IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.656 OF 2016

Business Process Outsourcing, Inc.
(now known as Business Process
Outsourcing LLC) .... Petitioner
Vs.
Union of India & Another .... Respondents

Mr. Percy Pardiwalla, Senior Counsel with Mr. Rajesh Simhan, Mr. Ashish Sodhani and Mr. Meyyappan Neggappan i/by M/s. Nishith Desai Associates for the Petitioner.
Mr. Charanjeet Chanderpal with Mr. Milind Borkar for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
G.S. KULKARNI, JJ.

DATE : APRIL 12, 2016

P.C:

1. This writ petition under Article 226 of the Constitution of India challenges a show cause notice dated 24-2-2016.

2. Mr. Pardiwalla, learned senior counsel appearing on

behalf of the petitioner, would urge that though this petition is filed to impugn a show cause notice, that is a relief claimed in exceptional circumstances. He would rely upon the factual position as narrated in the petition to submit that the petitioner so as to ascertain whether there is any tax liability in India to a transaction, more particularly detailed in the petition, sought intervention of an authority styled as Authority for Advance Rulings ("AAR"). The Authority, during the pendency of the application, framed certain questions and Mr. Pardiwalla invites our attention to the questions that are framed and set out in para 15, page 7, 8 and 9 of the petition. According to Mr. Pardiwalla, the next hearing was scheduled on 9-3-2016. The petitioner provided all the details of the transaction and eventually when the matter was placed before this Authority, the hearings which went on over a period of five years and numerous documents were supplied, an opinion was expressed that there are different modifications that had to be made to the application filed before the Authority and numbered as Application No.1086 of 2011 and, therefore, it would be proper to withdraw it and re-file a modified one.

3. The petitioner was ready with the modifications but the Authority was of the view that since extensive amendments are being sought and proposed, it would be desirable to file a revised or a fresh application. The petitioner, therefore, sought permission to withdraw that application with a view to file a revised one. The withdrawal request is contained in a letter dated 22-2-2016. In the interregnum period the petitioner also sought a stay on initiation of any fresh assessment proceedings by the Department. Though the application was allowed to be withdrawn by the AAR, what the petitioner was shocked and surprised to receive is a show cause notice and which is impugned in the present petition.

4. The argument is that there is a Circular of the Central Board of Direct Taxes, copy of which is annexed to the petition at page 221 of the paper-book, and that requires an approval of a Committee before initiating any proceedings. Mr. Pardiwalla relies upon the wordings of this Circular and

submits that the same binds the Revenue.

5. Thus, Mr. Pardiwalla submits that in the face of the proceedings before the AAR and the opportunity that the AAR has granted to file a revised application, the Revenue should not have rushed and issued a show cause notice. Secondly, the show cause notice is *ex facie* without jurisdiction because that is issued without compliance with the Circular dated 28-8-2014. Rather, it is an order under Section 119 of the Income Tax Act. For these reasons, it is submitted that the writ petition is maintainable.

6. In opposing this writ petition, Mr. Chanderpal, learned Advocate appearing for respondent No.2, submits that the petition is directed against a show cause notice and ordinarily this Court does not interfere with such an action.

7. It is next contended that the conduct of the petitioner is such that they are aware of a tax liability but to postpone meeting it, they take advantage of the provisions of the Income Tax Act and approached the AAR. There also, they did

not pursue the case for nearly five years. The Revenue cannot be expected to forego and sacrifice the huge liability and which falls on the petitioner/assessee. More so, when it is aware of it and provides for it in its arrangement with foreign companies. Even that arrangement has been doubted by the Revenue. Once the retrospective operation of the enactment permits the Revenue to take action, then the show cause notice is justified. As far as compliance with the Board's Circular is concerned, the Assessing Officer will take steps and he has requested for an *ex post facto* approval from the Board. All this would enable the authorities to proceed in accordance with law. Mr. Chanderpal, on instructions, states that while adjudicating the show cause notice, the Authority will give full opportunity to the petitioner and they can satisfy the officer concerned that there is no tax liability. All contentions, including on the point of maintainability of the show cause notice and merits are thus available. He would, therefore, submit that the writ petition be dismissed.

8. Mr. Chanderpal also placed before us written

submissions and the annexure to which is an order passed by the Authority for Advance Rulings (Income Tax), New Delhi.

9. After having heard both sides, we are of the view that this Court need not decide any larger controversy or wider question, leave alone the merits of the case. We are of the opinion that in the peculiar facts it would not be necessary to decide, whether a show cause notice could have been issued and without the approval of the Board in terms of its Circular and mere issuance of that show cause notice, therefore, would mean violation of the said Circular or the Officer acting in breach of it. We are of the view that interest of justice would be subserved by passing an order in the following terms:

ORDER

(i) Since the Authority for Advance Rulings (Income Tax), New Delhi, on 23-2-2016, in its proceedings has clarified that they did not see any reason in not permitting the withdrawal of the application filed by the petitioner, the hearing of the application filed by the Revenue and objecting to the course adopted by the petitioner also being kept pending, the petitioner's application, which is allowed to be withdrawn and treated to be disposed of as withdrawn has not been, therefore, adjudicated on merits.

(ii) We record the statement made by Mr. Pardiwalla, learned senior counsel appearing for the petitioner, on instructions, that within two weeks from today the petitioner shall file a fresh application raising all necessary and relevant questions before the Authority for Advance Rulings (Income Tax), New Delhi.

(iii) If such an application is filed, the said Authority shall decide it in accordance with law and as expeditiously as possible.

(iv) If the application, as undertaken above, is filed within two weeks, then the respondents shall keep all proceedings pursuant to the show cause notice impugned in this petition in abeyance and shall not take up the same for adjudication until the Authority for Advance Rulings (Income

Tax), New Delhi decides the petitioner's request in terms of the above, finally.

(v) In the event the petitioner does not comply with the statement and undertaking to this Court, the show cause notice then shall be taken up for adjudication and on its own merits. While such an adjudication is undertaken, the concerned Official shall allow the petitioner to raise all contentions, including on the point of maintainability of the show cause notice, the jurisdiction of the Officer and compliance with the CBDT Circular. The contentions on merits also can be raised.

10. We clarify that we have not expressed any opinion on the rival contentions. The Authority for Advance Rulings (Income Tax), New Delhi shall decide the matter by taking into consideration all contentions raised before it and uninfluenced by our above directions.

11. The writ petition is disposed of accordingly.

(G.S. KULKARNI, J.) (S.C. DHARMADHIKARI, J.)