any, as Parliament may by law provide in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operations connected therewith, or any property used or occupied for the purposes of such trade or business, or any income accruing or arising in connection therewith.
>
> (3) Nothing in clause (2) shall apply to any trade or business, or to any class of trade or business, which Parliament may by law declare to be incidental to the ordinary functions of Government.

25. It is submitted that the negative list in Section 66D of the Finance Act was in consonance with Article 289(2) of the Constitution of India and therefore, the demand of service tax is contrary to Article 289 of the Constitution of India also.

26. It is further submitted that no counter affidavit has been filed by the Union of India and only the counter affidavit has been filed by the Commissioner on strength of Letter dated 06.12.2019 bearing reference F.No.280/01/2019-CX.8A of the Central Board of Indirect Taxes and Customs (Legal Cell). It is submitted that Central Board of Indirect Taxes and Customs (CBIC) is merely a statutory Board constituted under the Central Boards of Revenue Act, 1963. Central Board of Indirect Taxes and Customs (CBIC) was formed in 1964 when the Central Board of Revenue was split into the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs, which was renamed the Central Board of Indirect Taxes and Customs in 2018.

27. It is submitted that under Article 77 of the Constitution of

Indian as also under Article 166 of the Constitution of India, the executive action of the Government of India and the Government of State is to be represented by the President of India or by the Governor of the concerned State, as the case may be. It is also submitted that the Notifications have been issued by the Central Government in exercise of power under Section 93 of the Finance Act, 1994 and therefore, authorization given by the Central Board of Indirect Taxes and Customs (CBIC) authorizing the Commissioner of Central Goods and Service Tax is contrary to the Rules of business.

28. It is submitted that the counter affidavit should have been filed only by the Government of India represented by its Secretary and not by the Board. In any event, there are no records or counter affidavit by the competent authority explaining the reason as to why the exemption granted in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 was withdrawn. A reference was also made to the decision of the Hon'ble Supreme Court in **Shayara Bano** Vs. **Union of India and others**, (2017) 9 SCC 1, wherein, it was held as under:-

62. Article 14 of the Constitution of India is a

facet of equality of status and opportunity spoken of in the Preamble to the Constitution. The Article naturally divides itself into two parts—(1) equality before the law, and (2) the equal protection of the law. Judgments of this Court have referred to the fact that the equality before law concept has been derived from the law in the UK, and the equal protection of the laws has been borrowed from the 14th Amendment to the Constitution of the United States of America. In a revealing judgment, Subba Rao, J., dissenting, in *State of U.P.* v. *Deoman Upadhyaya* [*State of U.P.* v. *Deoman Upadhyaya*, (1961) 1 SCR 14 : AIR 1960 SC 1125 : 1960 Cri LJ 1504], AIR p. 1134 para 26: SCR at p. 34 further went on to state that whereas equality before law is a negative concept, the equal protection of the law has positive content. The early judgments of this Court referred to the "discrimination" aspect of Article 14, and evolved a rule by which subjects could be classified. If the classification was "intelligible" having regard to the object sought to be achieved, it would pass muster under Article 14's anti-discrimination aspect. Again, Subba Rao, J., dissenting, in *Lachhman Dass* v. *State of Punjab* [*Lachhman Dass* v. *State of Punjab*, (1963) 2 SCR 353 : AIR 1963 SC 222] , SCR at p. 395, warned that: (AIR p. 240, para 50)

> "*50*. … Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the Article of its glorious content."

He referred to the doctrine of classification as a "subsidiary rule" evolved by courts to give practical content to the said Article.

63. In the pre-1974 era, the judgments of this Court did refer to the "rule of law" or "positive" aspect of Article 14, the concomitant of which is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground. In *S.G. Jaisinghani* v. *Union of India* [*S.G. Jaisinghani* v. *Union of India*, (1967) 2 SCR 703 : AIR 1967 SC 1427] , this Court held: (SCR pp. 718-19 : AIR p. 1434, para 14)

> "*14*. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey—"*Law of the Constitution*"—10th Edn., Introduction cx.) "Law has reached its finest moments", stated Douglas, J. in *United States* v. *Wunderlich* [*United States* v. *Wunderlich*, 1951 SCC OnLine US SC 93 : 96 L Ed 113 : 342 US 98 (1951)] : (SCC OnLine US SC para 9)
>
> > '*9*. … when it has freed man from the unlimited discretion of some ruler…. Where discretion, is absolute, man has always suffered.'

> It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in*John Wilkes* [*R.* v. *Wilkes*, (1770) 4 Burr 2527 : 98 ER 327], Burr at p. 2539: (ER p. 334)
>
> > '… means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague, and fanciful….' "

This was in the context of service rules being seniority rules, which applied to the Income Tax Department, being held to be violative of Article 14 of the Constitution of India.

.....

66. Chandrachud, J., was a little more explicit in that he expressly referred to Article 14 and stated that Article 329-A is an outright negation of the right of equality conferred by Article 14. This was the case because the law would be discriminatory in that certain high personages would be put above the law in the absence of a differentia reasonably related to the object of the law. He went on to add: (*Indira Nehru Gandhi case* [*Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1] , SCC p. 258, para 681)

> "*681*. It follows that clauses (4) and (5) of Article 329-A are arbitrary and are calculated to damage or destroy the rule of law. Imperfections of language hinder a precise definition of the rule of law as of the definition of "law" itself. And the constitutional law of 1975 has undergone many changes since A.V. Dicey, the great expounder of the rule of law, delivered his

lectures as Vinerian Professor of English law at Oxford, which were published in 1885 under the title, "*Introduction to the Study of the Law of the Constitution*". But so much, I suppose, can be said with reasonable certainty that the rule of law means that the exercise of powers of Government shall be conditioned by law and that subject to the exceptions to the doctrine of equality, no one shall be exposed to the arbitrary will of the Government. Dicey gave three meanings to rule of law: Absence of arbitrary power, equality before the law or the equal subjection of all classes to the ordinary law of the land administered by ordinary law courts and that the Constitution is not the source but the consequence of the rights of individuals, as defined and enforced by the courts. The second meaning grew out of Dicey's unsound dislike of the French Droit Administratif which he regarded "as a misfortune inflicted upon the benighted folk across the Channel". [See *S.A. de Smith: Judicial Review of Administrative Action*, (1968) p. 5.] Indeed, so great was his influence on the thought of the day that as recently as in 1935 Lord Hewart, the Lord Chief Justice of England, dismissed the term "administrative law" as "continental jargon". The third meaning is hardly apposite in the context of our written Constitution for, in India, the Constitution is the source of all rights and obligations. We may not therefore rely wholly on Dicey's exposition of the rule of law but ever since the Second World War, the rule has come to acquire a positive content in all democratic countries. [See *Wade and Phillips: Constitutional Law* (6th Edn., pp. 70-73).] The International Commission of Jurists, which has a consultative status under the United Nations, held its Congress in Delhi in

> 1959 where lawyers, Judges and law teachers representing fifty-three countries affirmed that the rule of law is a dynamic concept which should be employed to safeguard and advance the political and civil rights of the individual in a free society. One of the committees of that Congress emphasised that no law should subject any individual to discriminatory treatment. These principles must vary from country to country depending upon the provisions of its Constitution and indeed upon whether there exists a written Constitution. As it has been said in a lighter vein, to show the supremacy of the Parliament, the charm of the English Constitution is that "it does not exist". Our Constitution exists and must continue to exist. It guarantees equality before law and the equal protection of laws to everyone. The denial of such equality, as modified by the judicially evolved theory of classification, is the very negation of rule of law."

This paragraph is an early application of the doctrine of arbitrariness which follows from the rule of law contained in Article 14. It is of some significance that Dicey's formulation of the rule of law was referred to, which contains both absence of arbitrary power and equality before the law, as being of the essence of the rule of law.

67. We now come to the development of the doctrine of arbitrariness and its application to State action as a distinct doctrine on which State action may be struck down as being violative of the rule of law contained in Article 14. In a significant passage, Bhagwati, J., in *E.P. Royappa* v. *State of T.N.* [*E.P.*

Royappa v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] stated: (SCC p. 38, para 85)

> "*85*. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. *From a*

positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

68. This was further fleshed out in *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] , where, after stating that various fundamental rights must be read together and must overlap and fertilise each other, Bhagwati, J., further amplified this doctrine as follows: (SCC pp. 283-84, para 7)

"*The nature and requirement of the procedure under Article 21*

7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E.P. Royappa* v. *State of T.N.* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , namely, that: (SCC p. 38, para 85)

> '*85*. … From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14….'

Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. *The principle of reasonableness, which legally as well as philosophically, is an essential*

> *element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14*. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied."

69. This was further clarified in *A.L. Kalra* v. *Project and Equipment Corpn.* [*A.L. Kalra* v. *Project and Equipment Corpn.*, (1984) 3 SCC 316 : 1984 SCC (L&S) 497], following *Royappa* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and holding that arbitrariness is a doctrine distinct from discrimination. It was held: (*A.L. Kalra case* [*A.L. Kalra* v. *Project and Equipment Corpn.*, (1984) 3 SCC 316 : 1984 SCC (L&S) 497] , SCC p. 328, para 19)

> "*19*. … It thus appears well settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal of (sic) protection by law. The Constitution Bench pertinently observed in *Ajay Hasia case* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] and put the matter beyond controversy when it said: (SCC p. 741, para 16)

> '*16*. … Wherever therefore, there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action.'

This view was further elaborated and affirmed in *D.S. Nakara* v. *Union of India* [*D.S. Nakara* v. *Union of India*, (1983) 1 SCC 305 : 1983 SCC (L&S) 145]. In *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] it was observed that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Article 14."

The same view was reiterated in *Babita Prasad* v. *State of Bihar* [*Babita Prasad* v. *State of Bihar*, 1993 Supp (3) SCC 268 : 1993 SCC (L&S) 1076] , SCC at p. 285, para 3

70. That the arbitrariness doctrine contained in Article 14 would apply to negate legislation, subordinate legislation and executive action is clear from a celebrated passage in *Ajay Hasia* v. *Khalid Mujib Sehravardi* [*Ajay Hasia* v. *Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] : (SCC pp. 740-41, para 16)

> "*16*. … The true scope and ambit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state

that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (*i*) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (*ii*) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa* v. *State of T.N.* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said: (SCC p. 38, para 85)

> '*85*. … The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many

> aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.'

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in *Royappa case* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and it was reaffirmed and elaborated by this Court in *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] where this Court again speaking through one of us (Bhagwati, J.) observed: (SCC pp. 283-84, para 7)

> '*7*. Now the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a

> narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. … Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence….'

This was again reiterated by this Court in *International Airport Authority case* [*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489 : (1979) 3 SCR 1014] , SCR at p. 1042 (SCC p. 511) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. *Wherever therefore there is arbitrariness in State action*

> *whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution*."
>
> *(emphasis supplied)*

29. M/s.Aparna Nandakumar for Mr.Aditya Reddy and Mr.V.Ravi, Special Government Pleaders for State Government has drawn attention to the decision of the Hon'ble Supreme Court in **Union of India and others** Vs. **Bengal Shrachi Housing Development Limited and another**, (2018) 1 SCC 311 : 2017 SCC OnLine SC 1290. A reference was made to the following paragraphs in the above decision:-

> **33.** In this view of the matter, the arbitration award was set aside. This judgment again turned on the language of the particular clauses in the lease deed and would have no application to the facts of the present case.
>
> **34.** At the fag end of the argument, however, Shri Gupta referred us to a sanction letter dated 27-4-2012 and a letter dated 30-4-2012. The sanction letter of 27-4-2012 issued by the Government of India conveying sanction for hiring of the lease premises in the present case to the Director General, Indian Coast

Guard, specifically states:

> "… The registration charges, stamp duty, service taxes, etc. (if applicable) is the liability of the lessee.…"

35. The letter dated 30-4-2012, written by the Deputy Inspector General, Chief Staff Officer, to the respondent, in turn, in Para 3(*c*) reiterated the same position as that of the sanction letter. The learned Single Judge in dealing with the letter dated 30-4-2012 has held: (*Bengal Shrachi Housing case* [*Bengal Shrachi Housing Dev. Ltd.* v. *Union of India*, 2014 SCC OnLine Cal 10569 : AIR 2014 Cal 145] , SCC OnLine Cal para 12)

> "*12.* Turning to the facts of the present case, it appears that Clause 6 extracted supra delineated the respective obligations of the lessor and the lessees. The parties agreed that the rates and taxes primarily leviable upon the occupier would be paid by the Government. That the respondents were not oblivious of their obligation to bear service charge is reflected from the letter dated 30-4-2012. Although the said deed does not specifically refer to service tax, the letter dated 30-4-2012 expressly provides that Government of India had sanctioned the terms and conditions of hiring including, inter alia, the liability of the "*lessee in respect of registration charges, stamp duty, service tax, etc., (if applicable)*". The words "if applicable" in brackets follows, "etc." and not "service tax". Therefore, it is not a case that if obligation to make payment of service tax arises, the respondents would have discretion to foist the responsibility on the lessor (the first petitioner). Liability to bear service tax being

> that of the person receiving service, there can be no escape from the conclusion that the respondents are liable to bear service tax."
>
> (emphasis in original)
>
> **36.** This being the case, though in law and under Clause 6 of the lease deed the appellant is not required to pay service tax, we are loathe to upset the finding of the learned Single Judge based upon a letter by the appellant to the respondent in which the appellant has expressly stated that it was liable to pay service charges. Having thus clarified the legal position, given the sanction letter of 27-4-2012 and the letter dated 30-4-2012, in which it was made clear that the Union of India alone will bear the service charges, we refuse to exercise our discretion under Article 136 of the Constitution of India in favour of the Union of India. Thus, the impugned Division Bench judgment [*Union of India* v. *Bengal Shrachi Housing Dev. Ltd.*, 2014 SCC OnLine Cal 18431] is set aside on law, but the appeal fails on the facts of the present case.

30. Opposing the prayer in these Writ Petitions, the learned Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel for Central Government submits that promissory estoppel is not applicable when larger public interest is invoked and therefore, a reference was made to the decision of the Hon'ble Supreme Court in **Kasinka Trading and Another** Vs **Union of India and another**, (1995)

1 SCC 274, wherein, it was held as under:-

> **21.** The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is *with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country*. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import

> PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any 'representation' much less a 'promise' to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon *as such* by the party to whom the same was made. A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption.

31. A reference was also made to the decision of the Hon'ble Supreme Court in **Union of India and others** Vs. **Unicorn Industries**, (2019) 10 SCC 575, wherein, it was held as under:-

> **15.** It could thus be seen that, this Court has clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are

bound to see all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principle of equity must forever be present in the mind of the Court while considering the applicability of the doctrine. It has been held that the doctrine of promissory estoppel must yield when the equity so demands and when it can be shown having regard to the facts and circumstances of the case, that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. After considering the earlier judgments on the issue, which have been heavily relied upon by the assessees, this Court has observed thus: (*Kasinka Trading case* [*Kasinka Trading* v. *Union of India*, (1995) 1 SCC 274] , SCC pp. 287-88, para 21)

> "*21*. The power to grant exemption from payment of duty, additional duty, etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. *It does not make items which are subject to levy of customs duty, etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public*

> *interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner*."
>
> (emphasis supplied)

32. It is also submitted that exemption can be taken away under the power which was granted. A reference was made to decision of the Hon'ble Supreme Court in **State of Haryana and others** Vs. **Mahabir Vegetable Oils Pvt. Ltd.**, (2011) 3 SCC 778, wherein, it was held as under:-

> **28.** An exemption is nothing but a freedom from an obligation which an assessee is otherwise liable to discharge. In a fiscal statute, an exemption has been held to be a concession granted by the State so that the beneficiaries of such concession are not required to pay the tax or the duty they are otherwise liable to pay under such statute. The beneficiary of a concession has no legally enforceable right against the Government to grant a concession except to enjoy the benefits of the concession during the period of its grant. The right to exemption or concession is a right that can be taken away under the very power in exercise of which the exemption was granted.

33. Another reference was made to the decision of the Hon'ble Supreme Court in **Union of India (UOI) and others** Vs. **Jalyan Udyog and others**, (1994) 1 SCC 318, wherein, it was held as under:-

> **25.** We are equally unable to agree that by virtue of the fiction contained in the exemption notification, the ship-owners are being made to pay a higher duty than the statutory duty. By a fortuitous combination of circumstances, it so happens that the value of the ship when it was imported in 1968 as an ocean-going vessel happens to be less than the value of the ship today when it has become junk and fit only for scrapping/breaking. On account of the steep rise in the prices of steel, such an unusual situation has come about but this circumstance in no way affects the validity of the notification. The notification shifts the date of import — in the case of a ship which is imported as an ocean-going vessel but is subsequently broken-up — from the actual date of import to the date of breaking-up by creating a legal fiction. Once it is held that it is open to the Central Government to impose such a condition or to create such a fiction, as the case may be, the condition or the fiction has to be given full effect to. It must be deemed that the ship is imported on the date it is broken-up (as explained herein above) and its value and rate of duty should be determined with reference to such date. By doing this, the duty chargeable by virtue of the exemption notification is not going beyond the statutory duty payable on such deemed date.

34. It is submitted that power to issue Notification includes power to amend. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Aflon Engineering Corporation**, (2001) 10 SCC 677, wherein, it was held as under:-

> **11.** The 1971 notification did not elaborate or specify as to what would be regarded as a rigid plastic sheet. In order that there should be no ambiguity as to what is to be categorised as a flexible or rigid material the explanation was inserted in 1978. It is rightly not being contended that the Central Government could not have included the explanation at the time when the notification was first promulgated in 1971. The Central Government could at that very first instance restrict the ambit of the exemption notification to a particular variety of goods. After all, no manufacturer has a right to claim exemption. It is a relief which is granted by the Government in case where it thinks appropriate and proper. Exemptions could be granted subject to certain conditions. They may even be granted, as in this particular case, to a small variety of items which would otherwise fall under Tariff Item 15-A. If the explanation could have been inserted in 1971 when the exemption was first promulgated there is, in our opinion, no legal impediment in the Government issuing a notification which has the effect of amending an earlier notification and thereby restricting the operation of the exemption notification. Under the General Clauses Act when power is given to the Government to issue

notification there is inherent in the same power to amend the same. This is precisely what has happened in the present case.

35. As far as the public interest is concerned, it is submitted that the Court cannot sit in an appeal over the judgment regarding the public interest. A reference was made to the decision of Bombay High Court in **Elkays International** Vs. **Union of India**, 1996 SCC OnLine Bom 723, wherein, it was held as under:-

> **7.** The learned Counsel for the Petitioner submitted that the power to grant any exemption or to withdraw or modify the exemption under Section 25 of the Customs Act, 1962 is a power that should have been exercised in the public interest. He submitted that import of pulses was allowed by the Respondents under the OGL (Open General Licence) in the interest of general public under the Import Policy for a span of ten years considering the needs or demands of pulses in the country. Hence, there should have been no sudden change or withdrawal of the said exemption. It is not possible to accede to this contention. It is for the Respondents to decide whether a particular commodity or article is to be granted exemption or not or whether it should be withdrawn or modified in the public interest. If the Respondents decide that it is not necessary to grant such exemption in the public interest then the Court cannot sit in judgment or consider sufficiency of the reasons which appealed to the Respondents. It is for the respondents to take such policy decisions.

Therefore there is no substance in this contention.

36. It is submitted that since the Parliament had thought it fit to bring several services within the purview of service tax liability, a decision was taken to broaden tax base and to withdraw the exemption.

37. A reference was made to the decision of the Madurai Bench of this Court in **T.Krishnan** Vs. **The Assistant Commissioner of CGST & Central Excise, Madurai II Division and others**, dated 23.03.2022 in W.P.(MD) Nos.2510 of 2021 etc. batch (authored by one of us).

38. It is submitted that it is not necessary for the Government to establish in each of the cases. In this connection, a reference was made to the decision of the Bombay High Court in **Mehta Pharmaceutical Industries** Vs. **Union of India**, 1994 SCC OnLine Bom 790 : (1994) 71 ELT 908, wherein, it was held as under:-

> **5.** The second contention urged by Shri Mehta is that the notification dated August 10, 1984 was issued by Government of India in exercise of powers conferred under Section 25 of the Customs Act and

sets out that the exemption was withdrawn in public interest. The learned counsel urged with reference to ground (b) in paragraph 12 of the petition that the exercise of power was not in the public interest but with a view to favour certain interested persons. On this bare averment, it was contended that it is boundant duty of Government of India to produce data and material before this Court to establish that the exemption was withdrawn in public interest. It is not possible to accede to the submission urged by the learned counsel. It is undoubtedly true that the Government of India will be required to establish that the exercise of powers is in the public interest in cases where the petitioners at least prima facie establish that the exercise was not bona fide. The exercise of powers by Government authorities is presumed to be bona fide and unless the averments made in the petition are substantial and sufficient to at least prima facie indicate that the exercise was not bona fide, it is not necessary for the Government to establish in each and every matter that the exercise was in the public interest. In our judgment, merely because a wild allegation is made without any foundation in the petition, the Government cannot be called upon to establish that the exercise was in the public interest. In our judgment, on the facts and circumstances of the case, there cannot be any debate that exercise was in the public interest.

39. It is further submitted that there is assumption of public interest.

A reference was made to the decision of the Hon'ble Supreme Court in

D.P.F.Textiles Ltd. Vs. **Union of India**, 1997 (92) E.L.T. 28 (S.C.).

40. It is submitted that the Hon'ble Supreme Court in **In Re:The Bill To Amend S.20 of the Sea Customs Act, 1878 and S.3 of the Central Excise and Salt Act, 1944**, AIR 1963 SC 1760, held that neither the Union nor the State can claim unlimited right as regards the area of taxation. "The right has been hedged in by considerations of respective powers and responsibilities of the Union in relation to the States in relation to citizens or inter se or in relation to the Union.

41. Mr.Rajnish Pathiyil, learned Senior Central Government Standing Counsel for Central Government has placed reliance on the decision of the Hon'ble Supreme Court in **Tamil Nadu Kalyana Mandapam Assn.** Vs. **Union of India (UOI) and others**, (2004) 5 SCC 632 : 2004 SCC OnLine SC 491.

42. It is submitted that the Hon'ble Supreme Court has upheld the levy of service tax in the aforesaid cases and in several other cases and therefore it is not open for the petitioners to state that levy of service tax is

unconstitutional or contrary to the Act.

43. Mr.V.Sundareswaran, the learned Special Government Pleader for the Central Government refers to the report of the Comptroller and Auditor General of India, wherein, it has been stated as follows:-

> **5.3 Other cases**
> As per Sl. No.12(c) of notification dated 20th June 2012, services provided to the Government, a local authority or a governmental authority by way of construction of a structure meant predominantly for use as an educational institution is exempted from levy of service tax.

44. It is submitted that under Section 94(4) of the Service Tax Act (Chapter V of the Finance Act, 1994), every Rule made under this Chapter, Scheme framed under Section 71 and every Notification issued under Section 93 shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification

or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

45. It is submitted that while issuing the impugned Notification No.6/2015-Service Tax, dated 01.03.2015, the above requirement has been complied with and therefore the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 is unwarranted. A reference was made to the decision of the Division Bench of this Court in **Union of India and others** Vs. **M/s.Dindigul Spinners Association**, dated 21.01.2022 in W.A.Nos.1552 to 1573 of 2013, wherein, it was held as under:-

> **10.1.5** The Hon'ble Supreme Court and various High Courts including this Court, after quoting the above passage with approval, has consistently

reiterated the above view. The Hon'ble Supreme Court in ***Swadeshi Cotton Mill Co. Ltd. v. State Industrial Tribunal***, AIR 1943 FC 75, held as under:-

> *"31...Our conclusion therefore is that where certain conditions precedent have to be satisfied before a subordinate authority can pass an order, (be it executive or of the character of subordinate legislation), it is not necessary that the satisfaction of those conditions must be recited in the order itself, unless the statute requires it, though, as we have already remarked, it is most desirable that it should be so, for in that case the presumption that the conditions were satisfied would immediately arise and burden would be thrown on the person challenging the fact of satisfaction to show that what is recited is not correct. But even where the recital is not there on the face of the order, the order will not become illegal ab initio and only a further burden is thrown on the authority passing the order to satisfy the court by other means that the conditions precedent were complied with. In the present case this has been done by the filing of an affidavit before us."*

10.1.6 The above view of the Hon'ble supreme court was reiterated in ***Narayan Govind Gavate v. State of Maharashtra***, (1977) 1 SCC 133 wherein, with regard to presumption that is raised by a recital in the notification, it was held as under:

> "28. The High Court opined that the presumption of regularity, attached to an order containing a technically correct recital, did not operate in cases in which Section 106 Evidence Act was applicable as it was to the cases before

us. We do not think that we can lay down such a broad general proposition. ***An order or notification, containing a recital, technically correct on the face of it, raises a presumption of fact under Section 114 illustration (e) of the Evidence Act. The well-known maxim of law on which the presumption found in illustration (e) to Section 114 of Evidence Act is: "Omnia praesumuntur rite esse acta" (i.e. all acts are presumed to have been rightly and regularly done)……*** " (emphasis supplied)

10.1.7 The above view with regard to presumption in view of the provisions of the Evidence Act and the maxim 'omnia praesumuntur rite esse acta' i.e. 'all acts are presumed to have rightly and regularly been done' was reiterated in the following judgments:

a) Ayaaubkhan Noorkhan Pathan v. State of Maharashtra, (2013) 4 SCC 465 : (2013) 2 SCC (Civ) 658 : (2013) 2 SCC (L&S) 296 : 2012 SCC OnLine SC 926 at page 488.
b) Karewwa v. Hussensab Khansaheb Wajantri, (2002) 10 SCC 315 : AIR 2002 SC 504
c) Engg. Kamgar Union v. Electro Steels Castings Ltd. (2004) 6 SCC 36 : 2004 SCC (L&S) 782
d) Mohd. Shahabuddin v. State of Bihar, (2010) 4 SCC 653 : (2010) 2 SCC (Cri) 904
e) SEB v. Ashwani Kumar, (2010) 7 SCC 569 : (2010) 3 SCC (Civ) 147
f) M. Chandra v. M. Thangamuthu. (2010) 9 SCC 712 : (2010) 3 SCC (Civ) 907 : AIR 2011 SC 146
g) R.Ramachandran Nair v. State of Kerala (Vigilance Deptt.), (2011) 4 SCC 395 : (2011)

2 SCC (Cri) 251 : (2011) 2 SCC (L&S) 691

Thus, it could be seen that a recital in a notification raises a presumption though not conclusive, however, the burden is on the person who assails the recital as not reflecting the true state of affairs, to demonstrate the same by letting in cogent and appropriate material and mere assertion however strong, may not be an adequate discharge of such burden.

10.2.6 In any event, the aforesaid reasoning of the learned Judge viz., failure to satisfy the court that there was "sufficient material" with the Central Government for issuance of notification and thus setting aside the impugned notification, is also contrary to the law as to the scope of judicial review, while testing the validity of a subordinate legislation. Adequacy or wisdom of legislative measures be it plenary or subordinate falls within the exclusive domain of the Legislature and its delegate and the courts have adopted "hands off" approach qua economic legislation. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to the matters covered by the Act and there is no scope for interference by the Court unless the particular action impugned before it, can be said to be wholly beyond the scope of the delegate or it being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. Thus, it may not be permissible for the Court to look at the adequacy of the material, which necessitated the issuance of a notification.

10.2.7 In this regard, it may be relevant to refer to the following judgments of the Hon'ble Supreme Court:

a. Narayan Govind Gavate v. State of Maharashtra (1977) 1 SCC 133

> *"10....That test basically is: Was the authority concerned acting within the scope of its powers or in the sphere where its opinion and discretion must be permitted to have full play? Once the court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material,* ***however meagre, on which it could reasonably base its opinion, the courts should not and will not interfere....****"*
>
> *(emphasis supplied)*

b. State of U.P. v. Hindustan Aluminium Corpn. (1979) 3 SCC 229 at page 246

> *"41. ..... We have no doubt that the State Government formed its opinion about the necessity and expediency of making the Order for the purpose of maintaining the supply and securing the equitable distribution of energy at a time when that was called for, and this Court cannot sit as a Court of appeal to examine any and every argument in an attempt to show that the opinion of the State Government was vitiated for one fanciful reason or the other.* ***It has to be appreciated that the question whether the reasons which led to the making of the Order were sufficient, was essentially for the State Government to consider.****"*
>
> *(Emphasis supplied)*

c. Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh

Bhupeshkumar Sheth (1984) 4 SCC 27:

"14…… ***It would be wholly wrong for the Court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act****.... the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, ……..It is not for the Court to examine the merits or demerits of such a policy"*

"16. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious. ***The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body.*** *It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act.*

(emphasis supplied)

d. Corpn. of the City of Bangalore v. Kesoram Industries and Cotton Mills Ltd. 1989 Supp (2) SCC 753 at page 757

> *" 9. The court has no jurisdiction to examine the validity of the reasons that goes into the decision or the motive that induced the delegated authority to exercise its powers. No judicial duty is laid on the authority in discharge of the statutory obligations and, therefore, the only question to be examined is whether the statutory provisions have been complied with."*

46. M/s.R.Hemalatha, the learned Senior Standing Counsel referred to the decision of the Hon'ble Supreme Court in **Dental Counsel of India** Vs. **Biyani Shikshan Samiti and another**, (2022) 6 SCC 65, wherein, it was held as under:-

> **30.** In *State of T.N.* v. *P. Krishnamurthy* [*State of T.N.* v. *P. Krishnamurthy*, (2006) 4 SCC 517] after considering the law laid down by this Court earlier in *Indian Express Newspapers (Bombay)* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121], *Supreme Court Employees' Welfare Assn.* v. *Union of India* [*Supreme Court Employees' Welfare Assn.* v. *Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569], *Shri Sitaram Sugar Co. Ltd.* v. *Union of India* [*Shri Sitaram Sugar Co. Ltd.* v. *Union of India*,

(1990) 3 SCC 223], *St. Johns Teachers Training Institute* v. *NCTE* [*St. Johns Teachers Training Institute* v. *NCTE*, (2003) 3 SCC 321 : 5 SCEC 391], *Ramesh Chandra Kachardas Porwal* v. *State of Maharashtra* [*Ramesh Chandra Kachardas Porwal* v. *State of Maharashtra*, (1981) 2 SCC 722], *Union of India* v. *Cynamide India Ltd.* [*Union of India* v. *Cynamide India Ltd.*, (1987) 2 SCC 720] and *State of Haryana* v. *Ram Kishan* [*State of Haryana* v. *Ram Kishan*, (1988) 3 SCC 416], this Court has laid down certain grounds, on which the subordinate legislation can be challenged, which are as under: (*Krishnamurthy case* [*State of T.N.* v. *P.Krishnamurthy*, (2006) 4 SCC 517] , SCC p. 528, para 15)

"*Whether the rule is valid in its entirety*?

15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(*a*) Lack of legislative competence to make the subordinate legislation.

(*b*) Violation of fundamental rights guaranteed under the Constitution of India.

(*c*) Violation of any provision of the Constitution of India.

(*d*) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(*e*) Repugnancy to the laws of the land, that is, any enactment.

(*f*) Manifest arbitrariness/ unreasonableness (to an extent where the court

might well say that the legislature never intended to give authority to make such rules)."

47. A further reference was made to the decision of the Madhya Pradesh High Court in **MDP Infra (India) Pvt. Ltd.** Vs. **Commissioner of Customs, C. Ex. & CGST**, 2019 SCC OnLine MP 7105 : (2019) 65 GSTR 51, wherein, it was held as under:-

> **15.** As regard to substantial question of law at 'B', the said question in given facts of present also does not arise for consideration. The appellant was under legal obligation to deposit the service tax in respect of the service rendered *qua* non-exempted service. The contentions that it was beyond the control of the appellant to deposit the service tax on exempted service is misconceived. Evidently, the Notification No. 12/2012 & 25/2012 ceased to exist w.e.f. 1-4-2015. The exemption was revived by notification dated 1-3-2016. But since it was prospective in effect, the appellant was not entitled for any exemption, which the appellant was aware of and with open mind and eyes deposited the service tax due with interest. It was only by virtue of subsequent legislation the notification was made effective from retrospective date with the stipulations that refund can be claimed within specific time provided. There was thus no ambiguity nor any dispute as would have prevented the appellant from seeking refund within the period of limitation. On these given facts the substantial question at 'B' also does not arise for consideration.

48. As far as the Central Public Works Department Mr.Venkataswamy Babu, the learned Senior Panel Counsel for the respondents submits that the Notice dated 11.01.2017 bearing reference File No.52(1)/2017/PCD/AB/67 issued by Office of the Executive Engineer, Puducherry Central Division, Central Public Works Department is of no relevance. It is submitted that the service tax liability is to be determined in terms of the provisions of the Act and therefore service tax is to be paid by the petitioners and therefore these Writ Petitions are liable to be dismissed.

49. A reference was made to Paragraph No.3 of the counter affidavit filed by the fourth respondent in W.P.Nos.6641, 6652, 6929, 6923, 6961, 6966, 7172, 7325, 7327, 7179, 7005 & 7011 of 2021, wherein, it has been stated as follows:-

> 3. I submit that only relation between the petitioner and the Respondent No 4 is by virtue of agreements for various works which are drawn as pe the tenders called by Respondent 4. For all such agreements, the reimbursement of Service Tax is governed by the General Conditions of Contract (GCC) which is a part of the agreement. For the period pertaining to the

petition, the prevalent version was GCC 2014 which is part of all agreements signed by CPWD. The GCC 2014 includes the following regarding service tax:
Clause 37: Sales Tax/VAT (except Service Tax), Building and other Construction Workers Welfare Cess or any other tax or Cess in respect of this contract shall be payable by the contractor and Government shall not entertain any claim whatsoever in this respect. However, in respect of service tax, same shall be paid by the contractor to the concerned department on demand and it will be reimbursed to him by the Engineer-in-Charge after satisfying that it has been actually and genuinely paid by the contractor.

a) Clause 38 (i): All tendered rates shall be inclusive of all taxes and levies (except Service Tax) payable under respective statutes. However, if any further tax or levy or cess is imposed by Statute, after the last stipulated date for the receipt of tender including extensions if any and the contractor thereupon necessarily and properly pays such taxes/levies/cess, the contractor shall be reimbursed the amount so paid, provided such payments, if any, is not, in the opinion of the Superintending engineer (whose decision shall be final and binding on the contractor) attributable to delay in execution of work within the control of the contractor.

50. We have considered the arguments advanced by the learned counsel for the respective petitioners and the learned counsel for the respective respondents.

51. W.M.P.No.1486 of 2018 in W.P.No.1185 of 2018 (one of this batch of Writ Petitions) was filed for an interim injunction. By an order dated 20.03.2018, W.M.P.No.1486 of 2018 in W.P.No.1185 of 2018 was dismissed by a learned Single Judge of this Court with the following observations:-

> 9. However, on a reading of the provisions of the Act, it is clear that exemption was granted only to the Government and not to private individuals. As per the provisions, the petitioner has to make payment of the Service tax to the Department and get it reimbursed from the State Government as per the Rules. When there is no exemption granted to private individuals subsequent to the year 2012, interim injunction cannot be granted in favour of the petitioner restraining the respondents 1 to 3 from insisting payment of service tax. Since the amounts paid by the petitioner towards service tax is being reimbursed by the State Government, the petitioner cannot be construed as an aggrieved party. If an interim order is granted in this petition, it would operate against the provisions of the Act. Hence, I do not find any merits in the petition. The Writ Miscellaneous Petition in W.M.P.No.1486 of 2018 is dismissed."

52. Aggrieved by the same, the petitioner in W.P.No.1185 of 2018 filed Writ Appeal in W.A.No.756 of 2018 before the Division Bench of this Court. By a Judgment dated 24.04.2018, the Division Bench of this Court had held that the petitioner in W.P.No.1185 of 2018 had made out a

prima facie case on merits in their challenge to impugned Notification No.6/2015-Service Tax, dated 01.03.2015 and set aside the interim order of the learned Single Judge dated 20.03.2018. Operative portion of the Judgment dated 24.04.2018 of the Division Bench in W.A.No.756 of 2018 reads as under:-

> 12. Though, Mr.Rajinish Pathiyil, learned counsel for the 1st respondent submitted that notice dated 30.01.2017, has not been challenged and made objections, for interference, at the interim state, contention of the appellant herein that service tax was never collected from Government / Tamil Nadu Housing Board, has not been disputed. On the other hand service tax is paid by the appellant and reimbursement is sought for. If any amount has already been collected, then the appellant cannot retain, but to pay to the 1st respondent. But, in the case on hand, no service tax was collected, but the appellant is compelled to pay and thereafter, to get the same reimbursed. Appellant need not be mulcted with liability to pay service tax, which they have not collected from the Government / Tamilnadu Housing Board, and consequently, to pay the same to 1st respondent. Intention not to collect service tax from government for sovereign functions, is the main issue and that is why exemption has been granted earlier.
>
> 13. In the light of the above discussion, we are of the view that appellant has made out a prima facie case for interference with the order made in WMP No.1486 of 2018 in WP No.1185 of 2018 dated 28.03.2018. Hence, order impugned is set aside. Appellant is entitled for an order of interim injunction. Though on 20.03.2018 writ court directed

the respondents to file counter by four weeks, so far, no counter affidavit has been filed. It is open to the parties to seek for an early disposal of the writ petition.

14. Writ Appeal is allowed, accordingly. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

53. Following the above judgment, another Division Bench of this Court, in W.P.No.24996 of 2019, granted similar ad-interim injunction *vide* order 19.09.2019. Rest of petitioners have also secured similar interim orders.

54. Correctness of the impugned Show Cause Notices, impugned Orders–In–Originals, impugned communications/letters/summons etc. issued to the respective petitioners in Table Nos.2, 3, 4, 5 & 6, in the light of the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 cannot decided on merits under Article 226 of the Constitution of India.

55. They would relate to appreciation facts of individual cases and settlement of disputed questions of facts. They are to be decided only by the appropriate Authority under the provisions of the Finance Act, 1994

read with Central Excise Act, 1944 as made applicable to the provisions of the former enactment.

56. That apart, challenge to the collateral proceedings under Article 226 of the Constitution of India would be pre-mature if the challenge to impugned Notification No.6/2015-Service Tax, dated 01.03.2015 fails.

57. Therefore, this Court also shackles the hands of the Authorities from exercising their jurisdiction and restrains them if the challenge the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 is to fail.

58. In this order, we have confined our enquiry to the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 alone.

59. In case the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 fails, the respective petitioners will have to redress their grievance if any, before the Authority under the Finance Act,

1994, as a more efficacious and an alternate remedy exits before the authorities. Wherever Order-in-Originals have been passed, the concerned petitioner will have to file statutory appeals, if they desire.

60. Wherever, Show Cause Notices have been issued, the respective petitioners will have to answer to the same by participating in the adjudicating mechanism prescribed under the Finance Act, 1994.

61. Wherever, investigations were pending before the institution of these Writ Petitions and letters /communications and summons etc. were issued to the respective petitioners, which have been stayed on account of the interim orders of this Court, such of those petitioners, will have to co-operate with the Department and submit to the authority and furnish the documents, information(s) and statement(s) called for etc.

62. The Department may thereafter issue Show Cause Notices if a *prima facie* case is made out for invoking the jurisdiction under Section 73 of the Finance Act, 1994 against such of those petitioners.

63. Thereafter, orders will have to be passed on merits after due compliance with the principle of natural justice in accordance with the provisions of the Finance Act, 1994.

64. We also wish to make it clear that in case the petitioners succeed in their Writ Petitions challenging the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 as detailed in Table No.1, the cases of those petitioners who have challenged impugned Show Cause Notices, impugned Orders-In-Originals, impugned communications, letters, summons etc. as detailed in Table Nos.2, 3, 4, 5 & 6, will be relegated to the concerned authority under the Finance Act, 1994 to pass consequential orders.

65. We shall therefore confine our enquiry in these Writ Petitions only to the merits to the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015. We shall therefore now turn our attention to the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015.

66. Chapter-V of the Finance Act, 1994 contains the provisions for levy and collection of service tax on services. There was no standalone enactment for levy of service tax all through of its period of existence. Since its introduction, it was under Chapter V of the Finance Act, 1994.

67. The Parliament kept amending Chapter V of the Finance Act, 1994 in the successive Finance Acts and increased the number of services and thus brought several services within the purview of the Service Tax Net.

68. The ostensible reason for bringing more and more services under the service tax net was that they contributed to the Gross Domestic Product (GDP) of the country.

69. Service Tax was chargeable at the rates prescribed under Section 66 of the Finance Act, 1994 on the "taxable value" under Section 67 of the Finance Act, 1994. Upto 30.06.2012, there were specific

definitions for various services and taxable services in Chapter V of the Finance Act, 1994.

70. Prior to 01.07.2012, some of the services provided by these petitioners were liable to service tax under the category of "works contract" as defined in definition of "taxable service" in Section 65(105)(zzzza) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994). Section 65(105)(zzzza) of the Act read as under:-

> 65. **Definitions**
>
> (1)……
> ……
> (105) "taxable service" means any service provided or to be provided,-
>
> (a) ……
> (zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.
>
> ***Explanation.***—For the purposes of this sub-clause, "works contract" means a contract wherein,—
>
> (i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,—

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;

71. Service tax on “Works Contract Service” was introduced in the Finance Act, 1994 with effect from 11.05.2007 and made liable to tax with effect from 01.06.2007 vide Notification No.23/2007-ST dated 22.05.2007 after Section 65(105)(zzzza) came to be introduced in the Finance Act, 1994 vide the Finance Act of 2007. Thus, for the period starting from 01.06.2007 to 30.06.2012, the respective petitioners may

have been liable to service tax for the services rendered by them in relation to "works contract".

72. In fact, prior to that, a confusion existed in view of levy of service tax on "construction service" vide Finance (No.2) Act, 2004 with effect from 10.09.2004 as in Section 65(105)(zzzza) read with Section 65(25b) & 65(30a) and Section 65(105)(zzzh) read with Section 65(91a) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994).

73. The Hon'ble Supreme Court has clarified the position in its judgment in **Kone Elevator India Pvt. Ltd.** Vs. **State of Tamil Nadu**, 2014 (34) S.T.R. 641 (S.C.) : 2014 (304) E.L.T. 161 (S.C.) that the services provided under "works contracts" was liable to service tax only with effect from 01.06.2007.

74. Prior to 01.07.2012, there was a special dispensation under Rule 2A of the Service Tax (Determination of Value) Rules, 2006 inserted vide Notification No.2007-ST dated 22.05.2007 with effect from 01.06.2007 for determination of value of service in the execution of works contract

which reads as under:-

*"**2A. Determination of value of services involved in the execution of a works contract :***

(1) Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract (hereinafter referred to as works contract service), referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act, shall be determined by the service provider in the following manner :-

(i) Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.

***Explanation.**- For the purposes of this rule, -*

(a) gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity,

fuel, used in the execution of the works contract;

(vi)cost of establishment of the contractor relatable to supply of labour and services;

(vii)other similar expenses relatable to supply of labour and services; and

(viii)profit earned by the service provider relatable to supply of labour and services;

(ii) Where Value Added Tax or sales tax, as the case may be, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i).

75. An alternative method for payment of service tax was also provided under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 vide Notification No. 32/2007-S.T., dated 22-5-2007.

76. This alternate method of payment of service tax on composition as devised vide Notification No.32/2007-ST, dated 22.05.2007 with effect from 01.06.2007 as amended vide Notification No.10/2012-ST, dated

17.03.2012 with effect from 01.04.2012 was however later rescinded vide Notification No.35/2012-ST, dated 20.06.2012 with effect from 01.07.2012 in view major changes brought to the Finance Act, 1994 in the Finance Act, 2012 and in view of the Mega Exemption Notification No.25/2012-ST, dated 20.06.2012 issued by the Government in the exercise of its power under section 93(1) of the Finance Act, 1994.

77. The petitioners were conferred exemption vide Entry 12(a), (c) & (f) to Mega Exemption Notification No.25/2012-ST, dated 20.06.2012. The impugned Notification No.6/2015-Service Tax, dated 01.03.2015 amends Entry 12(a), (c) & (f) to the Mega Exemption Notification No.25/2012-ST, dated 20.06.2012 and thereby withdrew exemption granted to these petitioners and made these petitioners liable to tax once again. We shall refer to the above Notification later again in the course of this order.

78. With effect from 01.07.2012, Section 66B was the charging provision for all “taxable services” provided or agreed to be provided in the “taxable territory by one person” to another person for consideration

other than those services specified in the negative list, on the value under Section 67 of the Finance Act, 1994. Section 66B of the Act reads as under:-

> ***Section 66B. Charge of service tax on and after Finance Act, 2012.—***
>
> *There shall be levied a tax (hereinafter referred to as the service tax) at the rate of fourteen percent. on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.*
>
> ***Explanation:****For the removal of doubts, it is hereby clarified that the references to the provisions of section 66 in Chapter V of the Finance Act, 1994 (32 of 1994) or any other Act, for the purpose of levy and collection of service tax, shall be construed as references to the provisions of section 66B.*

79. Vide Finance Act, 2013 (17 of 2013), the above Explanation to Section 66B of the Act was deleted. Rule 2A of the Service Tax (Determination of Value) Rules, 2006 referred to *supra* was amended vide Notification No.24/2012-ST dated 06.06.2012, with effect from 01.07.2012 as follows:-

> ***2A. Determination of value of service portion in the***

execution of a works contract.- *Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-*

(i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods or in goods and land or undivided share of land, as the case may be, transferred in the execution of the said works contract.

Explanation.*- For the purposes of this clause,-*

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include, -

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii)profit earned by the service provider relatable to supply of labour and services.

(c) Where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

(A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent. of the total amount charged for the works contract;

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract;

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:

Provided further that in case of works contract for construction of residential units having carpet area up to 2000 square feet or where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract."

"Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract:

Provided further that in case of works contract for construction of residential units having carpet area up to 2000 square feet and where the amount charged per residential unit from service recipient is less than rupees one crore and the amount charged for the works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on twenty-five per cent. of the total amount charged for the works contract.;

Provided that where the amount charged for works contract includes the value of goods as well as land or undivided share of land, the service tax shall be payable on thirty per cent. of the total amount charged for the works contract.

(B) in case of works contract, not covered under

sub-clause (A), including works contract entered into for,-

i. *maintenance or repair or reconditioning or restoration or servicing of any goods; or*
ii. *maintenance or repair or completion and finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property,*

service tax shall be payable on seventy per cent. of the total amount charged for the works contract;

Explanation 1. *- For the purposes of this rule,-*

(a) "original works" means-

(i) all new constructions;
(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(b) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and
(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

***Explanation 2.**--For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."*

80. However, the above amendment did not impact the petitioners adversely. The service provided by some of these petitioners were exempted vide Entry 12(a), (c) & (f) to the Mega Exemption Notification No.25/2012-ST dated 20.06.2012 with effect from 01.07.2012.

81. Though not relevant, it must be remembered that the most important change brought to the Finance Act, 1944 vide Finance Act, 2012 included a new definition of "service" introduced for the first time in Section 65B(44) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994, concept of "Declared Services" and grouping few services under the

category of "Negative List".

82. The definition of "Service" in Section 65B(44) of the Finance Act, 1994, reads as under:-

> **65B. Interpretations**:-
> (1).....
> .....
> (44) "*service*" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—
>
> (a) an activity which constitutes merely,—
>
> (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
> (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
> (iii) a transaction in money or actionable claim;
>
> (b) a provision of service by an employee to the employer in the course of or in relation to his employment;
> (c) fees taken in any Court or tribunal established under any law for the time being in force.
>
> ***Explanation 1 .*** — For the removal of doubts, it is hereby declared that nothing contained in this clause shall apply to,—

A) the functions performed by the Members of Parliament, Members of State Legislative, Members of Panchayats, Members of Municipalities and Members of other local authorities who receive any consideration in performing the functions of that office as such member; or

B) the duties performed by any person who holds anypost in pursuance of the provisions of the Constitution in that capacity; or

C) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or local authority and who is not deemed as an employee before the commencement of this section.

Explanation 2. - For the purposes of this clause, the expression "transaction in money or actionable claim" shall not include —

(i) any activity relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

(ii) any activity carried out, for a consideration, in relation to, or for facilitation of, a transaction in money or actionable claim, including the activity carried out —

(a) by a lottery distributor or selling agent on behalf of the State Government, in relation to promotion, marketing, organising, selling of lottery or facilitating in organising lottery of any kind, in any other manner, in accordance with the provisions of the

Lotteries (Regulation) Act, 1998;

(b) by a foreman of chit fund for conducting or organising a chit in any manner;

Explanation 3. — For the purposes of this Chapter, —

(a) an unincorporated association or a body of persons, as the case may be, and a member thereof shall be treated as distinct persons;

(b) an establishment of a person in the taxable territory and any of his other establishment in a non-taxable territory shall be treated as establishments of distinct persons.

Explanation 4. — A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory;

83. Practically, every activity provided by one person to another person for consideration was a "service" and was taxable. The above definition itself excluded certain activities from its purview. Thus, only those activities were not service. The definition of "service" however included "declared service".

84. The definition of service included "declared service" as defined in Section 65B(22) and as enumerated in Section 66E of the Act. Section

65B(22) and Section 66E of the Act read as under:-

Declared Service
65B. Interpretation (22)"**Declared service**" means any activity carried out by a person for another person for consideration and declared as such under section 66E;
66E. - The following shall constitute declared services, namely:- (a) renting of immovable property (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of completion-certificate by the competent authority. Explanation.— For the purposes of this clause, (I) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :— A) architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or B) chartered engineer registered with the Institution of Engineers (India); or C) licensed surveyor of the respective local body of the city or town or village or development or planning authority; (II) the expression "construction" includes additions,alterations, replacements or remodelling of any existing civil structure; (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

Declared Service
(d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software; (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; (f) transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods; (g) activities in relation to delivery of goods on hire purchase or any system of payment by instalments; (h) **service portion in the execution of a works contract;** (i) service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity. (j) assignment by the Government of the right to use the radio-frequency spectrum and subsequent transfers thereof.

85. The expression "taxable service" was defined in Section 65B(51) of the Finance Act, 1994 as services on which service tax is leviable under Section 66B of the Act.

86. Service tax was not payable on those services which are enumerated in the negative list. The services provided by these petitioners were also not in "negative list".

87. The expression "negative list" has been defined in Section

65B(34) of the Finance Act, 1994. Section 66D of the Finance Act, 1994 which enumerates the services in the negative reads as under:-

Negative list of services
65B.Interpretations: (34)"negative list" means the services which are listed in Section 66D;
Section 66D: Negative list of services.— The negative list shall comprise of the following services, namely :— (a) services by Government or a local authority excluding the following services to the extent they are not covered elsewhere— i. services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services provided to a person other than Government; ii. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; iii. transport of goods or passengers; or iv. Any service, other than services covered under clauses (i) to v. above, provided to business entities; (b) services by the Reserve Bank of India; (c) services by a foreign diplomatic mission located in India; (d) services relating to agriculture or agricultural produce by way of— (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;

Negative list of services

(ii) supply of farm labour;

(iii) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;

(iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;

(v) loading, unloading, packing, storage or warehousing of agricultural produce;

(vi) agricultural extension services;

(vii) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

(e) trading of goods;

(f) .....;

(g) selling of space for advertisements in print media;

(h) service by way of access to a road or a bridge on payment of toll charges;

(i) betting, gambling or lottery;

Explanation. - For the purposes of this clause, the expression "betting, gambling or lottery" shall not include the activity specified in Explanation2 to clause (44) of section 65B;

(j) .....

(k) transmission or distribution of electricity by an electricity transmission or distribution utility;

(l) .....

(m) services by way of renting of residential dwelling for use as residence;

(n) services by way of—

Negative list of services

(i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;

(ii) inter se sale or purchase of foreign currency amongst banks or authorized dealers of foreign exchange or amongst banks and such dealers;

(o) service of transportation of passengers, with or without accompanied belongings, by—

(i).....

(ii) railways in a class other than—

(A) first class; or

(B) an air-conditioned coach;

(iii) metro, monorail or tramway,

(iv) inland waterways;

(v) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and

(vi) metered cabs or auto rickshaws

(p) services by way of transportation of goods—

(i) by road except the services of—

(A) a goods transportation agency;or

(B) a courier agency;

(ii) .....

(iii) by inland waterways;

(q) funeral, burial, crematorium or mortuary services including transportation of the deceased.

88. The services provided by the petitioner are mostly in the nature of "works contract" as defined in Section 65B(54) of the Act. Section 65B(54) of the Act reads as under:-

> ***65B. Interpretations***:-
> *(1).....*
> .....
>
> *(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;*

89. Services provided by these petitioners were "declared services". Thus, the services provided by these petitioners would have been liable tax at 12% on the taxable value and later at 14% vide Notification No.14/2015-ST, dated 19.05.2015 with effect from 01.06.2015 but for the exemption vide Entry 12(a), (c) & (f) to Mega Exemption Notification No.25/2012-ST, dated 20.06.2012.

90. The services provided by the petitioners, by and large, would

have come within the purview of the definition of "works contract" and thus "declared service". Therefore, these petitioners would have been liable to tax.

91. As mentioned above, the above services provided by these petitioners were exempted from payment of service tax vide Entry 12(a), (c) & (f) to the Mega Exemption Notification No.25/2012-ST dated 20.06.2012.

92. Thus, a temporary reprieve which was given to these petitioners by virtue of the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 with effect from 01.07.2012 vide Entry 12(a), (c) & (f) cannot be continued. There is no promissory estoppel.

93. The exemption given in the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 was over and above those services which were categorized under the Negative List in Section 66D of the Finance Act, 1994 (Chapter V of the Finance Act, 1994) as it stood with effect from 01.07.2012. For the purpose of these Writ Petitions,

Entry 12(a), (c) & (f) in Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 are reproduced below:-

> 12. Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
>
> **(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;**
> (b) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);
> **(c) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;**
> (d) canal, dam or other irrigation works;
> (e) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal; or
> **(f) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause 44 of section 65 B of the said Act;**

94. Mega Exemption Notification No.25/2012-ST, dated 20.06.2012 was however amended vide the impugned Notification

No.6/2015-Service Tax, dated 01.03.2015 which resulted in deletion of Sub Clauses (a), (c) & (f) to Entry 12 of the above Mega Exemption Notification No.25/2012-ST dated 20.6.2012. Thus, the activities undertaken by the petitioners were brought outside the exemption. The petitioners thus became liable to service tax on the taxable services under Section 67 of the Act.

95. As far as the determination of value for works contract is concerned, the valuation would have been in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 as amended.

96. As far as the petitioners are concerned, they have stated that they have rendered services to various Government Bodies which were exempted in terms of Entry 12(a), (c) & (f) to the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 until the issue of the impugned Notification No.6/2015-Service Tax, dated 01.03.2015. Entry 12(a), (c) & (f) were deleted by the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 with effect from 01.04.2015.

97. Only as per Rule 2(1)(d) of the Service Tax Rules, 1994 read with "taxable services" notified under Section 68(2) of the Act, the burden of paying service tax could be shifted on any other person. Rule 2(1)(d) of the Service Tax Rules, 1994 which was inserted by Notification No.3/2012-ST, dated 17.03.2012, w.e.f. 01.04.2012 read as under:-

2. Definitions

(1) In these rules, unless the context otherwise requires,-

(a) .....
.....

(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service;

(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, the recipient of the service;

(AAA) in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service:

Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax;

Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);
(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;
(III) any co-operative society established by or under any law;
(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;
(V) any body corporate established, by or under any law; or
(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage:

Provided that when such person is located in a non-taxable territory, the provider of such service shall be liable to pay service tax.

(C) in relation to service provided or agreed to be provided by way of sponsorship to anybody corporate or partnership firm located in the taxable territory, the recipient of such service;

(D) in relation to service provided or agreed to be provided by,-

(I) an arbitral tribunal; or

(II)an individual advocate or a firm of advocates by way of legal services other than representational services by senior advocates;

"(DD) in relation to service provided or agreed to be provided by a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, and the senior advocate is providing such services, the recipient of such services, which is the business entity who is litigant, applicant, or petitioner, as the case may be.

(E) in relation to services provided or agreed to be provided by Government or local authority except,-

(a) renting of immovable property, and

(b) services specified sub-clauses (i), (ii) and (iii)

of clause (a) of section 66D of the Finance Act, 1994,

to any business entity located in the taxable territory, the recipient of such service;

(EE) in relation to service provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate, the recipient of such service;

(EEA).....

(EEB) in relation to service provided or agreed to be provided by a selling or marketing agent of lottery tickets to a lottery distributor or selling agent, the recipient of the service;

(EEC) in relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the person in India who complies with sections 29, 30 or 38 read with section 148 of the Customs Act, 1962 (52 of 1962) with respect to such goods;

(F) in relation to services provided or agreed to be provided by way of:-

(a) renting of a motor vehicle designed to carry passengers, to any person who is not engaged in a similar business; or

(b) supply of manpower for any purpose or security services; or

(c) service portion in execution of a works contract,

by any individual, Hindu Undivided Family or partnership firm, whether registered or not, including association of persons, located in the

taxable territory to a business entity registered as a body corporate, located in the taxable territory, both the service provider and the service recipient to the extent notified under sub-section (2) of section 68 of the Act, for each respectively.

(G) in relation to any taxable service other than online information and database access or retrieval services provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory, the recipient of such service;

(H) in relation to services provided or agreed to be provided by way of online information and database access or retrieval services, by any person located in a non-taxable territory and received by any person in the taxable territory other than non-assesse online recipient, recipient of such service.

(ii) in a case other than sub-clause (i), means the provider of service.

Provided that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient, provider of service located in a non-taxable territory shall be the person liable for paying service tax:

Provided further that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, an intermediary located in the non-taxable territory including an electronic platform, a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of

such service but does not provides the main service on his account shall be deemed to be receiving such services from the service provider in non-taxableterritory and providing such services to the non-assesse online recipient except when such intermediary satisfies all the following conditions, namely :-

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question, its supplier in non-taxable territory and the service tax registration number of the supplier in taxable territory;
(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;
(c) the intermediary involved in the supply does not authorise delivery;
(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, any person located in taxable territory representing such service provider for any purpose in the taxable territory shall be the person liable for paying service tax:

Provided also that in case of online information and database access or retrieval services provided or

agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, if the service provider does not have a physical presence or does not have a representative for any purpose in the taxable territory, the service provider may appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by any person located in the taxable territory, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non contradictory conditions are satisfied, namely :-

(a) the location of address presented by the service recipient via internet is in taxable territory;
(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the service recipient settles payment has been issued in the taxable territory;
(c) the service recipient"s billing address is in the taxable territory;
(d) the internet protocol address of the device used by the service recipient is in the taxable territory;
(e) the service recipient"s bank in which the account used for payment is maintained is in the taxable territory;
(f) the country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory;
(g) the location of the service recipient’s fixed land line through which the service is received

by the person, is in taxable territory:

Provided also that in case of online information and database access or retrieval services provided or agreed to be provided by any person located in a non-taxable territory and received by non-assesse online recipient, a person receiving such services shall be deemed to be a non-assesse online recipient, if such person does not have service tax registration under these rules.

98. Under the proviso to Section 68(2), Notifications have been issued for service tax to be paid by the service providers. The arguments that the services tax could be collected from the recipient also cannot be countenanced as there is no Notification issued under Section 68(2) of the Act.

99. The Central Government however realized by deleting the Exemption vide the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 that those contractors who had signed contracts before 01.03.2015 also became liable to tax and therefore to subject them to service tax enactment would create an anomaly.

100. Realizing the anomaly caused due to the impugned

Notification No.6/2015-Service Tax, dated 01.03.2015 with effect from 01.04.2015, a further amendment was made to the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 vide Notification No.9/2016-Service Tax, dated 01.03.2016 with effect from 01.04.2016.

101. Thus, the services provided to the Government, Local Authorities or Governmental Authorities by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration in respect of the following were exempted:-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the Explanation 1 to clause (44) of section 65 B of the said Act;

102. While granting the above exemptions, it was made clear that the exemption will be available only for the contracts entered into prior to 01.03.2015 and on which appropriate stamp duty, wherever applicable had been paid prior to such date. It was further made clear that nothing

contained in the above Entry would apply on or after 01.04.2020.

103. It is perhaps in this context, a Clarification was issued by the Public Works Department of Pondicherry on 11.01.2017 which has been referred to *supra*.

104. Though the above Notification was to remain in force upto 01.04.2020, the fact remains that during the interregnum, respective GST enactments were enacted and came into force with effect from 01.07.2017 and replaced various indirect tax levied under the Union Law including the levy of service tax under the Chapter V of the Finance Act, 1994. Therefore, from 01.07.2017, supply of service is independently taxable under the provisions of the respective GST enactments, 2017.

105. The clarification of Central Public Works Department of Pondicherry is therefore of no consequence as with effect from 01.07.2017, the tax regime was altered with the implementation of respective GST enactments, 2017. Therefore, based on the above letter dated 11.01.2017 issued by the Public Works Department of Pondicherry,

no concession can be inferred in favour of the respective petitioners.

106. Section 93(1) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994) gives power to the Central Government to issue Notification, if it is satisfied that it is necessary in the public interest. The power to grant exemption in the "public interest" also implies to power to withdraw the exemption in the public interest as held by the Hon'ble Supreme Court in **Kasinka Trading** case referred to *supra*.

107. The above exemption under the Mega Exemption Notification No.25/2012-Service Tax, dated 20.06.2012 which was granted in the exercise of power under Section 93(1) & (2) of the Finance Act, 1994 (Chapter V of the Finance Act, 1994) was withdrawn vide the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 with effect from 01.04.2015. The exemption which was earlier granted in the public interest was withdrawn in the public interest.

108. Whether public interest existed or not in withdrawing the exemption is not justiciable unless it is found that such withdrawal was

vitiated on account of malafide, extraneous consideration or arbitration. High Court while exercising its jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the decision of the Government to withdraw a Notification or an exemption. It is further a policy decision of the Government to withdraw the exemption.

109. The arguments advanced that some of the petitioners were illiterate and/or semi literate and were unaware of amendment cannot be countenanced as law presumes the every citizen to know the law. It is for the every citizen to arrange his or her or his/her affairs in consonance with the law. Further, prior to 01.07.2012, itself w.e.f. 10.09.2004, these petitioners were exposed to service tax and w.e.f. 01.06.2007, for service, the service tax liability was confirmed on service provided in relation to works contract.

110. Therefore, these petitioners cannot claim any concession based on the alleged ignorance. Cursory glance of some of the Show Cause Notices issued to the petitioners which have been challenged in the Writ Petitions in Table Nos.2 & 4 indicates that they are assessees not only

under the provisions of the Income Tax Act, 1961 but also under the Tamil Nadu Value Added Tax Act, 2006 and Puducherry Value Added Tax Act, 2007. Apart from the above, some of these petitioners failed to register and pay service tax for the services rendered by them to the Government Authorities.

111. Withdrawal of exemption in public interest is a matter of policy. Courts cannot find fault with the policy decisions of the Government for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in public interest and therefore, the challenge to the Notification or the show cause notices, seeking to demand tax cannot be countenanced.

112. In this connection, the decision of the Hon'ble Supreme Court in **RC. Tabacco P. Ltd.** Vs. **Union of India**, 2005 (188) ELT 129 (SC) is relevant, wherein, it was held as under:-

> *"25. ..... But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of*

classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways ...."

113. The decisions cited by the learned counsel for the petitioners are irrelevant. The decision of the Hon'ble Supreme Court in **W.P.I.L. Ltd.** case referred to *supra* dealt with a situation under Notification No.46/94 – C.E., dated 01.03.1994 and Notification No.95/94-CE, dated 25.04.1994. The Hon'ble Supreme Court in the above decision took note of the fact that parts of power-driven pumps, which were to be utilized for manufacturing power-driven pumps within the factory, continued to be exempted from the excise duty. The exemption was withdrawn when a consolidated Notification No.46/94 was issued on 01.03.1994 with a view to reduce the number of Notifications. Thus, the exemption that was being granted for power-driven pumps as well as parts of power-driven pumps was withdrawn. On realizing the mistake, the Government issued a subsequent Notification on 25.04.1994 in Notification No.95/94. Noting the above, the Hon'ble Supreme Court held as under:-

"13.The contention of the appellant, in our opinion, therefore, is well founded that both power-driven pumps as well as parts of powerdriven pumps used for manufacturing of pumps within the factory were exempted from payment of excise duty. We are also satisfied that notifications were rescinded and a consolidated notification was issued on 1-3-1994 with a view to reduce the number of notifications. No demand hence could have been made against the appellant in respect of parts of power-driven pumps by issuing show-cause notices.

The submission of the appellant is well founded that the Government was satisfied about the policy which was in vogue not to impose excise duty on parts of power-driven pumps used in the factory premises for manufacture of power-driven pumps and to clarify the position, the subsequent notification dated 25-4-1994 was issued. This is also clear if one reads both Notifications Nos. 46/94 dated 1-3-1994 and 95/94 dated 25-4-1994. They read thus:

Table

S. No.	*Chapter/Heading No. or Sub-Heading No.*	*Description of goods*	*Rate*	*Condition*
(1)	(2)	(3)	(4)	(5)
1.	84.13	Power-driven pumps primarily designed for handling water, namely — (a) Centrifugal pumps (horizontal or vertical pumps); (b) Deep tubewell turbine pumps; (c) Submersible pumps; (d) Axial-flow and	Nil”	

mixed-flow
vertical pumps

(Notification No. 46/94 dated 1-3-1994)

(1)	(2)	(3)	(4)	(5)
"4a.	72, 73, 82, 83, 84 or 85	Goods other than namely: (*a*) Electrical stamp-ings and laminations (*b*) Bearings (*c*) Winding wires	Nil	If the said goods are used within the factory of production in the manufacture of goods specified in S. No. 4 above."

(Notification No. 95/94-CE dated 25-4-1994)

14. In our opinion, therefore, the authorities were in error in upholding the demand and in directing the appellant to pay excise duty.

15.The learned counsel for the appellant is also right in relying upon a decision of this Court in CCE v. Wood Craft Products Ltd. [(1995) 3 SCC 454] In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.

16.In view of the consistent policy of the Government of exempting parts of power-driven pumps utilised by the factory within the factory premises, it could not be said that while issuing Notification No. 46/94 of 1-3-1994, the exemption in respect of the said item which was operative was either withdrawn or revoked. The

action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on 25-4-1994. It was not a new notification granting exemption for the first time in respect of parts of power-driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

17.For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are allowed accordingly. Deposit, if any, made by the appellant in pursuance of the order passed by the authorities below will be refunded to it. In the facts and circumstances of the case, however, there shall be no order as to costs."

114. However, this is not the case here. Exemption was withdrawn and re-introduced with certain conditions on to those contracts signed before the cut-off date. The exemption is confined to a specific category of contracts entered before 01.03.2015. Therefore, it cannot be said that the impugned Notification is arbitrary.

115. A special provision for exemption in certain cases relating to the construction of Government Building was also recognized under Section 102 of the Finance Act, 2016 which reads as under:-

102. (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of—

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as—

(i) an educational establishment;
(ii) a clinical establishment; or
(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six

months from the date on which the Finance Bill, 2016 receives the assent of the President.

116. Reference to Article 289 of the Constitution of India is misplaced and is of no significance as it deals with exemption of property and income of a State or Union Territory. It has nothing to do with levy of service tax under the provisions of the Finance Act, 1994. The service provided by the Government has already been exempted under the negative list. The service provided by the petitioners to the Government is not in the negative list.

117. The objection that the counter has been filed by the officer from the Commissionerate and not by an officer from the Central Board of Customs and Excise constituted under the provisions of the Central Board of Revenue Act or by the Secretary to the Government, Ministry of Finance, cannot be countenanced as the technical objections which are argued are not relevant. The issue pertains to only withdrawal of exemption which is, in our view, unjusticiable. It cannot be a subject matter of judicial review.

118. The petitioners have to pay the respective service tax and

recover the same from their clients namely, the Government Departments. As mentioned elsewhere in this order, the principles contained in Sale of Goods Act, 1930, will apply and it is open for the respective petitioners to press for such relief by applying the above principles to their cases.

119. Therefore, it is open for the petitioners to reply to the impugned Show Cause Notices and meet out the allegations contained in the impugned Show Cause Notices and take advantage of the benefit given by the Parliament, *vide* Section 102 of the Finance Act, 2016 read with Notification 9/2016-ST, dated 01.03.2016. Similarly, it is open for the petitioners to establish that a part of the demand was time barred in terms of Section 73 of the Finance Act read with Rule 7 of Service Tax Rules, 1994. It is open for the petitioners to make representations to the respective Departments of the Government to reimburse the tax by applying the principle contained in Section 64-A of the Sale of Goods Act, 1930.

120. Therefore, it cannot be said that the petitioners are remediless. They can certainly file a suit to recover the amount from the person who

engaged their services by invoking principles in Section 64A of the Sale of Goods Act, 1930.

121. In the light of the above, the challenge to the impugned Notification No.6/2015-Service Tax, dated 01.03.2015 fails. Consequently, the challenge to the impugned Show Cause Notices / Summons / Demand Notice, Orders-in-Original, Letters / Communication and etc. also fails.

122. As far as the prayer for Writ of Mandamus in Table No.7 to direct the authorities acting under the Finance Act, 1994 to collect tax payable by the petitioners from the recipients of service namely, State Public Works Department cannot be countenanced as the Mandamus would lie only if there is a corresponding duty cast upon the respondent to collect the same from the State Public Works Department the respondents herein. Therefore, these Writ Petitions also fail.

123. The prayer for a direction to refund of tax already paid by the

petitioner also cannot be countenanced as these petitioners are liable to tax. Therefore, wherever the Orders-in-Original have been passed, the respective petitioners are given liberty to file statutory appeal before the Appellate Authority subject to the compliance of the other requirements of pre-deposit the amount as is contemplated under Section 35F of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994, within a period of **thirty (30) days** from the date of receipt of a copy of this order.

124. Subject to the above, the appeals to be filed by the respective petitioners shall be entertained by the Appellate Authority before whom the appeals are to be filed by the respective petitioners within such time. If such appeals are filed within such time, the Appellate Authority shall pass appropriate orders in the proposed appeals to be filed by the respective petitioners on merits and in accordance with law without reference to the limitation.

125. Wherever Show Cause Notices have been issued, the respective petitioners are directed to give detailed replies to the same and

participate in the adjudicatory mechanism provided under the Finance Act, 1994. Such of those petitioners shall file their replies within a period of **sixty (60) days** from the date of receipt of a copy of this order. The respondents shall thereafter pass appropriate orders on merits within a period of **ninety (90) days**, after giving the respective petitioners adequate opportunity of being heard.

126. Wherever investigations are pending and wherever / Summons / Summons / Letters or Communications have been issued to the such of those petitioners, they shall be completed within a period of **six (6) months** and thereafter, Show Cause Notices shall be issued to the respective petitioners. They shall file their reply to the respective Show Cause Notices within a period of **sixty (60) days** from the date of issuance of such Show Cause Notices. The respondents shall thereafter pass appropriate orders on merits within a period of 90 days, after giving the respective petitioners adequate opportunity of being heard. Respective petitioners shall co-operate with the respondents.

127. All these Writ Petitions are dismissed with the above

observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

S.V.N., J C.S.N., J.
30.11.2022

Internet : Yes / No
Index: Yes/ No
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To

1.The Government of India,
Represented by its Secretary,
Ministry of Finance,
New Delhi - 110 001.

2.The Senior Intelligence Officer,
O/o. Directorate General of
GST Intelligence,
Trichy Regional Unit,
No.10B/5, First Street,
Jaya Nagar, K.K.Nagar Post,
Trichy – 620 021,
Trichy District.

3.The Government of Tamil Nadu,
Represented by its Finance Secretary,
Fort St.George,
Chennai – 600 009.

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

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Pre-Delivery Common Order
made in
W.P.No.24996 of 2019 etc. batch
and W.M.P.Nos.1485 of 2018 etc. batch

30.11.2022