

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.15498 OF 2024

Apollo Tyres Limited,
7, Institutional Area,
Sector 32, Gurgaon – 122 001,
Haryana, through its constitute
attorney Mr. Rajiv Vijay Gupta

...Petitioner

Versus

1. Union of India
through the Secretary,
Ministry of Finance, North Block,
New Delhi – 110 001
2. The Additional Director,
Directorate General of GST Intelligence
Delhi Zonal Unit, MTNL Sanchar Hut,
Near Manipla Hospital, Sector 6
Dwarka, New Delhi – 110 075
3. The Additional / Joint Commissioner
Central Goods and Service Tax, Thane,
Nehru Nagar, Wagle Industrial Estate,
Thane, Maharashtra

...Respondents

Mr. Joseph Kodianthara, Senior Advocate (through VC) a/w Mr. Anil D'Souza for Petitioner.

Mr. Ram Ochani a/w Ms. Sangeeta Yadav for Respondent No.1.

Mr. Ram Ochani a/w Ms. Kavita Shukla for Respondent Nos.2 and 3.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

RESERVED ON : 11 November 2024

PRONOUNCED ON : 14 November 2024

JUDGMENT (Per Jitendra Jain J) :-

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the show cause notice dated 2 August 2024 issued by respondent no.2 to the petitioner to centralise and show cause before respondent no.3 why CGST, SGST and IGST should not be demanded and recovered under Section 74 of the Central Goods and Services Tax Act (CGST), State Goods and Services Tax Act (SGST) and Integrated Goods and Services Tax Act (IGST). The said show cause notice further directs the petitioner to show cause why interest under Section 50 of the CGST Act and the SGST Act should not be demanded and recovered in addition to the penalty under Section 74 of the CGST Act, SGST Act and Section 20 of the IGST Act. By this show cause notice, the issue pending before various State authorities, namely Jammu and Kashmir, Himachal Pradesh, Uttarakhand, Haryana, Uttar Pradesh etc. has been centralised and referred to respondent no.3 for adjudication.

2. Mr. Ochani, learned counsel for the respondents, raised a preliminary objection to the entertainability of the present petition at the stage of the show cause notice. He contends that this Court should not stop the adjudication of the show cause notice and the petitioner should be called upon to reply to the show cause notice and raise all the contentions, including the contention of limitation before respondent no.3. It is his submission that the petitioner can convince respondent no.3 and if respondent no.3 is satisfied with the submissions of the petitioner, then the show cause notice would be dropped and if he is not satisfied then appropriate order would be passed which can be challenged in appeal. Mr. Ochani strongly submitted that, at this stage,

the petitioner should not be permitted to approach this Court in Writ Petition.

3. Mr. Joseph Kodianthara, learned senior counsel appearing through Video Conferencing, submitted that the show cause notice is issued beyond the period of one year and, therefore, the same is barred by limitation. It is his submission that the show cause notice has been issued to give retrospective effect to Circular No.212/6/2024 dated 26 June 2024 and, therefore, this Court should entertain at the stage of the show cause notice itself since conditions specified in the Circular cannot be complied with. The learned senior counsel also relied upon the decision of the Delhi High Court in the case of *M/s. JSW Steel Limited Vs. Directorate General of GST Intelligence & Ors.*¹ in support of his submission.

4. We have heard the learned senior counsel for the petitioner and the learned counsel for the respondents.

5. The show cause notice is issued for the determination of the value of the supply as per Section 15(3)(b) of the CGST Act, 2017, which provides that the value of the supply shall not include any discount given after the supply has been effected subject to fulfilment of conditions specified therein. At the outset, we wish to state that the show cause notice is issued after the investigation was initiated into the petitioner's transactions based on intelligence. During the course of the investigation, statements of various officers of the petitioner were recorded, which have been relied upon in the show cause notice on the issue of various discounts given to the dealers and their treatments under the GST Act. In the show cause notice, the respondents have relied upon the findings of the investigations which in turn is based on

¹ Writ Petition (C) NO.13769 of 2024
dated 1st October 2024

various documentary evidence including the statements recorded in the course of investigations.

6. In the show cause notice, a specific allegation is made on suppressing facts and misstatement regarding non-furnishing details of outward supplies under Section 37 of the CGST Act. There is also an allegation that the facts have been suppressed with the intention to evade the payment of GST. It is further stated in the show cause notice that if the investigation had not been conducted, evasion of GST would not have come to light. The respondents in the show cause notice have invoked the extended period of limitation based on the allegations of suppression of facts and misstatement with an intention to evade the payment of GST from July 2017 to March 2022. The show cause notice also deals with the onus of proof and its extent of compliance for the purpose of Section 15(3)(b) of the CGST Act.

7. In our view, the issue of whether there is a suppression of facts or misstatement to invoke an extended period of limitation would require a determination on the factual matter which this Court, in its extraordinary jurisdiction under Article 226 of the Constitution of India, certainly cannot enter into. The issue of shifting of onus also involves adjudication on facts. Furthermore, compliance with conditions of Section 15(3)(b) would also include inviting this Court to enter the arena of facts which we are afraid we cannot examine. In the show cause notice, we could not find any reference to Circular No.212/6/2024 dated 26 June 2024, based on which the petitioner has submitted that the impugned show cause notice is issued. Therefore, the contention of the petitioner that the show cause notice has been issued only on the ground of retrospective application of the Circular is also ill-founded. There is no challenge to the said circular in the prayer clause

of the petition.

8. Mr. Ochani, learned counsel for the respondents, is justified in submitting that if the petitioner is called upon to reply to the show cause notice, the adjudicating officer would certainly look into it objectively and, if convinced with the submission, may drop the show cause notice. However, to restrain the respondents from adjudication of the show cause notice certainly is incorrect and correctly objected to, and we believe that the submission made by the respondents is justified on the facts of the present case. In the petition also, there is no averment except bald statement that the petitioner has no alternative and efficacious remedy. As we observed above, the petitioner has an alternate and efficacious remedy.

9. In *Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others*², the Hon'ble Supreme Court explained that Writ Petitions may be entertained against show cause notices where the petitioners seek enforcement of any fundamental rights, where there is a violation of principles of natural justice or where the order or proceedings are wholly without jurisdiction or where the vires of the Act is itself challenged. None of these circumstances are made out in the present. Simply alleging that the impugned show cause notices are without jurisdiction is insufficient. The usual adjudicatory process, where such a mattwhirlpooler can be effectively adjudicated upon, cannot be scuttled by rushing to the writ court and securing stays on the adjudicatory process.

10. 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 even to investigate the facts, writ petitions should not be entertained for 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 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.

11. In *Thansingh Nathmal V/s. Superintendent of Taxes, Dhubri and Others*⁴, the Constitution Bench of the Hon'ble Supreme Court, disapproved the petitioner's invoking the jurisdiction of the High Court under Article 226, bypassing alternate statutory remedies that were clearly available. The Constitution Bench observed that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations.

12. The Constitution Bench held that resorting to this jurisdiction is not intended as an alternative remedy for relief, which may be obtained in a suit or other mode prescribed by statute. Ordinarily, the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy that provides an equally efficacious remedy without being unduly onerous. Again, the High Court does not generally

4 AIR 1964 SC 1419

enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not, therefore, act as a court of appeal against the decision of a court or tribunal to correct errors of fact and does not, by assuming jurisdiction under Article 226, trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

13. The learned counsel for the petitioner relied upon the decision in the Delhi High Court in the case of JSW Limited (*supra*). In our view, it is an interim order, and in any case, the respondents were permitted to continue with the proceedings to adjudicate the show cause notice. The allegation of suppressing facts and misstatement was not the subject matter before the Delhi High Court, which is the case in the present petition. In any case, the Delhi High Court is an interim order that cannot be a binding precedent for this Court.

14. In view of the above, the petition to challenge the show cause notice dated 2 August 2024 is dismissed. However, the petitioner is granted time up to 15 December 2024 to file its reply to the show cause notice. Respondent no.3 to give a personal hearing to the petitioner and, after considering the petitioner's submissions, pass a reasoned and speaking order on or before 31 January 2025.

15. We make it clear that we have not expressed any opinion on the merits of the case since we have not heard the parties on the same. All

parties' contentions are kept open to be adjudicated in the adjudication process.

16. This petition is dismissed with liberty in the above terms. No costs.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)