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

\+ W.P.(C) 9448/2016 and CM APPL No. 37841/2016

HIND CONSTRUCTION CO

..... Petitioner

Through Ms. Suruchi Aggarwal, Advocate

versus

NORTH DELHI MUNICIPAL CORPORATION AND ORS

..... Respondents

Through Mr. Mini Pushkarna, Standing Counsel, North MCD with Ms. Namrata Mukin, Ms. Anushruti and Ms. Vasundhara Nayyar, Advocates

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

<u>O R D E R</u>

% 08.03.2017

During the course of arguments learned counsel for the petitioner points out that the petitioner was in fact never liable to pay any service tax as the same was never applicable to the services rendered by her. Counsel for the petitioner has drawn attention of sub clause 24 chapter 5 of the Finance Act by virtue of which service tax become leviable. Clause 65 of Chapter 5 of the Finance Act 1994 (32 of 1994) as amended by the Finance) (2 of 2014) is the definition clause; sub clause 24 (b) defines “cleaning activity”. Reliance has been placed on sub clause (105) i.e. definition of taxable service and zzz(d) “which is applicable to any person, by any other person in relation to cleaning activity.” Submission of the counsel for the petitioner being that the services rendered by the petitioner do not fall within the definition of "cleaning activity" and at no point of time was the petitioner ever liable to pay service tax.

This submission is disputed by counsel for the respondent who submits that the work order dated 02.06.2012 clearly shows that the petitioner had agreed to pay this service tax.

This Court is of the view that in view of the statement made by the petitioner let the respondent on an affidavit inform this Court that the initial levy of service tax in terms of the definition "cleaning activity " was a service rendered by the petitioner and thus liable to service tax. This affidavit shall be filed by the respondent within a period of four weeks with advance copy to counsel for the petitioner who may file rejoinder before the next date.

List on 25.04.2017.

INDERMEET KAUR, J

MARCH 08, 2017
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