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

WRIT PETITION NO.17122 OF 2024

General Motors India Private Limited
Gat No.16, 23 & 24
Greenbase Industrial & Logistics Parks
Bhadalwadi, Talegaon MIDC
Pune, Maharashtra 410507

.. Petitioner

Versus

1. State of Maharashtra
Through the Secretary,
Finance Department, Mantralaya,
Madam Cama Road,
Hutatma Rajgur Chowk,
Nariman Point, Mumbai-400032
2. Assistant Commissioner of State Tax
PUN-INV-D-004, Cabin No.231,
2nd floor, GST Bhavan,
Airport Road, Yerwada,
Pune-411006
3. Authority for Advance Ruling
Maharashtra, GST Bhavan,
1st floor, B wing, 107,
Mazgaon, Mumbai-400010

.. Respondents

Mr. Darius Shroff, Sr. Advocate a/w Mr. Mahir Chablani a/w Ms. Dimpal Jangid for the petitioner.

Ms. Shruti Vyas, Addl GP a/w Ms.P. N.Diwan AGP for respondent.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**
DATE : 11 December 2024

PC.(Per M.S.Sonak, J):-

1. Heard learned counsel for the parties.
2. Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3. The challenge in this petition is to the pre-show cause notice in Form DRC-01 A issued by respondent No.2 to the petitioner under Section 73(5) read with Rule 142 (1-A) of the State Goods and Services Tax Act (SGST). The petitioner also seeks a Writ of Mandamus upon respondent No.3 to dispose of the petitioner's application dated 20 December 2023 seeking advance ruling *inter alia* on the taxability of the sale of land and buildings carried out pursuant to the Asset Purchase Agreement (APA) on merits.
4. Mr. Shroff learned senior counsel for the petitioner, expressed an apprehension that on account of the issuance of the pre-show cause notice dated 22 October 2024 respondent No.3 may decline to dispose of the petitioners' application for advance ruling on merits. He submitted that such a refusal to decide the application seeking an advance ruling would be contrary to the provisions of Section 98 of the SGST Act. But still, he submitted that on a misinterpretation of the relevant statutory provisions, the petitioners apprehend that respondent No.3 will decline to decide the application on merits.

5. Mr Shroff also pointed out that Section 98(6) of the SGST Act requires respondent No.3 to pronounce its advance ruling in writing within 90 days of receiving the application. He submits that this 90-day period has long expired, but to date, the advance ruling has not been pronounced. He submitted that in the meanwhile, on 22 October 2024, respondent No.2 issued the impugned pre-show cause notice. Based on the same, respondent No.3 may not decide on the petitioners' application, seeking an advance ruling on merits.

6. Ms. Vyas learned Addl. GP, on instructions, has stated that the petitioners' application dated 20 December 2023 will be disposed of by respondent No.3 on merits within three months from today. This statement is accepted, and respondent No.3 will have to comply with the same.

7. Regarding the apprehension expressed by Mr Shroff, we refer to the provisions of Section 98 of the SGST Act, which read as follows ;

Section 98 - Procedure on receipt of application

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officer.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the

question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act:

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorised representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

8. The proviso to Section 98(2) states that the authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

9. The petitioners' application seeking an advance ruling was filed on 20 December 2023. At that stage, the question raised in the application was not already pending or decided in any proceedings in the case of the

petitioner under any of the provisions of this Act. Therefore, the subsequent issue of pre-show cause notice dated 22 October 2024 will not bar or come in the way of respondent No.3 deciding the petitioners' application dated 20 December 2023 on merits. Even Ms Vyas assured the Court that the petitioners' application dated 20 December 2023 would be disposed of on merits and apprehension now expressed by Mr Shroff can, therefore, rest.

10. Mr. Shroff relied on the decisions of the division bench of the Telangana High Court in *'DRI (Headquarters) Vs. Spraytec India Ltd.'*¹ and *'Srico Projects Private Limited Vs. Telangana State Authority for Advance Ruling, and Anr.'*²

11. In the case of *'Srico Projects Private Limited' (Supra)* delivered by the Telangana High Court Division Bench comprising the Hon'ble Chief Justice Shri. Ujjal Bhuyan (as his Lordship then was) and Hon'ble Justice C.V. Bhaskar Reddy, on interpreting the provisions of Section 98, have observed as follows ;

11. From the above, it is seen that the Authority shall not admit an application for advance ruling where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the CGST Act.

12. Though the word "proceedings" has neither been defined in Chapter XVII nor in the definition clause i.e., in Section 2 of the CGST Act, if the said word is understood in the context in which it is being applied, namely, any proceedings pending or decided in the case of an

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applicant under the provisions of the CGST Act, it would mean proceedings where the question raised in the application for advance ruling has already been decided or is pending decision. Therefore, inquiry or investigation would not come within the ambit of the word "proceedings".

13. Be that as it may, in so far the present case is concerned, there is no dispute to the fact that the petitioner had filed the application for advance ruling on 11.05.2019. From the order dated 03.06.2022, it is evident that notice was issued to the petitioner by DGGI on 15.12.2021 much after filing of the application for advance ruling. In our considered opinion, the same cannot be a bar under the first proviso to sub-section (2) of Section 98 of the CGST Act and the question of petitioner informing the Authority that it was being enquired into did not arise because the application was filed much prior in point of time.

12. Accordingly, we are satisfied that respondent No.3 cannot avoid deciding the petitioners' application dated 20 December 2023 on merits based upon subsequent issues of the pre-show cause notice dated 22 October 2024. This is more so because the proviso to Section 98(2) is quite clear, and it uses the expression 'already pending or decided'. The phrase 'already pending' would mean and imply that it is pending on the date of filing the application seeking an advance ruling.

13. Mr Shroff then contended that until respondent No.3 disposes of the petitioners' application dated 20 December 2023, we must restrain respondent No.2 from proceeding with the pre-show cause notice dated 22 October 2024 or at least direct that no final orders must be made should the show cause notice be eventually issued to the petitioner in this matter. We are not inclined to accept this contention or request at

this stage.

14. As it is, we have issued directions to respondent No.3 to dispose of the petitioners' application within three months from today. This direction is based on the statement made on behalf of respondent No.2 and also upon considering the provisions of Section 98(6), which require the authority to pronounce the advance ruling in writing within 90 days of receiving the application. In any event, the scope of interference with pre-show cause or even show cause notice is minimal. If, ultimately, the advance ruling authority rules in favour of the petitioner, then it was pointed out by Mr. Shroff in terms of Section 103(1) that such advance ruling will bind not only respondent No.2 but also the petitioner.

15. As a matter of routine, the Petitioners must not rush to this Court bypassing alternate remedies or by filing pre-mature petitions just because they can afford to do so. There is, of late, an increased tendency to rush to this Court and take a chance to see if proceedings before the authorities are stalled even before the authorities have an opportunity to examine the cause shown and make some decision. The same applies to bypassing alternate remedies.

16. We dispose of the rule in this petition by issuing the above directions. There shall be no order for costs.

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

18. The interim order, if any, stands vacated. The interim application, if any, is disposed of.

(Jitendra Jain, J.)

(M. S. Sonak, J.)