

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

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WRIT PETITION NO.14128 OF 2024

Prakash Raghunath Autade

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr. Hidayatullah, Senior Advocate (through VC) a/w Ms. Shailaja Kher Hidayatullah, Mr. Makarand Joshi, Mr. Anupam Dighe, Ms. Chandni Tanna and Mr. Prathamesh Chavan i/by India Law Alliance for the petitioner.

Mr. J. B. Mishra a/w Ms. Sangeeta Yadav, Mr. Ashutosh Mishra and Mr. Rupesh Dubey for respondent nos.1 to 4.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE: 14 October 2024**

PC.:-

1. Heard learned counsel for the parties.
2. The challenge in this petition is to the show cause notice dated 5 April 2024 (Exhibit 'A') issued by the 4th respondent to the petitioner.
3. Mr. Hidayatullah, learned Senior Advocate for the petitioner, submitted that the show cause notice is based mainly on the statements referred to at Serial Nos.2, 3, 4, 5, 6, 13, 14 and 15 of paragraphs 12 of the impugned Show Cause Notice-cum-Demand Notice. He submitted that the above statements were mainly recorded in 2018-19 in the context of the Pre-GST regime. He submitted that, in any event, all the

statements were not recorded during an enquiry or proceeding, either in the Central Goods and Service Tax Act or the Pre-CGST regime. He referred to the decision of the Co-ordinate Bench of this Court in the petitioner's case decided on 3 December 2021 in ***Prakash Raghunath Autade Vs. Union of India***¹ to submit that any statements recorded before the issue of any show cause notice cannot be regarded as those recorded during an enquiry or proceedings. Based on this decision and certain observations therein, Mr Hidayatullah contended that the statements which have been relied upon in the show cause notice constitute no evidence whatsoever; in fact, such statements are *non-est*. He submitted that no show-cause notice could have been issued based on such statements. He further submitted that apart from these statements, no other significant material is relied upon in the impugned show cause notice to sustain the same.

4. Accordingly, Mr. Hidayatullah submitted that the impugned show cause notice should be interfered with, and the respondents should be prohibited from proceeding further based on it.

5. Mr. Mishra, learned counsel for the respondents, pointed out that the review petition has already been filed against the decision relied upon. However, without prejudice, he submitted that the impugned show cause notice is not based only on the statements referred to by Mr Hidayatullah. Still, other materials on record were revealed during the investigation, based upon which the impugned show cause notice came to be issued.

6. Mr Mishra submitted that in any event, the issue of whether

1 2022 (380) E.L.T. 264 (Bom.)

the above statements can be looked into or not and, further, the issue of the burden being on the revenue are matters which can always be decided in the adjudication of the show cause notice once a reply is filed by the petitioner raising all these and other permissible objections.

7. Mr Mishra accordingly submitted that this petition might not be entertained, leaving it open to the petitioner to raise all permissible defences in response to the impugned show-cause notice.

8. The rival contentions now fall for our determination.

9. At the outset, unless a case of the impugned show cause notice being *ex-facie* without jurisdiction is made out, we are usually not inclined or required to interfere at the stage of issue of the show cause notice. In this case, the impugned show cause notice does not attract the vices indicated in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others*².

10. In *Whirlpool (Supra)*, the Hon'ble Supreme Court has explained that writ petitions may be entertained against show cause notices where the Petitioner seeks enforcement of any of the fundamental rights, where there is a violation of the principles of natural justice, or where the order or proceedings are wholly without jurisdiction or vires of the Act, is challenged.

11. In *Special Director and Another Vs. Mohd. Ghulam Ghouse and another*³ the Hon'ble Supreme Court has held that unless the High Court is satisfied that the show-cause notice was totally non-est in the

2 (1998) 8 SCC 1

3 (2004) 3 SCC 440

eyes of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine. The writ petitioner should invariably be directed to respond to the show cause notice and raise all defences and contentions highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue the recipient can even urge before the authority issuing the notice. Such issues can also be adjudicated by the authority initially issuing the notice before the aggrieved party could approach the Court.

12. In *Union of India and others Vs. Coastal Container Transporters Association and others*⁴ the Hon'ble Supreme Court held that where the case was neither of lack of jurisdiction nor any violation of principles of natural justice, the High Court ought not to have entertained the writ petition at the stage of notice, more so, when against the final orders, appeal lies to the Supreme Court. Further, the Court held that when there is a serious dispute concerning the classification of service, the respondents ought to have responded to the show cause notices by placing material in support of their stand. Accordingly, the appeals against the quashing of the show cause notices were allowed.

13. In *Mahanagar Telephone Nigam Ltd. Vs. Chairman Central Board, Direct Taxes and another*⁵, the Hon'ble Supreme Court held that it was settled law that the litigation against show cause notices should not be encouraged. The Court approved the decision of the High Powered Committee, which was eminently fair and aimed at preventing frivolous litigation. The Court held that the appellant's right was not affected. It

4 (2019) 20 SCC 446

5 (2004) 6 SCC 431

was clarified that the appellant could move a court of law against an appealable order. By not maintaining discipline and abiding by the decision, the appellant had wasted the public money and time of the courts.

14. In *Malladi Drugs and Pharma Limited Vs. Union of India and another*⁶ the Hon'ble Supreme Court held that the High Court was absolutely correct in dismissing the writ petition against the mere show cause notice. The High Court, by the impugned judgment, held that the appellant should first raise all the objections before the authority that has issued the show cause notice. If any adverse order was passed against the appellant, liberty was granted to approach the High Court.

15. *Prakash Raghunath Autade (Supra)*, relied upon by Mr Hidayatullah, was in the context of the petitioner's insistence to cross-examine the person who had made the statements before issuing the show cause notice, which was impugned in the said petition. In that context, the Co-ordinate Bench of this Court observed that the statements recorded before the issuance of such show cause notice are not the statements recorded in the course of an enquiry or proceedings and, therefore, no right accrues in favour of a noticee to insist on the cross-examination of the witnesses, whose statements have been recorded and are referred to in the show cause notice, even before reply to it being submitted. The Court held that once the show cause notice is issued, it is for the petitioner to deny and dispute the allegations levelled therein and, if he so chooses, to raise such defence as he may be advised.

16. Accordingly, the directions were issued in paragraph 13 to the

effect that if, in the course of adjudication proceedings before the relevant authority under the Show Cause Notice-cum-Demand Notice, any witness is summoned in terms of the power conferred by Section 14 of the Act and his statement is recorded and found relevant, such statement shall not be relied upon against the petitioner unless he has been given a suitable and reasonable opportunity to cross-examine such witness. The evidence of such witness was directed to be recorded in the petitioner's presence. Significantly, neither was the show-cause notice interfered with, nor was any immediate opportunity granted to cross-examine those who had made the statements.

17. Therefore, even going by the decision relied upon by Mr. Hidayatullah, we do not think that any case is made out to interfere with the impugned show cause notice in this case. It will, of course, be open to the petitioner to raise all permissible defences in the context of the statements relied on or the contention about the burden always being upon the revenue. However, based on the objections now raised, we cannot hold the impugned show cause notice *ex-facie* without jurisdiction and warranting interference at this threshold stage. The petitioner has not made out any case to sidestep the alternate remedy of responding to the show cause notice, and if aggrieved with the adjudication order, appealing the same following the usual channel and the law.

18. The observations made in this order are not intended to affect the review petition instituted by the respondents.

19. At this stage, Mr Hidayatullah requests the petitioner be

granted eight weeks to reply to the impugned show cause notice. Accordingly, we grant the time as prayed for. Further, we also clarify that the time spent from the date of institution of this petition, i.e., 27 June 2024, till the filing of the reply to the show cause notice, i.e., eight weeks from today, will not be counted for limitation to dispose of the show cause notice.

20. Accordingly, we decline to interfere in this matter but clarify that all the petitioner's defences are kept open. If such defences are raised in response to show cause notice, we have no doubt they will be considered and disposed of following the law.

21. With the above liberty, we dismiss this petition without any order as to costs.

22. All concerned must act on an authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)