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

WRIT PETITION (L) NO.33260 OF 2023

Oberoi Constructions Ltd.
a public Company incorporated under
Companies Act, 1956 and having its
registered address at Commerz,
3rd Floor, International Business Park,
Oberoi Garden City,
Off Western Express Highway,
Goregaon (E), Mumbai-400063.

... Petitioner

Versus

1. The Union of India, through
the Revenue Secretary
Ministry of Finance,
Department of Revenue,
New Delhi
2. The Joint Commissioner,
Circle - G CGST & CEx, (Audit-II),
Mumbai, 30th Floor, Centre -1,
World Trade Centre, Cuffe Parade,
Mumbai-400 005
3. The Commissioner of CGST & CEx,
Mumbai East Commissionerate,
Lotus Info Centre, Parel,
Mumbai-400012
4. The Additional Commissioner, CGST
CX, Mumbai East Commissionerate,
9th Floor, Lotus Info Centre, Parel,
Mumbai-400012

5. The Joint Commissioner, CGST
CX, Mumbai East Commissionerate,
9th Floor, Lotus Info Centre, Parel,
Mumbai-400012.
6. The State of Maharashtra
Through Government Pleader
High Court (O.S.), Mumbai
7. Municipal Commissioner,
Municipal Corporation of Greater Mumbai
5, Mahapalika Marg, Dhobi Talao.
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai, Maharashtra-400 001. ... Respondents

**WITH
WRIT PETITION NO.1762 OF 2024**

K. Raheja Private Ltd.
a Company incorporated under
Companies Act, 1956 and having its
registered address at Plot no. C-30,
Block G, Raheja Tower, Opp. SIDBI, BKC
Bandra East, Mumbai-400051 Petitioner

Versus

1. The State of Maharashtra,
Through the Government Pleader, 13 pt
Bombay High Court
2. The Commissioner of State Tax
GST Bhavan, Mazgaon,
Mumbai-400010, Maharashtra
3. The Assistant Commissioner of State Tax,
Investigation - C, Mumbai G-05,

8th Floor, GST Bhavan, New Building,
Mazgaon Mumbai - 400010

4. The Union of India,
through the Revenue Secretary
Ministry of Finance,
Department of Revenue, New Delhi

5. Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
5, Mahapalika Marg, Dhobi Talao,
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai – 400 001.

.... Respondents

WITH
WRIT PETITION NO.3402 OF 2024

M/s Bridgeview Real Estate Development LLP
a limited liability partnership incorporated under
Limited Liability Partnership Act, 2008 and having
its registered office at 503, 5th Floor,
Peninsula Tower Peninsula Corporate Park,
G.K. Marg, Lower Parel, Mumbai - 400013

.... Petitioner

Versus

1. The Union of India, through
the Revenue Secretary, Ministry of Finance,
Department of Revenue, New Delhi

2. The Joint Commissioner, CGST & C Ex,
(Audit – II), Mumbai
30th Floor, Centre-1, World Trade Centre,
Cuffe Parade, Mumbai – 400 005

3. The Commissioner of CGST & Cex,
Mumbai Central Commissionerate,
GST Bhavan, M.K. Road, Churchgate,

Mumbai - 400020

4. The Joint Commissioner of CGST & CEx,
Mumbai Central Commissionerate,
GST Bhavan, M.K. Road, Churchgate,
Mumbai – 400020

5. Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
5, Mahapalika Marg, Dhobi Talao,
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai – 400 001

6. The State of Maharashtra
Through the Government Pleader
High Court, Mumbai – 400 001

.... Respondents

**WITH
WRIT PETITION NO.3629 OF 2024**

Neepa Real Estates Private Limited
a Private Limited Company
incorporated under Companies Act, 1956
and having its registered office
at Vasant Oasis, Site Office,
Upper Basement, CTS 345A/1 to 3,
345A 5 to 6, Makwana Road,
Makwana Road, Marol,
Andheri East, Mumbai-400059

.... Petitioner

Versus

1. The Union of India,
through the Revenue Secretary,
Ministry of Finance,
Department of Revenue, New Delhi.

2. The Commissioner, CGST & C Ex,

Mumbai East, Lotus Info Centre,
9th Floor, Station Road, Parel (East),
Mumbai 400012.

3. The Joint Commissioner of CGST & CEx,
Mumbai East Commissionerate,
Lotus Info Centre, Parel,
Mumbai - 400012.

4. The Joint Commissioner, CGST & CX
(Audit - II), Mumbai
30th Floor, Centre -1, World Trade Centre,
Cuffe Parade, Mumbai - 400 005.

5. Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
5, Mahapalika Marg, Dhobi Talao,
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai - 400001.

6. State of Maharashtra,
Through the Government Pleader,
High Court, Mumbai.

.... Respondents

**WITH
WRIT PETITION NO.3624 OF 2024**

Roma Builders Private Limited
a Private Limited Company incorporated
under the provisions of Companies Act,
1956/2013, having its registered office
at 5th Floor, 514, Dalamal Towers,
211 Free Press Journal Marg,
Nariman Point, Mumbai 400021.

.... Petitioner

Versus

1. State of Maharashtra,

Through the Government,
Department of Goods and Service Tax
Mantralaya, Mumbai,

2. Commissioner of State Tax,
GST Bhavan, Mazgaon,
Mumbai-400010.

3. Deputy Commissioner of State Tax,
Mumbai-E-632, LTU-3,
Cabin - H-1, 3rd Floor,
New Building GST Bhawan,
Mazgaon, Mumbai 400010.

4. Union of India,
Through the Secretary,
Ministry of Finance
Department of Revenue,
North Block, New Delhi, 110001.

5. Municipal Commissioner,
Thane Municipal Corporation
Thane City,
Mahanagarpalika Bhavan,
Dr Almeda Rd Chandanwadi,
Panchpakhadi, Thane-400602

.... Respondents

**WITH
INTERIM APPLICATION (L) NO. 23337 OF 2024
IN
WRIT PETITION NO. 3624 OF 2024**

Roma Builders Private Limited

.... Applicant

Versus

State of Maharashtra and Ors.

...Respondents

AND
WRIT PETITION NO. 3085 OF 2024

Glider Buildcon Realtors Private Limited
a private limited company incorporated
under Companies Act, 1956 and having
its registered office at Piramal Tower,
8th Floor, Ganpatrao Kadam Marg,
Lower Parel, Mumbai- 400013

....Petitioner

Versus

1. State of Maharashtra,
Through the Government Pleader,
High Court, Mumbai
2. Commissioner of State Tax,
8th Floor, GST Bhavan, Mazgaon,
Mumbai-400010.
3. Deputy Commissioner of State Tax,
E-522, LTU-02, Mumbai
Cabin No. 7, B wing, 4th Floor,
Old Building, GST Bhavan,
Mazgaon, Mumbai- 400010
4. Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
5, Mahapalika Marg, Dhobi Talao,
Chhatrapati Shivaji Terminus Area,
Fort, Mumbai - 400001.
5. The Union of India,
through the Revenue Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

.... Respondents

Mr. V. Sridharan, Senior Advocate a/w Mr. Prakash Shah, Mr. Jas Sanghavi, Mr. Mohit Raval and Mr. Shamik Gupte i/by PDS Legal for the Petitioner in WPL/33260/2023.

Mr. Prakash Shah a/w Mr. Jas Sanghavi, Mr. Mohit Raval and Mr. Shamik Gupte i/by PDS Legal for Petitioner in WP/3085/2024, WP/1762/2024, WP/3624/2024 and IAL/23337/2024, WP/3402/2024, WP/3629/2024.

Ms. Anuja Tirmali i/by Adv. Komal Punjabi for Respondent No. 4/BMC.

Mr. Karan Adik for Respondent No.1 to 5 in WPL/33260/2023.

Mr. Karan Adik a/w Harshad Shingnapurkar for Respondent in WP/3085/2024, WP/1762/2024, WP/3402/2024.

Ms. Maya Majumdar for Respondent No. 5 in WP/3085/2024.

Smt. Jaymala Ostwal a/w Ms. Maya Majumdar for Respondent No. 5 in WPL/10851/2024.

Mr. Subir Kumar a/w Harshad Shingnapurkar a/w Abhinav Palsikar a/w Ashita Aggarwal for Respondent No.2 in WP/3402/2024.

Mr. Subir Kumar a/w Megha Bajoria a/w Abhinav Palsikar a/w Ashita Aggarwal for Respondent No.2 to 4 in WP/3629/2024.

Ms. P. H. Kantharia, G.P a/w Smt. Jyoti Chavan, Addl. G. P in WP/3085/2024, WP/3624/2024 & WPL/33260/2023 and WP/1762/2024 for State of Maharashtra.

Ms. P. H. Kantharia, G.P a/w Smt. Jyoti Chavan, Addl. G. P a/w Smt. Nazia Shaikh, AGP in WP/3402/2024 & WP/3629/2024 for State of Maharashtra.

CORAM

RESERVED ON:
PRONOUNCED ON:

**M.S. Sonak &
Jitendra Jain, JJ.**
22 October 2024
11 November 2024

JUDGMENT : *(Per M. S. Sonak, J.)*

1. Heard learned counsel for the parties.

2. Learned Counsel for the parties agree that a common judgment and order can dispose of these petitions.

3. In Writ Petition (L) No.33260/2023(OS), Writ Petition No.1762/2024(OS), Writ Petition No.3402/2024(OS), Writ Petition No.3629/2024(OS), the challenge is to the show cause notice issued by the respondent under the provisions of the Central Goods and Services Tax Act, 2017 (CGST Act), Integrated Goods and Services Tax Act, 2017 (IGST Act) and Maharashtra Goods and Services Tax Act, 2017 (MGST Act).

4. In Writ Petition No.3624/2024(OS), the challenge is also to the show cause notice, but pending this petition, the show cause notice was disposed of by order dated 30 April 2024. Therefore, leave is applied by interim application (L) No.23337/2024 to amend the petition and to challenge the order dated 30 April 2024. In Writ Petition No.3085/2024(OS), the challenge is to the order dated 29 December 2023, *inter alia*, on the ground that the show cause notice itself was infirm.

5. In effect, therefore, the challenges in these petitions are mainly to the show cause notices issued to the petitioners, giving them an opportunity to show cause as to why the potential demands towards goods and service tax be not enforced against them.

6. The learned Counsel for the respondents submitted that these petitions should not be entertained because the petitioners could always respond to the impugned show cause notices by raising all the pleas now raised in these petitions. They submitted that even if any adverse orders were to be made, they were statutorily appealable. They submitted that none of the

circumstances even remotely justifying the deviation from the rule of exhaustion of alternate remedies were attracted in the present matters. Therefore, they urged the dismissal of these petitions and the relegation of the petitioners to avail of the alternate remedies available to them. They relied upon precedents, which we propose considering in this judgment and order.

7. Mr Sridharan learned Senior Advocate appearing for the petitioners in Writ Petition (L) No.33260/2023 (OS) (and some other matters) and the other Counsel for the petitioners in the connected petitions submitted that the impugned show cause notices were without jurisdiction and there were no disputed questions of fact involved. Therefore, they submitted that these petitions should be entertained instead of relegating the petitioners to the alternate remedies that might be available to them.

8. Mr Sridharan relied on Notification No.12/2017 - Central Tax (Rate) dated 28 June 2017 to submit that this Notification provides for nil rate of tax for services by Central Government, State Government, Union Territories, Local Authorities or Governmental Authority by way of any activity in relation to any function entrusted to the Municipality under Article 243W of the Constitution. He submitted that by the impugned show cause cum demand notices, the petitioners are mainly called upon to pay service tax on services rendered by the Municipal Corporation of Greater Mumbai (MCGM) in relation to the functions entrusted to the MCGM under Article 243W of the Constitution. Accordingly, he submitted that service tax at nil rate of duty was payable on such services, given the Notification dated 28 June 2017 and similar such Notifications covering the fee.

9. Mr Sridharan, in the context of Writ Petition (L) No.33260/2023, which he urged may be treated as the leading petition, submitted a chart, which, according to him, demonstrated that the services rendered by the MCGM pertain to functions entrusted to the MCGM under Article 243W of the Constitution. Based on the same, Mr Sridharan submitted that no service tax or service tax at a nil duty rate was payable for such services. Accordingly, he submitted that no useful purpose would be served by requiring the petitioner to go through the motions of adjudication, appeals, etc. He also pointed out that no seriously disputed questions of fact were involved and, therefore, these petitions may be entertained.

10. Mr Sridharan admitted that some of the demands may not strictly pertain to any activity concerning the functions entrusted to the MCGM under Article 243W of the Constitution. However, he submitted that the bulk of the demands in terms of the chart he prepared and handed over, related to the activities entrusted to the MCGM under Article 243W of the Constitution. He, therefore, submitted that the impugned show cause notices, at least to the extent they pertain to service tax demands on activities in relation to functions entrusted to the MCGM under Article 243W of the Constitution, be interfered with in these matters.

11. Mr Sridharan relied on *East India Commercial Co. Ltd. Calcutta V/s. Collector of Customs, Calcutta*¹, *State of UP and Ors. V/s. Indian Hume Pipe Co. Ltd.*², *Kailash Nath and Anr. V/s. State of UP and Ors.*³, *State of West Bengal and Ors. V/s. North Adjai*

¹ 1983 (13) E.L.T. 1342 (S.C.)

² 1977 (3) TMI 116 (SC)

³ 1957 (2) TMI 44 (SC)

*Coal Co. Ltd.*⁴, *North Adjai Coal Company (P) Ltd. V/s. Commercial Tax Officer and Ors.*⁵ and *Magadh Sugar & Energy Ltd. V/s. State of Bihar and Ors.*⁶ to submit that the rule of exhaustion of alternate remedies is not any constitutional or statutory rule but only a self-imposed restriction. He submitted that in the precedents he relied upon, this convention was departed from, and the reasons which prompted such departure also apply to the facts and circumstances of the present petitions. Therefore, he submitted that these petitions be entertained and the impugned show cause notices, at least to the extent they raise demands regarding the functions entrusted to the MCGM under Article 243W of the Constitution, be quashed and set aside.

12. The learned Counsel for the other petitioners adopted Mr. Sridharan's contentions. They also submitted that the impugned show cause notices were without jurisdiction, so the petitioners should not be relegated to alternate remedies. They submitted that alternate remedies involved pre-deposit of a certain percentage of the demanded taxes. They submitted that the alternate remedies are not efficacious given the clarity of the exemption notifications and the absence of any seriously disputed questions of fact.

13. The rival contentions now fall for our determination.

14. In most of these petitions, the petitioners have questioned the impugned show cause notices cum tax demands without participating in the adjudication process in pursuance of the impugned show cause notices. In one of the petitions, leave is

⁴ 1971 (1) TMI 96 (SC)

⁵ 1966 (1) TMI 64 (Calcutta High Court)

⁶ 2021 SCC OnLine SC 801

sought to amend by challenging the order made on the impugned show cause notice during the petition's pendency. In yet another petition, the challenge is to the order made after adjudication of the show cause notice, among other things, on the ground that the show cause notice was itself without jurisdiction.

15. There is no dispute that the petitioners have remedies of statutory appeals against any orders made after the adjudication of the show cause notices. No case is made out that the adjudicating authorities are precluded or disabled from considering the contentions now raised or urged in these petitions. The main contention is that taxes have been demanded for services in relation to functions entrusted to the MCGM under Article 243W of the Constitution, even though the exemption notifications exempt or precisely impose only a nil tax rate on such services. No case is made out to establish that such a contention cannot be considered by the adjudicating authorities or the appellate authorities should the adjudication be complete and the adjudication orders affect any parties adversely.

16. In Writ Petition (L) No.33260/2023, the petitioners have pleaded in paragraph D12 that the petitioners had come to know that another member of the industries association was served with a show cause notice seeking to levy service tax on the charges paid to MCGM. However, upon adjudication, the CGST and Central Excise Authorities dropped the proceedings.

17. Though no particulars are provided in the pleadings, the petitioners acknowledge that the authorities, upon due examination of the factual aspects and perhaps, on being satisfied that the nil tax rate notifications were indeed attracted, dropped the show cause notices and terminated the adjudication

proceedings. From all this, it is quite apparent that the adjudicating authorities are neither prevented nor disabled from appreciating the petitioners' contentions now raised in these petitions and deciding the matter by following the law.

18. In the lead Writ Petition (L) No.33260/2023 and connected petitions, general averments have been made regarding alleged non-efficaciousness of the alternate remedies. There is no serious attempt to bring the petitioners' case within the parameters of ***Whirlpool Corporation V/s. Registrar of Trade Marks, Mumbai and others***⁷. Based upon such general averments, we are afraid that no case is made out to depart from the usual rule (though self-imposed) regarding the exhaustion of alternate remedies.

19. In the context of exhaustion of alternate remedies, paragraphs 17 and 18 in Writ Petition (L) No.33260/2023 (lead petition) read as follows:

"17. The impugned show cause notice issued by the Respondent No.2 is ex-facie arbitrary, unreasonable, illegal, perverse, capricious, without and/or in excess of jurisdiction and in violation of principles of consistency and judicial discipline and issued in complete abuse of process of law. It is reiterated that the proposal in the said show cause notice is contradictory to the binding Notification no.12/2017-Central Tax (Rate) dated 28.06.2017, Notification no.14/2017-Central Tax (Rate) dt 28.06.2017. It is therefore submitted that the Petitioner is entitled to ad-interim and other reliefs as more particularly prayed for hereinafter.

The Petitioner has made out a strong prima facie case. The balance of convenience is in favour of the Petitioner. Unless ad-interim and interim orders as prayed for herein are passed, grave and irreparable harm and prejudice would be caused to the Petitioner.

18. The Petitioner submits that remedy of adjudication of show cause notice and the subsequent Appellate remedy available under the CGST Act is neither efficacious or adequate nor in the alternative. The Respondent No.2 has issued the impugned show

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(1998) 8 SCC 1

cause notice without and/or in excess of jurisdiction and in violation of principles of consistency and judicial discipline and in complete abuse of process of law. It is a settled legal position that if a proceeding has been initiated without following the prescribed procedure in abuse of process of law and without jurisdiction, then the availability of an alternate remedy cannot act as a bar to the maintainability of a writ petition. Reference is made to the following judgments:

(i) Godrej Sara Lee Ltd. Vs Excise & Taxation Officer cum Assessing Authority⁸,

(ii) State of Uttar Pradesh Vs Indian Hume Pipe Co. Ltd.⁹.”

20. The Notification dated 28 June 2017, relied upon by Mr Sridharan, *inter alia*, provides that service tax at the rate of nil per cent is to be levied on services by the local authority by way of any activity in relation to any functions entrusted to the MCGM under Article 243W of the Constitution. The MCGM may be a “local authority” as contemplated by the exemption notification. However, the question is whether the tax demands concern any activity in relation to the functions entrusted to the MCGM under Article 243W of the Constitution. Considering the demands in the show cause notice, at this stage, we can only say that such determination can be best achieved through the adjudicatory process and not by this Court in the exercise of its extraordinary and summary jurisdiction under Article 226 of the Constitution. Such a determination will undoubtedly involve examining various factual aspects that cannot be conveniently undertaken when exercised in extraordinary and summary jurisdiction under Article 226 of the Constitution.

21. Article 243W of the Constitution deals with powers, authority and responsibilities of Municipalities, etc. This article

⁸ 2023 (384) ELT 8 (SC)

⁹ (1977) 2 SCC 724

provides that subject to the provisions of this Constitution, the legislature of a State may, by law, endow-

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

22. The learned Counsel for the respondents submitted that most of the tax demands may not relate to any functions entrusted to the MCGM under Article 243W of the Constitution. They submitted that in respect of services rendered by MCGM in relation to the functions entrusted to the MCGM under Article 243W of the Constitution, no tax demands have been raised. They submitted that even going by the chart tendered by Mr Sridharan, providing services of fungible FSI or collecting premium for additional FSI, etc. can hardly be described as services in relation to any functions entrusted to the MCGM under Article 243W of the Constitution. They submitted that each activity will have to be scrutinized for determining whether such activity has any relation to any functions entrusted to the MCGM under Article 243W of the Constitution. They submitted that such an exercise can be appropriately carried out by the adjudicating authorities and not this Court under Article 226 of the Constitution.

23. On perusing the impugned show cause notices and the demands therein, we agree with the submission that each of the demands will have to be examined to determine whether the exemption notification relied upon by the petitioners would apply to them. In other words, this is an issue of whether the impugned demands are covered under the exemption notification or the notification providing for nil rate of taxes. This is a routine exercise the adjudicating authorities undertake in the first instance. If the determination of the adjudicating authorities aggrieves any parties, the statute provides for statutory remedies of appeals, etc.

24. The circumstances in which the appeals require some percentage of the demanded tax to be pre-deposited do not render the appellate remedies any less efficacious. Therefore, the petitioners cannot urge a deviation from the general rule of exhaustion of alternate remedies based on such a contention. The practice of instituting petitions bypassing the statutory remedies only to avoid a pre-deposit cannot be encouraged.

25. At this stage, we cannot accept the contentions of the learned Counsel for the petitioners about the petitioners' cases regarding the applicability of the exemption notification being crystal clear. We believe that examining the activities or the services in relation to which the taxes are demanded would be necessary. We also believe there are arguable issues regarding interpretation of functions entrusted to the MCGM under Article 243W of the Constitution. Learned Counsel for the respondents have contended that the demands are in respect of activities that have no relation to any functions entrusted to the MCGM under Article 243W of the Constitution. All these are arguable issues that will involve the examination of factual aspects. Therefore, all

these issues cannot be conveniently addressed in exercising our extraordinary and summary jurisdiction under Article 226 of the Constitution.

26. The learned Counsel for the respondents are not entirely unjustified in contending that all the activities of the MCGM are not necessarily related to the functions entrusted to the MCGM under Article 243W of the Constitution. Certain activities may have a commercial element unrelated to any functions entrusted to the MCGM under Article 243W of the Constitution. It would be futile to contend that the tax demands are without jurisdiction in such a situation. In any event, the issue as to whether the demanded tax is covered by the exemption notification or the nil tax rate notification is an issue that will require adjudication in the facts and circumstances of the present cases. Such adjudication cannot be conveniently undertaken by this Court exercising summary though extraordinary jurisdiction under Article 226 of the Constitution.

27. The contention that these petitions involve no disputed questions of fact cannot be accepted. The factual element regarding each of the demands will have to be examined and evaluated against the backdrop of the exemption or the nil tax rate notifications relied upon by the petitioners. The adjudicating authority will also have to determine whether the activities or services regarding which tax is demanded relate to any functions entrusted to the MCGM under Article 243W of the Constitution. It was fairly conceded that not all the demands in the show cause notice would relate to the exemption notification. This exercise of determining which demands are covered and which are not also cannot be conveniently undertaken by this Court in the first instance. Thus, if entertained, these matters would involve

examination of disputed questions of fact, unlike most of the decisions relied upon by Mr Shridharan.

28. In *Whirlpool Corporation* (supra), 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 batch of petitions. Simply alleging that the impugned show cause notices are without jurisdiction because, according to the petitioners' perception, the exemption covers them, or the nil tax rate notification is insufficient. The usual adjudicatory process, where such a matter can be effectively adjudicated upon, cannot be scuttled by rushing to the writ court and securing stays on the adjudicatory process.

29. In the case of *Prakash Raghunath Autade V/s. Union of India and Ors.*¹⁰, this Court considered and rejected arguments quite like those now raised. The Petitioners were relegated to the alternate remedies.

30. In *Special Director and Another Vs. Mohd. Ghulam Ghouse and another*¹¹ 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 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

¹⁰ WP No.14128/2024 decided on 14.10.2024

¹¹ (2004) 3 SCC 440

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.

31. *In Union of India and others Vs. Coastal Container Transporters Association and others*¹² 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.

32. *In Mahanagar Telephone Nigam Ltd. Vs. Chairman Central Board, Direct Taxes and another*¹³, 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 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.

¹² (2019) 20 SCC 446

¹³ (2004) 6 SCC 431

33. *In Malladi Drugs and Pharma Limited vs. Union of India and another*¹⁴, 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, in the impugned judgment, held that the appellant should first raise all the objections before the authority that issued the show-cause notice. If any adverse order was passed against the appellant, liberty was granted to approach the High Court.

34. Recently, in *The State of Maharashtra and Others V/s. Greatship (India) Limited*¹⁵, the Hon'ble Supreme Court, after referring to its earlier precedents on the subject, held that Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, for instance, where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up, and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But even then, the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely, matters involving the revenue where statutory remedies are available are not such matters. The Court, after referring to its earlier precedent in *United Bank of India V/s. Satyawati Tondon and Others*¹⁶ observed that “we can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the

¹⁴ (2020) 12 SCC 808

¹⁵ 2022 LiveLaw (SC) 784

¹⁶ (2010) 8 SCC 110

proceedings by one device or the other. The practice certainly needs to be strongly discouraged”.

35. In *Greatship (India) Limited* (supra), the Hon’ble Supreme Court did not approve the decision of the High Court to entertain the Writ Petition under Article 226 of the Constitution challenging the assessment order given the statutory alternate remedies available under the Maharashtra Value Added Tax 2002 and the Central Sales Tax Act, 1956. The Court held that the assessee showed no valid reasons to bypass the statutory remedy of appeal and that the Supreme Court has consistently taken the view that when an alternate remedy is available, judicial prudence demands that the courts refrain from exercising its jurisdiction under constitutional provisions.

36. In *Thansingh Nathmal V/s. Superintendent of Taxes, Dhubri and Others*¹⁷, 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.

37. The Constitution Bench held that resorting to this jurisdiction is not intended as an alternative remedy for relief,

¹⁷ AIR 1964 SC 1419

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 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.

38. In *Rattan India Power Limited V/s. The Union of India and Ors.*¹⁸, decided by a coordinate Bench on 13.03.2023, the Writ Petition was dismissed by relegating the petitioner to the alternate remedy before the Appellate Tribunal. Upon an exhaustive analysis of precedents on the subject, including the precedent in *Greatship (India) Limited* (supra) and others, the coordinate Bench declined to entertain the Writ Petition *inter alia* on the ground that statutory appellate remedies were available and factual inquiry was necessary to determine whether the jurisdictional facts were established, or not. The coordinate Bench noted that even the Supreme Court had disapproved the High Court's entertaining Writ

¹⁸

WP No.3201/2021 decided on 13.03.2023

Petitions involving classification disputes or even the applicability of exemption notification when parties had statutory alternate remedies.

39. The learned Counsel for the respondents also relied on *M/s. Nagen Caterer, Santa Sahi, Buxibuzar, Cuttack V/s. Central Board of Indirect Taxes & Customs & Ors.*¹⁹, *Commissioner of Central Excise, Haldia V/s. M/s. Krishna Wax (P) Ltd.*²⁰ and *Union of India V/s. M/s. Auto Ignation Ltd. and Anr.*²¹, which also hold that writ jurisdiction must be exercised with extreme caution, particularly when statutory remedies are sought to be bypassed. *M/s. Auto Ignation Ltd.* (supra) holds that where a *prima facie* case has been made out in the show cause notice, it is for the adjudicating authority to decide all the questions, including questions of fact finally.

40. In *East India Commercial Co. Ltd., Calcutta* (supra), relied upon by Mr Sridharan, the show cause notice for launching proceedings was contrary to the law laid down by the High Court of the same State. In these circumstances, the Hon'ble Supreme Court held that such a show cause notice would be wholly without jurisdiction, and further proceedings based upon such a show cause notice which was wholly without jurisdiction could not be allowed. The position in the present Writ Petitions is not even remotely comparable to the position in the decision cited.

41. Similarly, in *State of UP and Others V/s. Indian Hume Pipe Co. Ltd.* (supra), on facts, the Hon'ble Supreme Court found that there was absolutely no material before the Sales Tax Officer to

¹⁹ 2022 (I) ILR-CUT-729

²⁰ Civil Appeal No.8609/2019 decided on 14.11.2019

²¹ 2002 (2) Mh.L.J. 730

show that any of the hume pipes manufactured and sold by the respondent were meant for use in lavatories, urinals or bath-rooms and, in fact, the material was used entirely the other way, the Sales Tax Officer was not at all justified in holding that they were sanitary fittings. In these peculiar facts about which there was no dispute whatsoever, the Hon'ble Supreme Court did interfere after making it clear that if at any time the material is produced before the sales tax authorities establishes that in a given case, the Hume pipes were meant for use in a bathroom, lavatory, urinal, etc., then the notification of the Government would be attracted and the assessee must be liable to be taxed at the rate of 7 percent. Again, the factual position in this case is not comparable to the position in the petitions at hand. Accordingly, even this decision is of no assistance to the petitioners.

42. In *Kailash Nath and Anr.* (supra), a petition was entertained under Article 32 of the Constitution after it was established that the exemption notification clearly covered the petitioners, and still, there was insistence on tax payment. The position of the precedents in *North Adjai Coal Co. Ltd.* (supra) is also the same. The facts in the said case were not in dispute. Therefore, the High Court's order entertaining the Writ Petition without requiring the parties to exhaust the alternate remedies was not interfered with.

43. In the present petitions, the issue of whether the petitioners' cases are covered by the exemption notification or the nil tax rate notification is debatable. The petitioners themselves accept that some of the services in the SCN may attract exemption and others may not. Ordinarily, SCNs cannot be split or quashed, especially where there are arguable issues on either side. In any case, the resolution would require examination into several factual aspects.

In such situations, the contention of the SCN being wholly without jurisdiction cannot be accepted.

44. In *Magadh Sugar & Energy Ltd.* (supra), the Hon'ble Supreme Court noted that there was no dispute about the nature of the transaction between the appellant and BSEB. No disputed questions of fact or even mixed questions of law and fact were involved. Given the complete absence of dispute on facts, the Court found that the impugned orders were "wholly without jurisdiction". In these circumstances, the Hon'ble Supreme Court held that the High Court should have entertained the Writ Petition instead of relegating the petitioner to the alternate remedy available under the statute. Again, the facts in the present petitions are not comparable. Here, the matters involve adjudication into disputed questions of fact. Therefore, even the decision in *Magadh Sugar & Energy Ltd.* (supra) cannot assist the petitioners' cause.

45. In *Viswaat Chemicals Ltd. and Anr. V/s. Union of India and Ors.*²², we were constrained to observe that several petitions are instituted to question show cause notices even though most of such petitions do not satisfy the parameters the Hon'ble Supreme Court has laid down in *Whirlpool Corporation Ltd.* (supra). The entire objective of instituting such petitions was to wriggle out some orders by taking undue advantage of the pressure on the Court's dockets or to otherwise keep such matters pending and delay the adjudication proceedings by staying the adjudication process. In some cases, the objective was to avoid the provisions requiring pre-deposit of some of the portion of the demanded amounts as a pre-condition for institution or hearing of the statutory appeals. This

²²

WP (L) No.27725/2024 decided on 14.10.2024

Court's extraordinary and equitable jurisdiction under Article 226 of the Constitution cannot be allowed to be used for such purposes.

46. In *Dow Chemical International Pvt. Ltd. V/s. Commissioner of Customs NS-II Special Investigation and Intelligence Branch (X) and Anr.*²³, we were again constrained to observe that of late, almost as a matter of routine, the petitions are filed to challenge show cause notices by trying to portray that the case falls within one of the parameters prescribed by the Hon'ble Supreme Court when, most often, that is not the case. We noted that several times, non-serious challenges are thrown at the constitutionality of the provisions, only to avoid exhausting the alternate remedies provided by the statute or complying with the requirement of pre-deposit of the demanded tax amount. By relying upon several precedents of the Hon'ble Supreme Court, we pointed out that such an approach could neither be approved nor encouraged.

47. Thus, for all the above reasons, we are satisfied that no case has been made by any of the petitioners to bypass the statutory alternate remedies and insist upon the entertainment of these petitions. No case is also made to grant the petitioner in Writ Petition No.3624/2024 leave to amend the Writ Petition and challenge the order dated 30 April 2024. So also, no case is made out to entertain the challenge to the order made in Writ Petition No.3085/2024. This is because these petitioners have alternate remedies of appeal, etc., under the various statutes which govern them.

48. These petitions are accordingly dismissed but with liberty to the petitioners to avail of the alternate remedies. If any petitioners have yet to file any responses to the impugned show cause notices,

²³

WP No.11178/2024 decided on 21.10.2024

we grant them six weeks to do so. Similarly, we grant the petitioners in Writ Petition No.3624/2024, 3629/2024 and 3085/2024 six weeks to institute appeals against the adjudication orders before the appropriate appellate authority. If such appeals are filed within six weeks from today, and after complying with the prescribed conditions for filing such appeals, including pre-deposit, the appellate authority must consider such appeals on their own merits and as per the law.

49. All parties' contentions in these petitions are left open because we have not adverted to any of the parties' contentions on the merits of the matter. All that we have held is that the petitioners have no justification for instituting these petitions without exhausting the alternate remedies available to them.

50. All these petitions are disposed of with liberties as aforesaid. Interim orders, if any, are vacated. There shall be no order for costs.

51. Interim applications are also disposed of with liberties in the above terms.

52. All concerned can act on an authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)