IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1454 OF 2024

Route Mobile Ltd., Malad, Mumbai	]	
Through Mr. Rajdip Kumar Gupta	]	**.. Petitioner**
Versus		
1. Office of Commissioner,	]	
GST & C. Ex. Audit III, Parel, Mumbai	]	
2. Office of Joint Commissioner,	]	
GST & C. Ex. Audit III, Parel, Mumbai	]	
3. Office of Assistant Commissioner,	]	
Circle 1, CGST Audit III, Parel, Mumbai	]	
4. Office of Commissioner,	]	
CGST, Andheri, Mumbai	]	**.. Respondents**

Mr. Rajat Bose (through V.C.) with Mr. Ankit Sachdeva, Mr. Rohit Iyengar and Ms. Madri Chandak, Advocates, i/by Shardul Amarchand Mangaldas & Co., for the Petitioner.

Mr. Subir Kumar with Mr. Satyaprakash Sharma, Mr. Abhinav Palsikar and Ms. Ashita Aggarwal, Advocates for Respondent Nos.1 and 2.

Mr. S.D. Deshpande, Advocate for Respondent No.3.

CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ

DATE : 3RD DECEMBER 2024.

[THROUGH HYBRID HEARING]

P.C. :

1. Heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the show cause notice dated 28th September 2023 that has been issued by the Joint Commissioner, Goods and Service Tax and Commissioner of Excise, Audit-

III, Mumbai calling upon the petitioner to show cause why the amount of goods and service tax payable from July 2017 to March 2018 should not be recovered in terms of Section 74(1) of the Central Goods and Services Tax Act, 2017 along with interest in terms of Section 50(1) of the Act of 2017 along with penalty.

3. Mr. Rajat Bose, the learned counsel for the petitioner submitted that initially on 21st April 2017, a show cause notice came to be issued to the petitioner calling upon the petitioner to show cause why the amount of service tax mentioned in the notice during the period from October 2011 to March 2016 should not be recovered. This show cause notice came to be adjudicated on 27th June 2018 and the demand as made was confirmed. Thereafter on 15th January 2019, another show cause notice was issued to the petitioner as to why the amount of service tax indicated in the said notice for the period from April 2016 to June 2017 should not be recovered. This show cause notice was adjudicated on 2nd December 2019 and the demand as made was confirmed. It was thus submitted that when the earlier two show cause notices for the period from October 2011 to March 2016 and thereafter from April 2016 to June 2017 were issued and thereafter adjudicated, there was no jurisdiction whatsoever for the Joint Commissioner to issue the impugned show cause notices alleging suppression of true facts from the Department warranting recovery of the

amount of goods and service tax for the period from July 2017 to March 2018. All facts were available with the Department and such demand could have been made in the said show cause notices. Relying upon the judgment of the Supreme Court in *Nizam Sugar Factory Vs. Collector of Central Excise, AP, 2006 (197) E.L.T. 465* as well as the judgment of the Co-ordinate Bench of this Court in *The Commissioner of Central Excise, Mumbai-II Vs. Cona Industries and Ors., 2017 (352) E.L.T. 12 (Bom.)*, it was submitted that the subject show cause notice could not have been issued on the basis of facts that were within the knowledge of the Department. It was further submitted that there was no jurisdiction with the Joint Commissioner to extend the statutory period of adjudication and such power was conferred only on the Court under Section 75(2) of the Act of 2017. Since the period of adjudication had expired in December 2023, the show cause notices were liable to be quashed.

4. Mr. Subir Kumar, learned counsel for the Department opposed the writ petition. He submitted that the challenge as raised to the show cause notice was premature. The petitioner ought to reply to the show cause notices and raise all defences available. The Joint Commissioner had the authority to issue the show cause notice and it was not the case of inherent lack of jurisdiction. It was further submitted that the earlier show cause notice pertained to the period prior to the goods and service tax era

that was introduced in the year 2017. The issue pertained to the liability to pay service tax on the services rendered and it would be necessary to adjudicate the show cause notices. Placing reliance on the decisions of the Supreme Court in *Munshi Ram and Ors. Vs. Municipal Committee, Chheharta, (1979) 3 SCC 83* and *Titaghur Paper Mills Co. Ltd. and Anr. Vs. State of Orissa and Ors., (1983) 2 SCC 433* as well as the judgment of the Co-ordinate Bench in *Dow Chemical International Pvt. Ltd. Vs. Commissioner of Customs, NS-II, Special Investigation and Intelligence Branch (X) and Anr. (Civil Writ Petition No.11178 of 2024, decided on 21st October 2024)*, it was submitted that there was no case for interference at this stage. He thus submitted that the writ petition was liable to be dismissed.

5. Having heard the learned counsel for the parties and having perused the documents on record, we are not inclined to entertain the writ petition on the ground that challenge has been raised only to the show cause notice dated 28th September 2023. The show cause notice states in paragraph 12 that the said notice seeks to consider service tax liability against the services received by the petitioner from outside India. In our view, various factual aspects referred to in the show cause notices are required to be answered by the petitioner to enable consideration of the same by the Adjudicating Authority. It is not the case that the Joint

Commissioner had no authority in law to issue the impugned show cause notice. The fact that there was an investigation initiated during the period from July 2017 to March 2019 on 18th September 2019, the impugned show cause notice requires adjudication.

6. The issue with regard to the extension of the period of limitation and the legality of going into the issue of suppression of facts is required to be considered by the Adjudicating Authority. The decision in *Nizam Sugar Factory (supra)* indicates that after adjudication of the show cause notices, the challenge on merits was raised to that adjudication. In the present case, on the issuance of the show cause notice the petitioner has invoked the extra-ordinary jurisdiction of this Court. It is also to be noted that though the show cause notice is dated 28th September 2023, the challenge to the same is sought to be raised by filing this writ petition in November, 2023. In our view, the petitioner can raise all permissible defences including the challenge to the legality of the basis on which the impugned show cause notice has been issued. A similar view has been taken by the Co-ordinate Bench in *Dow Chemical International Pvt. Ltd. (supra)*.

7. In that view of the matter, we are not inclined to examine the challenge as raised to the issuance of the show cause notice. It would be open for the petitioner to reply to the show cause notice and raise all

permissible defences. By clarifying that the observations made in this order shall not come in the way of either the petitioner or the Adjudicating Authority and by keeping all challenges open, the writ petition is dismissed with no order as to costs.

[RAJESH S. PATIL, J.] **[A.S. CHANDURKAR, J.]**