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

Reserved on: 29.09.2020
Pronounced on: 03.11.2020

\+ **W.P.(C) 2245/2020 & CM APPL.7832/2020**

VIANAAR HOMES PRIVATE LIMITED ... Petitioner Through: Mr. Raghvendra Singh, Advocate.

Versus

ASSISTANT COMMISSIONER (CIRCLE-12), CENTRAL GOODS & SERVICES TAX, AUDIT-II, DELHI & ORS.
Through: ... Respondents
Mr. Harpreet Singh, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.

1. By way of the present petition, a challenge is laid to the jurisdiction, authority and legality of the action of the Respondents initiated in terms of Rule 5A of the Service Tax Rules, 1994, read with Section 174(2)(e) of the Central Goods and Services Tax Act, 2017 [*hereinafter referred to as the* "**CGST Act**"], for conducting audit/verification of documents and records at

the business premises of the Petitioner for the period of F.Y. 2014-15 to 2016-17 (up to June 2017) or for the period since last audited [*hereinafter referred to as* "***the disputed period***"].

Brief facts:

2. As averred in the petition, the facts of the case in brief are that the Petitioner is a company engaged in the business of construction of residential complexes since its incorporation on 25.05.2013. The Petitioner claims to be a regular and timely taxpayer under both the Service Tax and GST regime. It has never been subjected to any general or special audit by either the Service Tax or the GST authorities. Petitioner's books of accounts and business are subjected to, among other things, statutory audit in terms of the Companies Act, 2013 and the Income Tax Act, 1961. On 21.01.2020, officers of Central Goods and Service Tax, Audit-II visited the business premises of the Petitioner, directed the production of certain documents and sought information in relation to the disputed period. In addition thereto, the officers also demanded information pertaining to several group companies of the Petitioner. Despite Petitioner's compliance with the above and submission of the requisite information, the officers visited the business premises again on 17.02.2020 as well as 24.02.2020. Their conduct exhibits the intention to continue with the visits, conduct audit/verification proceedings, and give further directions for production of documents and information.

3. Aggrieved with the aforesaid action, the Petitioner has challenged, *inter-alia* the letter dated 01.11.2019 by virtue whereof the Respondents have

commenced the audit/verification, on the ground that the same is void *ab initio,* being wholly without jurisdiction as well as without any statutory or legal authority. The primary hypothesis for assailing the action of the Respondents is founded on the premise that w.e.f. 01.07.2017, by the advent of the CGST Act, the Respondents cannot take recourse to a subordinate legislation (i.e. Rule 5A Service Tax Rules, 1994) framed under Chapter V on the Finance Act, 1994, which, by virtue of Section 173 of CGST Act, stands omitted. According to the Petitioner, the repeal and saving provision *viz.* Section 174 does not specifically save Rule 5A of the Service Tax Rules, 1994. Without prejudice to the afore-noted contention, it is contended that the saving provision and Section 6 of the General Clauses Act, 1897 saves only those cases where the obligation / liability stood incurred or accrued prior to the date of repeal. The duty, tax etc. that is within contemplation of the saving clause is only that which falls within the ambit of section 72 & 73 of the Finance Act, 1994. Section 5A proceedings are in the nature of a roving enquiry that would not result in tax becoming due, and therefore cannot be resorted to in the facts of the present case.

Contentions of the parties:

4. On 16.09.2020, the Petitioner's application for early hearing (C.M. No. 22774/2020) was listed. At that stage, Mr. Harpreet Singh, learned senior standing counsel for the respondents contended that in view of the judgment rendered by this Court in the case of ***Aargus Global Logistics Pvt. Ltd. v. Union of India and Anr.***, [2020] 116 Taxmann.com 381 (Delhi), the legal ground challenging the action of the Respondent does not survive. Mr. Raghvendra Singh, learned counsel for the Petitioner sought time to go

through the aforesaid judgment and make submissions on the same. In view of the aforesaid, the application was allowed and the petition was directed to be listed for final disposal. We then proceeded to hear the counsels at length. At the outset, Mr. Raghvendra Singh, learned counsel for the Petitioner contended that the grounds raised in the present petition subsist, and merit consideration, notwithstanding the judgment of this Court in ***Aargus Global*** *(supra)*. He insisted that although the court has rejected the contention that Rule 5A of the Service Tax Rules, 1994 does not survive the enactment of the CGST Act, yet the stances urged in the present petition call for a fresh and independent consideration. The contentions urged by Mr. Raghvendra Singh, learned counsel for the Petitioner can be summarised as follows:

(i) That the respondents exercising powers under Rule 5A of the Service Tax Rules, 1994 are not the proper officers. The Commissioner Central Tax Audit-II has been appointed in terms of notification No. 2/2017-Central Tax (N.T.), dated 29.07.2017 for audit/verification under Sections 65 and 71 of the CGST and IGST Acts and is not a Central Excise Officer as required under Rule 3 of Service Tax Rules, 1994. Even though the proviso to Section 3 of CGST Act stipulates that the officers appointed under the Central Excise Act, 1944 are deemed to be the officers under the CGST Act, the converse of this provision cannot be assumed to be true. Therefore, the respondents are exercising powers beyond the purview of Rule 5A of the Service Tax Rules.

(ii) That the judgment rendered in ***Aargus Global*** *(supra)* does not take into consideration the decisions of the Supreme Court in ***Kolhapur Canesugar Works v. Union of India,*** (2000) 2 SCC 536 and ***Air***

India v. Union of India, (1995) 4 SCC 734. It was submitted that the Supreme Court in the aforesaid judgments has held that subordinate legislation is saved only if the saving provision expressly mentions the title of the subordinate legislation.

(iii) That Section 24 of the General Clause Act, 1987 is inapplicable in the present scenario. The said provision saves the erstwhile subordinate legislation only, till fresh one is framed under the new enactment. The Central Goods and Services Tax Rules, 2017 have been framed with effect from 22.06.2017 and supersede Service Tax Rule, 1994. If a contrary view is taken it would mean that even for exercising powers under CGST Act, the officers can invoke both Service Tax Rules, 1994 and CGST Rules, 2017 simultaneously. This would lead to inconsistencies and arbitrariness.

(iv) That without prejudice to the aforenoted contentions, even if it is assumed that Rule 5A is intra-vires and survive the enactment of CGST Act, and further assuming that Rule 5A can be initiated afresh, the exercise of power must take place in terms of Section 6 of the General Clauses Act and Section 174 of the CGST Act. The operation of Section 6 of General Clauses Act is controlled by *'any right, privilege, obligation or liability acquired, accrued or incurred'*. Since no obligation or liability has been accrued or incurred and no right of privilege has been acquired by the respondents, the exercise being carried out by the audit party is nothing more than a hope or a mere expectation that some adverse findings will be made in the process and then a notice would be issued under Section 73 of the Finance Act, 1994. The proceedings, for the purpose of acquiring grounds to

begin a fresh proceeding, is beyond what was contemplated under Section 6 of the General Clauses Act. In support of this submission, reliance was placed on ***Bansidhar and Ors. v. State of Rajasthan and Ors.***, (1989) 2 SCC 557.

(v) That Section 174(2)(e) of the CGST Act saves only those proceedings which stood already instituted at the time of omission of Chapter V of Finance Act, 1994, and not proceedings instituted thereafter.

(vi) That in terms of the saving clause under the CGST Act, an investigation, legal proceeding or remedy could have been initiated only in terms of the provisions of Finance Act, 1994. However, an audit under Rule 5A of the Service Tax Rules cannot be conducted, as subordinate legislation is not saved. The expression *'duty, tax, surcharge, fine, penalty, interest as are due or may become due'* controls the exercise of power under Section 174 of the CGST Act. In this context, undisputedly, no service tax was due from the Petitioner. Service tax returns have been filed regularly and service tax has been paid and accepted by the Department. The accounts are audited under the Companies Act, 2013 and also under the Income Tax Act, 1961.

(vii) That the exercise of power under Rule 5A cannot result into any tax becoming due. Audit under Rule 5A is qualitatively and materially different from audit under Section 72A of the Finance Act, 1994. Thus, even if, it is assumed that Rule 5A survives the enactment of CGST Act, the exercise of the power by the respondents is beyond the ambit of Section 174 of the CGST Act.

5. Mr. Harpreet Singh, learned senior standing counsel for the respondents on the other hand argued that the precise contentions urged by the Petitioner

have been considered and rejected by this Court in ***Aargus Global*** *(supra)*. This Court has categorically and authoritatively held that Rule 5A of the Service Tax Rules survives the CGST Act and therefore the present petition is not worthy of any further consideration. He drew our attention to the observations of the court in the afore-noted judgment to submit that the contentions being urged by the Petitioner have already been taken into account and deliberated upon. Mr. Singh further argued that in view of Section 3 of the CGST Act, since officers appointed under the Central Excise Act are deemed to be officers appointed under the CGST Act, nothing more is required for vesting powers on the CGST officers to exercise powers under the Central Excise Act/Finance Act. He submitted that the necessary corollary of the aforesaid provision is that the CGST Officers can exercise powers under the repealed Act. He also argued that Petitioner's understanding of the scope of the proceedings under the Rules is misconceived and completely incorrect. If it was accepted that Rule 5A cannot result in any tax becoming due, it would mean that in situations where there has been a duty evasion by an assessee prior to coming into force of the CGST, and the adjudication process for determining the said evasion has not commenced, the evasion has to be necessarily overlooked. This can never be the intention of the legislature. The import of the saving provision under the CGST Act is to deal with the circumstances with which we are presently confronted. If after verification under Rule 5A it is found that any tax has not been paid/short paid, the necessary adjudicatory process would follow which will ultimately lead to tax 'becoming due'. The import of the saving clause is to deal with proceedings that are initiated after the CGST Act, 2017 has come into force.

Analysis and findings:

6. Since much has been said about the decision rendered by this Court in ***Aargus Global*** *(supra)* to which one of us (Sanjeev Narula, J) was a party, we need to first evaluate the findings returned by this Court in the said judgment. This can be easily examined by referring to the judgment itself, which holds as under:

> ***"13.*** *The submission of learned Senior Counsel for the Petitioner is that Chapter V of the Finance Act, 1994 - which brought in the service tax regime, stands omitted. Thus, the provisions of Chapter V of the Finance Act, 1994 do not survive the enactment of the CGST Act. He further submits that Clauses (d) and (e) of Sub Section (2) of Section 174 have to be read in conjunction. Therefore, what is not affected by the omission of Chapter V of the Finance Act, 1994, is the "duty, tax, surcharge, fine, penalty, interest" which were due, or may become due even after the enactment of the CGST Act and the omission of Chapter V of the Finance Act, 1994. He submits that such "duty, tax, surcharge, fine, penalty, interest" could be only in respect of, and arising out of proceedings already initiated, and ongoing proceedings on the date of enactment of the CGST Act. In this regard, learned Senior Counsel for the Petitioner has laid special emphasis on the use of the words "in respect of the any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid" contained in Clause (e), as also the words "and any such investigation, inquiry, verification……"used in the same clause. We cannot agree with this submission of learned Senior Counsel for the Petitioner. Clause (e) expressly empowers the Competent Authorities to initiate and institute even fresh proceedings under the omitted chapter V of the Finance Act, 1994 and the rules framed thereunder, despite the said omission by Section 173 of CGST Act. This is clear from the use of the expression "may be instituted, continued or enforced……."in Clause (e) of Section 174 (2) of the Act. Clause (d) of Section 174 (2) saves "any duty, tax, surcharge ……..as are due or may become due……" There is nothing to suggest that the "duty, tax, surcharge" etc. should relate to proceedings initiated under, inter alia, Chapter V of the Finance Act, 1994 before the coming into force of the CGST Act, and not to proceedings initiated under the enactments after the coming into force of the CGST*

Act. If this submission of the Petitioner were to be accepted, it would mean that all evasions of, inter alia, service tax and all infractions of the provisions of the Finance Act, 1994 which remained suppressed and uninvestigated up to the point of time when, inter alia, the said Chapter V of the Finance Act was omitted and CGST Act was enacted, would go un-investigated without the violators of the law being brought to justice. That, in our view, was clearly not the intent and there is nothing to show that the Parliament intended to grant blanket immunity to all assessees whose past acts and omissions may, otherwise, fall foul of the provisions of, inter alia, Chapter V of Finance Act, 1994. On the contrary, it is clear to us that the intention of the Parliament was clearly to save not only ongoing investigation, inquiry, verification etc. but also to specifically enable the initiation of fresh investigation, inquiry verification etc. in respect of acts and omissions relating to inter alia, the erstwhile service tax regime.

14. The further submission of learned Senior Counsel for the Petitioner is that there is no provision in Section 174 to save the Service Tax Rules, as it is only Chapter V of the Finance Act, 1994 which has been saved for the specific purposes mentioned in Clauses (a) to (f) of Section 174 (2). The failure of the Parliament to mention the word "Rules", along with the Finance Act, 1994 in Section 174 (2), according to the Petitioner, means that the Service Tax Rules were not saved even for the purpose of enforcing the saving provisions. We find this submission to be completely meritless. Firstly, the Parliament omitted Chapter V of the Finance Act, 1994 by amending the same. No part of the Finance Act, 1994 was repealed by the provision of the CGST Act. This omission came into effect only from the date of enforcement of the CGST Act and not earlier. Therefore, Chapter V of the Finance Act, 1994 remained on the statute book till the enforcement of the CGST Act. Secondly, even this Amendment of the Finance Act, 1994 (by Section 173 of the CGST Act) saves what was otherwise provided in the Act, which included what is provided in Section 174. Therefore, to the extent the provisions of Chapter V of the Finance Act, 1994 are saved, they do not stand omitted by amendment of the Finance Act, 1994. Thirdly, the Rules under Chapter V of the Finance Act, 1994, were framed, as noticed hereinabove, to carry out the provisions of Chapter V of the Finance Act, 1994. The rules are subordinate legislation and without the said Rules, the provisions of Chapter V of that Act itself could not be worked. The Service Tax Rules were framed under Chapter V of the Finance Act, 1994. Those rules are,

therefore, saved by Clause (b) of Section 174 (2) which states that, inter alia, anything duly done under the Chapter V of the Finance Act, 1994 shall not be affected by the amendment of the Finance Act, 1994. Thus, the amendment of the Finance Act, 1994 does not affect the Service Tax Rules*. Fourthly, Section 6 of the General Clauses Act which deals with "effect of repeal" reads as follows:*

> *"6. Effect of repeal.—Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-*
>
> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
>
> *(b)* ***affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder****; or*
>
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
>
> *(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
>
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,*
>
> *and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."*

15. From the above, it would be seen that the repeal of the Central Act, unless a different convention appears, shall not, inter alia, affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy maybe instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or regulation have not been passed. Far from exhibiting a different intention, Section 174 of the CGST Act expressly seeks to preserve the powers of the Competent Authorities to, inter alia, institute investigation, inquiry etc. In fact, even if Section 174 (2) of the

***CGST Act were not to expressly so provide, the said power of the Competent Authorities stood preserved by virtue of Section 6 of the General Clauses Act.*"** *(Emphasis supplied)*

7. On reading the above extract, it becomes apparent that this Court has rejected the argument that Rule 5A of the Service Tax Rules does not survive the enactment of CGST Act, 2017. The Court has extensively examined Section 173 and Section 174 of the CGST Act and come to the conclusion that the intention of the Parliament was clearly to save not only the ongoing but also the initiation of fresh investigation, enquiry, verification etc. in respect of the acts and omission relating to *inter alia* the erstwhile service tax regime. This Court has also held that Service Tax Rules, 1994, being subordinate legislation would fall within the range of the parent Act that has been specifically saved, and, it's non-inclusion by title, in the saving clause, would not have a bearing on the applicability of the saving statute. The Court has come to the conclusion that Section 174 of the CGST Act, 2017 expressly seeks to preserve the powers of the central authority to, *inter alia*, institute or continue an investigation, inquiry etc. and no contrary intention is exhibited from the said provision. The Court purposely delved into the effect of Section 6 of the General Clauses Act and held that the power of the competent authority stood preserved also by virtue of the said provision.

8. In view of the aforesaid, we tend to agree with Mr. Harpreet Singh, learned senior standing counsel that nothing really survives in the present petition. The aforesaid decision in fact entirely traverses all the contentions urged in the present petition. In fact, we are at a loss to find any specific ground urged in the present petition that could be understood to go beyond

the contemplation of the court in ***Aargus Global*** *(supra)*. We have perused the grounds and find them to be general and unspecific and worded in the widest possible terms. There is no particular ground that can be regarded as distinctly alive or necessitating another probe. Be that as it may, we would not take a hyper technical view and non-suit the Petitioner on this ground. In the aforesaid background, let's now proceed to deal with each of the contentions urged by Mr. Raghvendra Singh.

[I] THE JUDGMENTS OF *KOLHAPUR CANESUGAR* AND *AIR INDIA*:

9. Mr. Raghvendra Singh has strongly contended that the attention of this Court was not drawn to the judgments in ***Kolhapur Canesugar*** (supra) and ***Air India*** (*supra*) at the time of rendering the decisions in ***Aargus Global*** *(supra).* Since the aforesaid judgments do not find reference in ***Aargus Global*** *(supra)* we have given our anxious consideration to the contention of Mr. Raghvendra Singh and scrutinized the aforesaid judgments, but do not agree with him. Before we say anything further and reflect upon the above-noted judgments, we would like to restate the views expressed by the Supreme Court, relating to interpretation of judicial precedents. In ***Commissioner of Income Tax v. M/S. Sun Engineering Works (P) Limited,*** (1992) 4 SCC 33, the Supreme Court had observed that:

> "*It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts*

must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

10. The above noted principles should be recognized and borne in mind for appreciating any observations made in the judgments. That said, ***Kolhapur Canesugar*** *(supra)* was a case dealing with a rebate of central excise duty on sugar produced in excess during the season 1973-74. The rebate was sanctioned and credited to the appellant in their personal ledger account. On re-examination of facts and circumstances connected with the said rebate claim, the Revenue had contended that the Appellant was not eligible and rebate was erroneously sanctioned and credited. A show-cause notice was issued under the then existing Rule 10A of the Central Excise Rules for recovery of the rebate amount. Before the order could be passed by the Assistant Collector, Central Excise, with effect from 06.08.1997, Rule 10 and 10A were deleted/omitted and a new provision was introduced as Rule 10. Being unsuccessful before the statutory authorities, the Appellant approached the High Court and raised the contention that since Rule 10 and 10A stood deleted, the effect thereof was that the Rules under which the show-cause notice was issued, ceased to exist, and thereafter, further proceedings were without jurisdiction. The High Court repelled the contentions and dismissed the petition. Resultantly, the matter reached the Supreme Court. The Revenue argued that the operation of the deleted Rules was protected by Section 6 of the General Clauses Act. In this context, the Court made the following observations:

"32. (…) *When the Legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a "Central Act" or "regulation", it is not possible to apply the*

provision to a case of repeal of a "Rule". The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a "rule" and takes its colour from the definition of the term in the Act (General Clauses Act).

33. In paragraph 21 of the judgment the Full Bench has noted the decision of a Constitution Bench of this Court in ***Chief Inspector of Mines v. ICC. Thapar,*** [AIR (1961) SC 838] *and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case under section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or Regulation under an Act after its repeal and re- enactment. In that case section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in M/s.* ***Rayala Corpn.*** *case. In our considered view the ratio of the said decision squarely applies to the case on hand*."

11. In our opinion, the aforesaid judgment will be of no assistance to the Petitioner as it does not lay down the proposition that Mr. Singh is canvassing before us. Besides, the context of the judgement is entirely different and the facts of the case are clearly distinguishable. The aforesaid case dealt with the omission and replacement of two rules by one rule, under which rebate re-credit proceedings were underway. The stark distinction of facts is as follows: **(a.)** The deletion and substitution of the old rules was brought about by way of a notification and not by a Central Act or regulation. **(b.)** The court observed that the High Court had, for reasons unsound in law, distinguished the constitution bench judgment of ***Rayala Corporation v. Director of Enforcement, New Delhi,*** AIR (1970) SC 494:1970 Cri LJ 588, wherein it was said that *"Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a Rule".* (Para 15, page 656 of the Supreme Court Report). **(c.)** There was no saving provision in favour of pending

proceedings and therefore court held that the realization of refund can be taken under the new provision in accordance with the terms thereof. **(d.)** Section 6 of General Clauses Act was held to be inapplicable as it was held to be a case of omission and not repeal.

12. The absence of a saving clause, in our opinion, was extremely telling of the legislature's intention of not protecting pending proceedings. The legislative intent is in fact the bedrock of the saving provision, as also noted in ***Kolhapur Canesugar*** *(supra)* in the following words:

> "*The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1).* ***If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is] introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.*****"*** *(Emphasis supplied)*

13. In contrast, in the instant case, the repeal and re-enactment is by way of a Central Act. Section 6 of the General Clauses Act squarely applies. This is also specifically provided in the repeal and saving provision of Section 174. The legislative intent is palpable from the saving provision which unequivocally and unambiguously stipulates that the rights, obligations,

privileges and liabilities acquired, accrued or incurred etc. shall not be affected by the repeal. The repeal of old laws, and the new corresponding tax replacing the service tax regime in a modified form, imperatively requires the old provisions to continue and apply. Furthermore, the earlier view that section 6 applies only in the case of repeal and not omission as held in ***Rayala Corporation*** (supra), and followed in ***Kolhapur Canesugar*** case, no longer holds good in view of the later decisions of the Supreme Court in ***Fibre Boards Pvt. Ltd. v. CIT Bangalore***, (2015) 10 SCC 333, and ***M/S Shree Bhagwati Rolling Mills v. CCE***, (2016) 3 SCC 643 which have discussed ***Rayala Corporation*** *(supra)* and ***Kolhapur Canesugar*** *(supra)* cases at length.

14. Apart from the distinguishing factors noted above, we find that certain passages in ***Kolhapur Canesugar*** (*supra*) go against the Petitioner. It will also be opportune to point out that we are assisted by the observations made in para 34, which reads as under:

> *"34. (...) If there is a provision therein that pending proceedings shall continue and be disposed of under the old rule as if the rule has not been deleted or omitted then such a proceeding will continue. If the case is covered by Section 6 of the General Clauses Act or there is a pari materia provision in the statute under which the rule has been framed, in that case also the pending proceeding will not be affected by omission of the rule. In the absence of any such provision in the statute or in the rule the pending proceedings would lapse on the rule under which the notice was issued or proceeding was initiated being deleted/omitted."*

15. Thus, for the reasons discussed above, and given that sub-section 2 of Section 174 of the CGST Act expressly saves all pending and new proceedings to be initiated under the old regime, and sub-section 3 of

Section 174 allows the operation of Section 6 of the General Clauses Act. In our view, the judgment of ***Kolhapur Canesugar*** *(supra)* is inapplicable. Pertinently, as observed in the preceding paragraphs, we are of the opinion that the observations of the Court reproduced above go against the Petitioner.

16. Likewise, the Judgment in ***Air India*** *(supra)*, also does not support the Petitioner. Before we deliberate upon this, let us note the factual situation in the said case. Air India was established under Air Corporation Act, 1953. Air India Employees Service Regulations, 1963 were framed thereunder to govern the terms and conditions of service of its employees. In 1982, the Deputy Chief Labour Commissioner, Delhi, initiated proceeding against Air India under the Industrial Employment (Standing Order) Act, 1946 for non-certification of standing orders. Air India contended that the 1946 Act did not apply to it on account of the existence of the 1963 Regulation which governed its employees' terms and conditions of service. This contention was rejected and the standing orders were certified. Air India's appeal too was rejected. Air India then filed a writ petition upon which an order was passed holding that the Standing Orders Act was a special act and applied to Air India's employees. The matter reached Supreme Court in 1992 by way of a civil appeal. Thereafter, during the pendency of the case, the 1953 Act was repealed by the Air Corporation (Transfer of Undertakings and Repeal) Act, 1994. After the repeal, Air India's employees, who sought the certification of the standing order, contended that the regulations framed under the 1953 Act no longer survived, now that the Act had been repealed. Per contra, Air India argued that the Regulations were saved under Section 8

of the new 1994 Act titled *'Provisions in respect of officers and other employees of corporation'*. The Supreme Court extensively dealt with the argument of the parties and also referred to *Bennion on Statutory Interpretation*, to observe that the Regulations do not survive, as Section 8 of the new Act neither mentioned the regulations nor saved it in express terms. It was thus deemed to be repealed in full. In this context, the Court observed as under:

> *"6. In Watson vs. Winch, (1916) 1 K.B. 688, Lord Reading, C.J., said:*
>
> > *"It would follow that any by-law made under a repealed statute ceases to have any validity unless the repealing Act contains some provisions preserving the validity of the by-law notwithstanding the repeal."*
>
> *7. Sankey, J., concurring, said:*
>
> > *"When a statute is repealed any by-law made thereunder ceases to be operative unless there is a saving clause in the new statute preserving the old by-law. There appear to be two reasons for this. Secondly, because the usual practice is to insert in the later statute a section expressly preserving previously made by-law if it is intended that they shall remain in force."*
>
> *8. Bennion on Statutory Interpretation, 2nd edition, at pages 494 and 495 states that a "saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation". Its adds, "Very often a saving is unnecessary, but is put in ex abundanti cautela to quieten doubts". The updated text of the Interpretation Act, 1978, (set out in Bennion's book at page 897) puts into statutory form in Section 15 what is otherwise recognised in law, namely, that the repeal of an enactment does not, unless the contrary intention appears, affects any right or privilege accrued under that enactment.*
>
> *9. In our view, if subordinate legislation is to survive the repeal of its parent statute, the repealing statute must say so in so many words and by mentioning the title of the subordinate legislation. We do not think that there is room for implying anything in this behalf."*

17. It can be seen that the case is entirely distinguishable on facts also. The Air Corporation Act was revoked by way of a repealing Act. Further, the Section 8 of the 1994 Act, which was the subject matter of the controversy in the said case, did not contain a repeal and saving provision, as observed in para 10: "*Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them. ... The limited saving enacted in Section 8 does not, in our opinion, extent to the said Regulations.*" The observation in para 9 are being read completely out of context. There was no contention raised that the Parent Act is saved by the repeal. The argument was that subordinate legislation is saved despite the repeal of the parent statute. In this background the Supreme Court correctly interpreted that because of a lack of any legislative intent to the contrary, the new statue envisaged a complete repeal of the prior statute along with all regulations thereunder. In such circumstances, they were correct in holding that the old law does not survive, as Section 8 of the new Act neither mentions the regulation nor saves it in express terms, it is deemed to be repealed in full. However, the factual situation in the present case before us is entirely different, as Section 174 of the CGST Act is very widely worded, which we shall shortly deal with.

18. In view of the foregoing, in our opinion, the aforenoted judgments do not have any bearing on the views expressed in ***Aargus Global*** *(supra).*

[II] EFFECT OF SECTION 24 OF THE GENERAL CLAUSES ACT:

19. Section 24 of the General Clauses Act, 1897 reads as under:

> *"**Continuation of orders, etc., issued under enactments repealed and re-enacted**. —Where any [Central Act] or Regulation, is, after the*

commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided ***any [appointment notification,] order, scheme, rule, form or bye-law [made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been [made or] issued under the provisions so re-enacted,*** *unless and until it is superseded by any [appointment notification,] order, scheme, rule, form or bye-law, [made or] issued under the provisions so re-enacted [and when any [Central Act] or Regulation, which, by a notification under section 5 or 5A of the Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].”*

(Emphasis supplied)

20. Revenue has strongly relied upon Section 24 to contend that in addition to the reasoning of the court in ***Aargus Global*** *(supra)*, Rule 5A is saved because of the afore-noted provision also. The Petitioner however controverts the contention by arguing that Section 24 is inapplicable since the Service Tax Rules, 1994 stand superseded by the CGST Rules, 2017. We find no merit in Petitioner’s contention for the reasons stated hereinafter.

21. We shall first briefly note the legal provisions concerning the controversy in the present case. Service tax was part of indirect tax structure of our country which was levied and collected by the service provider, but borne by the service recipient. The legal provisions for the levy and collection of Service Tax were introduced under Chapter V of the Finance Act, 1994 (Act 32 of 1994). It came into force w.e.f.
1. 07.1994, *vide* Notification No. 1/14-Service Tax, dated 20.06.1994. The authority for levy of service tax on specified services is contained in Section

66 of the Finance Act, 1994. The tax is normally payable by the service provider. However, the law empowers the Government to notify a person other than the service provider to pay the service tax. Service tax was originally levied only on a few services, but w.e.f. 01.07.2012, the service tax regime was based on the concept of "Negative List", which meant that all services, except those which found mention in the list were amenable to service tax. Besides service tax, the indirect taxes in our tax system included excise duty, value added taxes, etc. Recently, the centre and the states jointly decided to revamp the indirect tax structure. For this purpose, the Constitution (One Hundred and First Amendment) Act, 2016 was promulgated. This introduced the Goods and Services Tax regime in India. Following this amendment, GST laws [comprising of Central GST, Union Territory GST, Integrated GST and State GST Acts], were promulgated and the country steered into a new indirect taxation regime. The GST law consolidates and subsumes most of the indirect taxes and replaces them by GST. The GST system is considerably different from the early tax scheme. It is a destination based tax, levied on supply of goods and services, which is based on a significantly different concept in comparison with the earlier tax system that was origin-based. As the name suggests, the origin-based tax was levied at the point of production or origin of goods or services; whereas the destination-based tax is levied at the point of consumption. Under the new taxation system, both State and Centre levy tax concurrently on the same common base, which was not the case earlier. The CGST Act, being one of the GST laws, is thus essentially a consolidating Act that subsumes many indirect taxes. The reason we are highlighting the concept of GST and drawing out this distinction is to understand the legislative intent of the

saving provisions. The CGST laws thus re-enact the indirect taxes, including service tax and excise duty, but in a fundamentally altered form. The concepts of service tax, excise duty or VAT, no longer exist in their original form under the new system of taxation. After the repeal of the erstwhile legislations, with effect from the date of commencement of GST laws, most of the indirect taxes (including service tax), have ceased to exist and have resurrected in the unique form of GST. As we moved into a new system, the legislature ensured that the repealed laws are saved for a smooth transition. It provided an extensive saving clause under the CGST Act. Despite the elaborate saving clause, the Parliament in its wisdom also added a sub-section (3) to section 174 in following words: "*The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal*".

22. Clause 174(3) serves the purpose of ensuring the general application of section 6 of the General Clauses Act, 1897, notwithstanding what has been specifically provided under the saving Section 174. This saving provision safeguards, *inter alia,* that the shift to the new taxation would not affect the previous operation of the amended Act or the repealed Acts. Section 174 clearly stipulates that the repeal of the Acts, shall not:

> *"*(e) *affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced,*

and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed".

23. The noticeable aspect is the use of the expression *"including scrutiny and audit"* and *"any other legal proceedings"*. The former, as a bracketed portion, works like an explanation. The saving clause is framed in the widest possible language. Sub-section (e) to Section 174(2) also stipulates that such investigation, inquiry etc. may be *"instituted, continued or enforce*d*"* as if the Acts had not been so amended or repealed. Thus, both the saving statute as well as section 6 of the General Clauses Act save the institution of verification and audit proceedings. The conduct of these proceedings is governed by the Service Tax Rules, 1994. Therefore, we would say that section 24 of the General Clauses Act would have a substantial bearing. The factual situation before us is clearly one which is envisaged under the said provision. Section 24 becomes applicable where one enactment is repealed and re-enacted. By virtue of this provision, the rules made under the old Act are to continue in force and shall be deemed to have been made under the new Act. Section 24 of the General Clauses Act, 1987 thus introduces a concept of extending the life of rules, regulations and by-laws made under the old Act. The purpose of Section 24 is to uninterruptedly continue the subordinate legislation that may be made under the Central Act which is repealed and re-enacted, with or without modification. The repealing Act often comes with saving clauses to preserve certain provisions, which if allowed to be obliterated with the repealed Act, would not only destroy the continuity of the object and purpose of the repealing Act, but wreck great hardship and injustice. Thus, general saving statutes such as the General Clauses Act take care of this situation. Section 24 has to be read along with

the re-enacted Act in order to comprehend whether the rules framed under the old Act are kept alive even after the repeal of the old Act. If we interpret that the Rules are not saved and kept operative, the saving clause, as well as applicability of Section 6 of the General Clauses Act, would be rendered meaningless. In fact the entire purpose of section 24 is to redress the present situation. Mr. Raghvendra Singh wants us to draw an inference that although Chapter V of the Finance Act is saved, but these Rules therein are not. This is a wholly incorrect view. In our considered opinion, the CGST Rules stand on a different footing, separate and distinct from the Service Tax Rules, 1994. They do not impinge on the same subject matter. Thus, for the reasons discussed above, coupled with absence of a clear legislative intent to supersede then same, the mere bringing into force of the CGST Rules, 2017 does not mean that the Service Tax Rules, 1994 are not saved.

[III] JUDICIAL PRECEDENTS ON SAVING OF SUBORDINATE LEGISLATION:

24. Now, let us examine judicial precedents on saving of subordinate legislation. The Supreme Court in ***Brihan Maharashtra Sugar Syndicate Ltd. v. Janardan Ramchandra Kulkarni, and Ors.***, AIR (1960) SC 794, dealt with the question of validity of a notification issued under an Act after the repeal and re-enactment of such Act. Briefly stated, the facts of the case were that the Shareholders/Respondents had made an application against the Appellant Company and its directors, accusing them of oppression under Section 153-C of the erstwhile Companies Act, 1913. This was made to the District Judge of Poona who was vested with such jurisdiction *vide* a Notification issued by the Government of Bombay under Section 3(1) of the erstwhile Companies Act, 1913. During the pendency of the matter, the 1913

Act was repealed and re-enacted as the new Companies Act, 1956. The appellant company filed an application in the ongoing case, urging that on account of such repeal, the District Judge of Poona ceased to have jurisdiction to deal with such a matter. This application was dismissed by the District Judge. The Company appealed to the High Court, which, too, upheld the lower court's order. Aggrieved by the same, the Appellant then moved the Supreme Court. Along with this grievance, it was also contended that the notification was not specifically saved by the saving provisions, and thus deemed to be repealed as well.

25. It was argued by the Appellant that under the corresponding provision of the 1956 Act, a District Court was no longer empowered to deal with such an application as was filed by the Respondents under the 1913 Act. It was stressed that the notification under the 1913 Act which vested jurisdiction in the District Court, would be inconsistent with the corresponding provision of the 1956 Act. On this basis, it was contended that the notification could not have been deemed to continue to be in force, as is contemplated in Section 24 of the General Clauses Act.

26. Rejecting these contentions, the Supreme Court opined that the application of Section 6 of the General Clauses Act was abundantly clear by the wording of Section 658 of the 1956 Act, which provides that, the provisions of the 1956 Act "(…) *shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals*" (at para 3 of the judgment). In light of this, the court was of the view that "*Section 6 of the General Clauses Act would therefore*

preserve the rights and liabilities created by s. 153-C of the Act of 1913 and a continuance of the proceeding in respect thereof would be competent in spite of the repeal of the Act of 1913, unless of course a different intention would be gathered." It was also held that the corresponding provision of the 1956 Act neither indicated any legislative intention of destroying the rights created by section 153-C of the 1913 Act, nor did it indicate the intention that Section 6 of the General Clauses Act will not apply. The case of ***State of Punjab v. Mohar Singh***, AIR (1955) SC 84, was relied upon to state that a contrary intention must be manifest in the new Act to confirm that the rights under the old Act were indeed envisioned by the legislature to be destroyed by the new Act. It was observed that ***Mohar Singh*** (*supra*) held that: (a.) "*section 6 applies even where the repealing Act contains fresh legislation on the same subject but in such a case one would have to look to the provisions of the new Act for the purposes of determining whether they indicate a different intention."* and (b.) "*That in trying to ascertain whether there is a contrary intention in the new legislation, the line of enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them*."

27. Reading into the effect of Section 24 on the notification, the court was of the view that Section 24 was an enabling provision, not a disabling provision, i.e. to say that "*It is not intended to terminate any notification; all it does is to continue a notification in force in the stated circumstances, after the Act under which it was issued, is repealed. Section 24 therefore does not cancel the notification empowering the District Judge of Poona to exercise jurisdiction under the Act of 1913. It seems to us that since under section 6*

of the General Clauses Act, the proceeding in respect of the application under section 153-C of the Act of 1913 may be continued after the repeal of that Act, it follows that the District Judge of Poona continues to have jurisdiction to entertain it. If it were not so, then section 6 would become infructuous." On these grounds, the appeal was dismissed.

28. In ***State of Punjab v. Harnek Singh***, (2002) 3 SCC 48:2002 SCC (Cri) 659, a similar question came to be considered by the Court. Briefly stated, a notification issued under Section 5-A(1) of the Prevention of Corruption Act, 1947 authorised certain police officers serving in the State Vigilance Department to investigate offences under such act. The 1947 Act was repealed and re-enacted as the Prevention of Corruption Act, 1988, and thus, the accused-respondents against whom investigation was being conducted by such officers after such repeal, filed for quashing of FIRs. The reasoning being that such notification was not saved by such repeal, and thus the inspectors were no longer authorised to investigate the case. It was argued that Section 5-A of the 1947 Act, which was replaced by Section 17 of the 1988 Act, was inconsistent with the new provision. It was also urged that Section 30 of the 1988 Act, which was the repeal and saving clause, made reference to only section 6 of the General Clauses Act, and thus other provisions of the General Clauses Act cannot be applied. Per contra, it was argued by the State that the notification was not inconsistent with the provisions of the repealing Act, and that Section 30 of the 1988 Act, read with Sections 6 and 24 of the General clauses Act, ensured that the notification issued under the repealed Act was thus still in force. The Court,

agreeing with the stand of the State, made the following remarks, which we feel are very are relevant to the case present before us as well:

> "15. (…) *In other words, the General Clauses Act is a part of every Central Act and has to be read in such Act unless specifically excluded. Even in cases where the provisions of the Act do not apply, courts in the country have applied its principles keeping in mind the inconvenience that is likely to arise otherwise, particularly when the provisions made in the Act are based upon the principles of equity, justice and good conscience*."
>
> 17. *Section 24 of the General Clauses Act deals with the effect of repeal and re-enactment of an Act and the object of the section is to preserve the continuity of the notifications, orders, schemes, rules or bye-laws made or issued under the repealed Act unless they are shown to be inconsistent with the provisions of the re-enacted statute.*"
>
> 23. "***We do not find any force in the submission of the learned counsel appearing for the respondents that as reference made in Sub-section (2) of Section 30 of 1988 Act is only to Section 6 of General Clauses Act, the other provisions of the said Act are not applicable for the purposes of deciding the controversy with respect to the notifications issued under the 1947 Act. We are further of the opinion that the High Court committed a mistake of law by holding that as notifications have not expressly been saved by Section 30 of the Act, those would not enure or survive to govern any investigation done or legal proceeding instituted in respect of the cases registered under the 1988 Act****. There is no dispute that 1988 Act is both repealing and re-enacting the law relating to prevention of corruption to which the provisions of Section 24 of the General Clauses Act are specifically applicable. It appears that as Section 6 of the General Clauses Act applies to repealed enactments, the Legislature in its wisdom thought it proper to make the same specifically applicable in 1988 Act also which is a repealed and re-enacted statute.* ***Reference to Section 6 of General Clauses Act in sub-section (1) of Section 30 has been made to avoid any confusion or misunderstanding regarding the effect of repeal with regard to actions taken under the repealed Act. If the Legislature had intended not to apply the provisions of Section 24 of the General Clauses Act to the 1988 Act, it would have specifically so provided under the enacted law. In the light of the fact that Section 24 of the General Clauses Act is specifically applicable to repealing and re-enacting statute, its exclusion has to be specific and cannot be***

inferred by twisting the language of the enactments. *Accepting the contention of the learned counsel for the respondents would render the provisions of 1988 Act redundant inasmuch as appointments, notifications, orders, schemes, rules, by- laws, made or issued under the repealed Act would be deemed to be non-existent making impossible the working of the re- enacted law impossible. The provisions of the 1988 Act are required to be understood and interpreted in the light of the provisions of the General Clauses Act including Sections 6 and 24 thereof.*"

24. "*There is no substance in the arguments of the learned counsel appearing for the respondents that the provision made in two enactments were inconsistent and sub-section (2) of Section 30 would not save the notifications issued under the 1947 Act. The consistency, referred to in sub-section (2) of Section 30 is with respect to acts done in pursuance of the Repealed Act and thus restricted it to such provision of the Acts which come for interpretation of the court and not the whole of the scheme of the enactment. It has been conceded before us that there is no inconsistency between Section 5A of the 1947 Act and Section 17 of the 1988 Act and provisions of General Clauses Act would be applicable and with the aid of sub-section (2) of Section 30 anything done or any action taken or purported to have been done or taken in pursuance of 1947 Act be deemed to have been done or taken under or in pursuance of the corresponding provision of 1988 Act. For that purpose, the 1988 Act, by fiction, shall be deemed to have been in force at the time when the aforesaid notifications were issued under the then prevalent corresponding law.* ***Otherwise also there does not appear any inconsistency between the two enactments except that the scope and field covered by 1988 Act has been widened and enlarged****. Both the enactments deal with the same subject matter...*"

(Emphasis supplied)

29. In ***Parle Biscuits (P) Ltd. v. The State of Bihar and Ors.***, (2005) 9 SCC 669, the question under consideration was whether a notification, issued under the proviso to section 13 of the Bihar Finance Act, 1981, would be applicable to the Appellant, after the amendment of said section *vide* the insertion of section 13(1)(e) by the Bihar Finance (Amendment) Act, 1985. The notification excluded paper of all kinds from concessions under

Section 13, but the newly inserted sub-clause (e) provided for concessional rate of tax on all goods specified in the registration certificate of the dealer. It was thus argued by the Appellant/dealer that the notification would cease to apply, and cardboard boxes, being covered under the Appellant/dealer's registration certificate, would also become eligible for concessional rate of tax. On this point, the Supreme Court was of the view that the notification, being not inconsistent with the newly introduced provision, was saved by Section 24 of the General Clauses Act, Further, it took the view that, as there is no distinction between an amendment and a repeal, both are sheltered under Section 24. The same is extracted below:

> "25. *Section 27 of the Bihar and Orissa General Clauses Act, 1917, corresponding to Section 24 of the General Clauses Act, 1897 provides for "Continuation of Orders" etc. issued under Enactments repealed and re-enacted. According to the provision unless a different intention appears from the amended or re- enacted provision, the notification issued under the earlier enactment, if not inconsistent with the re-enacted provision shall continue in force and be deemed to have been issued under the re-enacted provision, unless and until it is superseded by issuance of fresh notification. It is true the Section does not speak of an amendment. But the provision is equally applicable in case of amendment. There is no real distinction between repeal and amendment. The latter is wider in terms and includes deletion or abrogation in existing statute. When the statutory provision is amended to a limited or a small extent then it is termed as amendment, and when the provision is extensively amended then it is called repeal. In that sense, after repeal there is re- enactment of the law. The above position was illuminatingly stated in* ***Bhagat Ram Sharma v. Union of India and Ors****.,* [1988] 1 SCR 1034."
>
> 26. *It is a matter of legislative practice to provide while enacting an amending law that an existing provision shall be deleted and a new provision substituted. Such deletion has the effect of repeal of the existing provision. Such a law may also provide for the introduction of a new provision. There is no real distinction between repeal and an amendment. This was noted in Sutherland's Statutory Construction (3rd Edn. Volume 1). There is nothing in Section 13(1)(e) of the Act*

which specifically provides that the earlier notification shall not cover the said provision. The provisions of the notification are not inconsistent with the amended provision and there is nothing in the amended provision to show that the earlier notification was intended to be superseded. In that view of the matter, effect of notification dated 28.1.1985 is not taken away by Section 13(1)(e) of the Act."

30. In the instant case, the repeal of the old Act and re-enactment of the new Act is simultaneous. According to the legislature, the repeal alongwith re-enactment was necessary to update the law to make it most suitable to the contemporary concept of indirect taxation. Overnight, the nation switched over to the GST system, which of course required massive calibrations of the entire accounting system, both at the end of the Government as well as the taxpayers. However it did not mean that all investigations, enquiries, audits, assessment proceedings, adjudications and other legal proceedings which form the subject matter of the Service Tax Rules stood abrogated the moment the new law was enacted, or that the officers carrying out the above exercise were stripped of their power to continue with the same because the Service Tax Rules were purportedly not saved. We are unable to accede to the Petitioner's interpretation. In the disputed period (for which the scrutiny and audit is being carried out by the Respondents) Chapter V of the Finance Act, 1994 was very much on the statute book. The present proceedings cannot be carried out under the GST Rules, because, as explained earlier, the concept of taxation under the GST regime is not the same. For the purpose of adjudication and other aspects related to service tax, the mechanism provided under the Service Tax Rules has to be followed. Thus, we are of the opinion that the CGST Rules, 2017 cannot be understood to have superseded the Service Tax Rules, 1994. The service tax rules will continue to govern and apply for the purpose of Chapter V of the Finance Act, 1994.

Any interpretation to the contrary would do violence to the repeal and saving clause and section 6 of the General Clauses Act. Moreover, Section 174(2) refers to the deletion of Chapter V of the Finance Act 1994 as an "amendment", which, as discussed earlier in ***Parle Biscuits*** *(supra)*, is settled to mean and include a "repeal", and thus, the amendment of the Finance Act 1994 is squarely covered under the ambit of Section 24 of the General Clauses Act.

[IV] AUTHORITY OF CENTRAL EXCISE OFFICERS:

31. Next, we must address the Petitioner's contention regarding the authority of officers: that the officers visiting the premises for scrutiny and audit are not Proper Officers as envisaged in the Act and Rules. Here, the Petitioner is under a wrong impression gathered by reading the notifications appointing certain officers as GST officers. The proviso to section 3 of CGST Act stipulates a deeming provision by virtue whereof, the Central Excise Officer who is appointed under the Central Excise Act, is deemed to be an officer under the provisions of the CGST Act. This means that the Central Excise Officer continues to be vested with the powers under the Central Excise Act concurrently, and by virtue of the afore-noted proviso, they are deemed to be officers under the CGST Act as well. The appointments under the Central Excise Act were by way of notifications and such officers are continuing to discharge the functions of Central Excise Officers. One such Notification No. 12/2017-Central Excise (N.T.) is exacted as follows:

"*GOVERNMENT OF INDIA MINISTRY OF FINANCE DEPARTMENT OF REVENUE (CENTRAL BOARD OF EXCISE AND CUSTOMS)*

New Delhi, the 9th June, 2017
19 Jyaistha, 1939 Saha

Notification No. 12/2017-Central Excise (N.T.)

G.S.R.(E).- In pursuance of clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944) read with clause (55) of section 65B of the Finance Act, 1994 (32 of 1994) and in exercise of the powers conferred by rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994 and in supercession of the notifications of the Government of India in the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide numbers 20/2014-Service Tax, dated the 16th September, 2014, 21/2014-Service Tax, dated the 16th September, 2014, 27/2014-Central Excise (N.T), dated the 16th September, 2014 and 29/2014-Central Excise (N.T), dated the 16th September, 2014 published in the Gazette of India Extraordinary vide numbers G.S.R.648(E), dated the 16th September, 2014, G.S.R.649(E), dated the 16th September, 2014, G.S.R.651(E), dated the 16th September, 2014 and G.S.R.653(E), dated the 16th September, 2014 respectively, except as respects things done or omitted to be done before such supercession, the Central Board of Excise and Customs hereby appoints–

(i) Principal Chief Commissioners of Central Excise and Service Tax;
(ii) Chief Commissioners of Central Excise and Service Tax;
(iii) Principal Commissioners of Central Excise and Service Tax;
(iv) Commissioners of Central Excise and Service Tax;
(v) Commissioners of Central Excise and Service Tax (Appeals);
(vi) Commissioners of Central Excise and Service Tax (Audit);
(vii) and any other officer of the Central Excise Department,

as Central Excise Officers and vests them with all the powers under the Central Excise Act, 1944 (1 of 1944) and the rules made there under and Chapter V of the Finance Act, 1994 (32 of 1994) and the rules made there under, with respect to the jurisdiction specified in the notification issued under rule 3 of the Central Excise Rules, 2002.

2. ***This notification shall come into force on a date to be notified by the Central Government in the Official Gazette.***

[F.No. 137/17/2017-Service Tax]
Dr. Sreeparvathy S.L.
Under Secretary to the Government of India"

32. The above notification came into force on 22.06.2017 by way of a later notification issued in terms of clause 2 noted above. *Vide* Notification No.3/2017-Central Tax, dated 19th June 2017, in exercise of powers conferred by sub-section (3) of section 1 of the CGST Act 2017, the Central Government appointed 22nd June 2017, as the date on which several provisions, including Section 3, of the CGST came into force. Simultaneously, the Central Government, vide Notification No. 2/2017-Central Tax, in exercise of the powers under section 3 read with section 5 of the CGST Act, and section 3 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), notified the officers under the CGST Act. This notification has undergone several amendments. Nonetheless, w.e.f. 22.06.2017, i.e. the day section 3 of CGST came into force, there are two parallel notifications – one under the CGST Act and another under Central Excise Act. Nothing has been shown by the Petitioner to establish that the officers carrying out the verification and audit are not the Proper Officers, except for citing the Notification No. 2/2017-Central Tax. By reading this notification, we cannot draw an inference to the contrary, in the manner that the Petitioner has conceived. Thus, we are of the view that the Petitioner's contention is without substance and if the officer carrying out scrutiny and audit is also vested with the powers under the Central Excise Act, he would be well within his powers to do so.

[IV] SCOPE OF THE AUDIT/VERIFICATION PROCEEDINGS – WHETHER SECTION 6 OF GCA OR SECTION 174 OF THE CGST ACT PROHIBITS INVOCATION OF RULE 5A AFTER 01.07.2017?

33. Lastly, we shall deal with the contention regarding the scope of the audit/verification proceedings and whether the exercise carried out under Rule 5A of the Service Tax Rules, 1994 cannot result in any tax becoming due. We don't find any merit in the Petitioner's submission that the expression *"duty, tax, surcharge, fine, penalty, interest as are due or may become due"* appearing in section 174(2)(d) can only mean such duty which has been crystalized prior to the 01.07.2017. The audit/verification is a process prior to adjudication. If audit/verification would lead to any tax not paid or short paid, the adjudicatory process would necessarily follow. It can therefore not be construed that the service tax shall become due only consequent to the exercise of powers under sections 72 and 73 of the Finance Act, 1994. The Petitioner may be right to the extent of saying that the audit under Rule 5A is qualitatively and materially different from an audit under section 72A of the Finance Act, 1994. However, we are not concerned with the scope of the audit. Before us, the material question is whether the audit/verification contemplated under Rule 5A is saved despite the repeal of Chapter V. The Petitioner is wrong in contending that no obligation or liability has been accrued or incurred by it. The obligation to pay service tax arose at the time of rendering taxable service, which fell during the disputed period, at which time Chapter V was very much in force. The service tax is levied on providing of taxable service and is paid by the assessee on self-assessment basis. Therefore, the liability and obligation to pay tax accrued in terms of the provisions of the Finance Act whenever a taxable event occurred. If service tax has not been paid or short paid, the Service Tax Department would acquire the right to recover the said tax. This is done *inter alia* on the basis of the best judgment assessment under

section 72, and by initiating recovery proceedings under section 73 of the Finance Act, 1994. Therefore, '*such duty*' cannot be construed to mean only that which forms the subject matter of proceedings under section 72 and 73 of the Finance Act. The necessary corollary is that the investigation, inquiry, verification (including scrutiny and audit) that falls within the ambit of section 174(2) of the Act would include proceedings that were initiated prior to action under section 72 and 73 of the Finance Act, 1994. We also find merit in the submission of Mr. Harpreet Singh that a contrary interpretation would mean that all cases of duty evasion, where the adjudicatory process has not commenced, have to be ignored. That is clearly not the intent of the saving clause. The Supreme Court in ***Harnek Singh*** (*supra*), while interpreting the words "*anything duly done or suffered thereunder*" used in clause (b) of Section 6 of GCA (which are also found in Section 174(2)(b) of the CGST Act), has observed that these words used by the legislature in a saving clause are intended to provide, unless a different intention appears, that the repeal of an Act would not affect anything duly done or suffered thereunder. In the said case, the Court also referred to ***Universal Imports Agency v. Chief Controller of Imports and Exports,*** [1961] (1) SCR 305 :AIR (1961) SC 41, and held that "*the expression "things done" was comprehensive enough to take in not only the things done but also the effect of the legal consequence flowing therefrom".* Thus, having regard to the language used in the saving clause of the CGST Act as well as Sections 6 and 24 of the General Clauses Act, along with the legislative intent behind the repeal and enactment, we hold that Rule 5A of Service Tax Rules, 1944 framed under the repealed/omitted chapter V of the Finance Act, 1994, is saved.

34. For the aforesaid reasons, there is no merit in the petition. Dismissed.

SANJEEV NARULA, J

MANMOHAN, J

NOVEMBER 03, 2020

vs