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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12685 OF 2024

Varalaxmi Construction Company
Through Its Proprietor

....Petitioner

V/s.

Union of India and Ors.

...Respondents

Ms. Deepali Kamble for Petitioner.

Mr. Ram Ochani i/b Ms. Niyati Mankad for Respondent Nos. 1 to 3.

CORAM : K.R. SHRIRAM &

JITENDRA JAIN, JJ.

DATED : 9th SEPTEMBER 2024

PC. :

1. Three show cause notices were issued to petitioner, details of which are in Paragraph No. 3 of the petition. Two show cause notices dated 6th October 2021 and 27th April 2021 for Rs.49,98,447/- and Rs.1,05,31,520/-, respectively, have been withdrawn. What remains is the show cause notice dated 30th December 2020 for Rs.3,26,07,913/-.

2. One of the main ground raised in the petition is that this show cause notice is not preceded by pre-consultation which is mandatory as per circular issued by the Central Board of Excise and Customs (the Board). Ms.Kamble submitted that though Section 73 of the Finance Act, 1994 provides for issuance of show cause notice for non payment of service tax, and though it does not specifically provide that the show cause notice

should be preceded by pre-consultation, the same has been incorporated by virtue of Master Circular dated 10th March 2017 issued by the Board and subsequently clarified by the circular dated 19th November 2020. Ms.Kamble submitted that the circular dated 10th March 2017 expressly provides that where the amount involves demand of duty above Rs.50 Lakhs, pre show cause notice consultation is mandatory. Ms. Kamble submitted that therefore as held by various courts the show cause notice itself has to be quashed and set aside and consequently the impugned order dated 1st May 2024 based on the said show cause notice also cannot survive and has to be quashed.

3. Mr. Ochani stated that though the petition may have been served in July 2024, he received instructions to appear in the matter only yesterday and copy of the petition was also handed over to him by Ms.Kamble in the court. It is rather shocking that the officers do not even take the matters seriously and give prompt instructions. We have repeatedly observed that such inaction on the part of the officers would result in great prejudice being caused to the Government of India. We would place the responsibility at the door steps of the Principal Commissioners who are probably not ensuring their officers give prompt instructions to its advocate.

4. We have perused the impugned order where there is no

reference to any pre-consultation notice or any pre-consultation. Mr. Ochani however submits that in Paragraph No. 3.2 of the impugned order (internal page no. 4 of 20) there is a reference to letter dated 8th June 2020 where petitioner has been allegedly asked to submit documents and petitioner failed to respond. Ms. Kamble promptly interjected to say no such notice has been however received by petitioner. Ms. Kamble also submitted that it is averred in Paragraph No.10(C) that at that time the firm was physically closed due to corona pandemic and opened only in November 2020.

5. Mr. Ochani also submitted that admittedly petitioner had appeared before the officer concerned and based on the discussion the second and third show cause notices referred to earlier were recalled. Mr. Ochani therefore requests that some short time be given to enable him to take instructions and file an affidavit in reply by also referring to the file notings as to whether any such pre show cause notice discussion or consultation happens. Mr. Ochani also has an ingenious point to submit that there is no format prescribed for any pre-consultation notice.

6. In the circumstances, though we are unhappy with the fact that respondent did not give prompt instructions, purely by way of indulgence we would grant an opportunity to respondent to file an affidavit in reply. The same shall be filed with specific reference to the points noted above and copy served on or before 27th September 2024. Rejoinder, if any, to be filed and copy served by 4th October 2024.

7. Stand over to 14th October 2024.
8. Until 30th November 2024, there shall be Ad-interim in terms of prayer clause (d) which reads as under :

(d) That pending the hearing and final disposal of this Petition this Hon'ble Court be pleased to by an order and injunction restrain the Respondents by themselves, their officers subordinates servants and agents to refrain from acting upon or taking any further proceedings/action in against the Petitioner.

(JITENDRA JAIN, J.)

(K.R. SHRIRAM, J.)