Priya Soparkar

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

WRIT PETITION NO. 4605 OF 2024
WITH
INTERIM APPLICATION NO.3469 OF 2024
IN
WRIT PETITION NO.4605 OF 2024

PayU Payments Private Limited ...Petitioner
a company incorporated under
the Companies Act, 2013, having
its Registered Office 1st Floor, 139
140/B, Wallace Towers, Crossing of
Sahar Road, Near Garware House,
Vile Parle (East), Mumbai – 400057
and Corporate office at Bestech
Business Tower, Sohna Road,
Sector 48, Gurugram,
Haryana- 122018.

Versus

1. The Union of India, through ...Respondents
the Secretary (Revenue),
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.

2. The Joint Director,
Directorate General of GST
Intelligence, Mumbai Zonal
Unit, N.T.C. House, 3rd Floor,
15 N.M. Road, Ballard Estate,
Mumbai-400001.

3. The Additional / Joint Commissioner,
CGST & C.Ex., Gurugram, Commissionerate,
having his/her office at Plot No.36-37,
Sector 32, Gurugram 122001.

4. The Assistant Commissioner
(Circle-3), Audit Gurugram,
Plot No. 24, Mudit Square,
Sector-32, Gurugram,
Haryana-122001.

Mr. Darius Shroff, Senior Advocate with Mr. Prasad Paranjape, Mr. Sanjeev Nair and Mr. Kevin Gogri i/by M/s Lumiere Law Partner, Advocates for the Petitioner.
Mr. J. B. Mishra with Ms. Sangeeta Yadav, Advocates for the Respondents.

CORAM **M.S. Sonak &**
Jitendra Shantilal Jain, JJ.
DATED: **10th December 2024**

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

INTERIM APPLICATION NO.3469 OF 2024
IN
WRIT PETITION NO.4605 OF 2024

1. This Interim Application seeks to carry out the formal amendment in the cause-title to the Petition.

2. The amendment is allowed. The amendment to be carried out forthwith. Re-verification is dispensed with.

3. Interim Application is disposed of.

WRIT PETITION NO. 4605 OF 2024

4. Heard learned counsel for the parties.

5. This is yet another case where the Petitioner has rushed to this Court to challenge a show cause notice dated 2nd August 2024 issued by the Directorate General of GST Intelligence ("DGGI").

6. Mr. Shroff, learned senior counsel for the Petitioner, submits that the Petitioner was audited for the precise period in question. He submits that complete disclosures were made during the audit, and the audit team flagged specific issues. The Petitioner agreed to the audit team's observations and voluntarily deposited the amount vide DRC-03 debit entries dated 19 August 2023 and 23 August 2023. For this, Mr. Shroff referred to the audit report and the observations at paragraph No.9.

7. Mr. Shroff submitted that once the Petitioner was audited and complete disclosures were made, there was no justification for either alleging any suppression or invoking the extended period of limitation under section 74 of the Central Goods and Services Tax Act, 2017 ("CGST Act"). He also referred to Explanation 2 in section 74, which defines "suppression" for the purposes of section 74 and the invocation of an extended period of limitation.

8. Mr. Shroff submitted that the Petitioner has suppressed nothing, and the show cause notice also does not allege the precise nature of suppression. He submitted that under such circumstances, issuing the impugned show cause notice by invoking the extended limitation period is an exercise in excess of jurisdiction. Therefore, he submits that the impugned show cause notice is without jurisdiction and must be interfered with at this stage.

9. Mr. Shroff submitted that in terms of the recommendations of the Treatment Committee of GST Council exempted all payments involved in settlement of transactions intermediaries over digital networks up to Rs.2,000/-. He submitted that the Petitioner, based upon this, was not liable to pay any GST on transactions up to Rs.2,000/-. He submitted that a mere claim for input tax credit does not amount to any suppression or fraud for invocation of the provisions of section 74 of the CGST Act.

10. Mr. Shroff submitted that the Treatment Committee of the GST has already expressed a view that exemption is available to Merchant banks and not to others. He submitted that such a view contradicts the explanation to the exemption notification. He submitted that once the Treatment Committee has taken this view, it is impossible to expect the Joint Director, DGGI-the Adjudicating Authority, to take any different view on the matter. He, therefore, submitted that the impugned show cause notice is only lip service to the principles of natural justice and fair play. Mr. Shroff submits that this is another reason the Court should interfere with the impugned show cause notice without requiring the Petitioner to file any reply or face any adjudication proceedings.

11. Mr. Mishra, learned counsel for the Respondents, submits that full opportunity will be offered to the Petitioner, and there is no case made out to interfere with the impugned show cause notice. He refers to the findings of the investigations based upon which a decision was taken to issue a show cause notice to the Petitioner. He submits that those findings make out the *prima facie* case of suppression and call for the invocation of an extended limitation period. He submits that all the contentions can be raised in response to the show cause notice. He submitted that there is no jurisdictional error and the contentions now raised would involve investigations into factual matters. Therefore, he submitted that this petition may not be entertained.

12. The rival contentions are now fall for our determination.

13. The record shows that the Petitioner was audited, and an audit report was prepared on September 26, 2023. However, the impugned show-cause notice refers to the Petitioner's response at the pre-show-cause stage, after the audit report was prepared. Clause 3.5 of the show-cause notice refers to the statement of the petitioner's Finance Manager, which was recorded on July 1, 2024. These statements accept that the Petitioner is not registered as a Bank but a payment aggregator as per the RBI norms.

14. The show cause notice also refers to the agreement between the Petitioner and M/s HDFC Bank Limited, i.e. an acquiring bank. The Senior Vice President of HDFC Bank Limited has also made a statement, which is referred to in the show cause notice. This statement is also post the audit report relied upon by the Petitioner. This statement also indicates that HDFC Bank was executing all the functions ascribed to an acquiring bank to the transactions with the Petitioner for authorisation and processing the credit.

15. Based upon, *inter-alia* the above statements which were recorded after the audit report now relied upon by the Petitioner, the show cause notice alleges that at least *prima facie,* the Petitioner was not entitled to exemption but has still availed of the exemption and/or has availed the input tax credit on such transactions. At this stage, what is relevant is that the show cause notice is based upon findings of investigations that were ordered into the matter. No doubt, such findings are necessarily tentative. The scope of judicial review is extremely narrow at the stage of issuing a show cause notice. At this stage, we cannot be expected to decide whether the factual allegations are correct or not, but we do not think that any case is made to halt further proceedings under the show-cause notice.

16. Even the audit report had flagged certain issues which the Petitioner then admitted. Section 65(7) of the CGST Act, 2017, which deals *inter-alia* with audit, provides that where the audit conducted under sub-section (1) results in the detection of tax not paid, or short paid or erroneously refunded or input tax credit wrongly availed or utilised, the proper Officer may initiate action under sections 73 or 74.

17. Therefore, based on the premise that the audit had cleared the Petitioner or that allegedly complete disclosures were made during the audit, no case is made to interfere with the impugned show cause notice or the invocation of section 74 of the CGST Act. In any event, the contentions can always be raised in response to the show cause notice, and there is no reason to believe that such defences would not be considered and dealt with in accordance with the law.

18. The contentions based on the Treatment Committee's discussion and recommendations also do not affect the case. The Treatment Committee may have made certain recommendations. However, if, according to the Petitioner, such recommendations are contrary to the exemption notification or the explanation in the exemption notification, it is for them to urge this ground by providing sufficient factual basis to sustain their contentions but by alleging that the adjudicating authorities will never take some different view, no case is made out to insist for interference with the show cause notice itself.

19. Incidentally, the audit report had referred to the wrongful input tax credit to the extent of Rs.6,20,590/-. The investigations have now *prima facie* revealed availment and utilisation to the extent of Rs.38.33 crores. Again, we do not say that all these must be accepted as correct at this stage. The Petitioner is at liberty to point out how this is not correct. But, based upon all these materials, we are not satisfied that a case has been made to interfere with the show cause notice itself.

20. In the case of ***Oberoi Constructions Limited Vs. Union of India and ors.,Writ Petition (L) No.33260 of 2023 and connected matters decided on 11th November, 2024***, we have discussed several precedents on the issue of exhaustion of alternate remedies. By adopting the reasoning in the said decision, we are not inclined to interfere with the impugned show cause notice in this case.

21. In the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998)8 SCC 1***, the Hon'ble Supreme Court has explained that the writ petition may be entertained at the show cause notice stage, where the Petitioner seeks enforcement of any fundamental rights, where there is violation of the principles of natural justice or where the order or the proceedings are wholly without jurisdiction. We are satisfied that under all these circumstances are not made out in this case, and the Petitioner is only bent upon taking a chance to see if the proceedings are halted or hurdles are created in them.

22. In the case of ***The Special Director and another Vs. Mohd. Ghulam Ghouse and another, (2024)3 SCC 440***, 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 law for absolute want of jurisdiction of the authority and to investigate the acts, the writ petition should not be entertained, for mere asking and as a matter of routine. The writ petitioner should merely be directed to respond to the show cause notice and raise all defences and contentions that may be highlighted in the petition. Whether the show cause notice was found on any legal terms is a jurisdictional issue, the recipient can urge before the authority issuing the notice. That issue can also be adjudicated by the the authority initially issuing the notice before the party approaches the Court.

23. Applying the ratio of the above decisions to the facts of this case, we are satisfied that no case is made out to interfere with the impugned show cause notice.

24. For all the above reasons, we dismiss this Petition without any order of costs.

25. At this stage, Mr. Shroff submits that Petitioner be granted four weeks to file a reply to the impugned show cause notice. The request is reasonable, and if the Petitioner files a reply within four weeks from the date of uploading the present order, such reply should be considered by the Adjudicating Authority.

26. This petition is dismissed without costs. However, the time to file a reply to the show cause notice is extended by four weeks as requested.

(Jitendra Shantilal Jain, J.) **(M.S. Sonak, J.)**