# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Dated : 19.11.2024**

**Coram:**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.34551 of 2024**
**and W.M.P.Nos.37458 & 37459 of 2024**

M/s.Ethiraj Timbers Private Limited,
Rep. by its Managing Director,
T.E.Giridharar Raj
No.249, Sydenhams Road,
Chennai – 600 003.

...Petitioner

Versus

1.Union of India,
Rep. by its Secretary Revenue,
Ministry of Finance,
128 A, North Block,
New Delhi – 110 001.

2.The Assistant Commissioner of GST
and Central Excise,
Central Goods and Service Tax Commissionerate,
Chennai North, M.G.Road,
Nungambakkam, Chennai – 600 034.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call upon the records pertaining to the Show Cause Notice

No.GEXCOM/AE/INV/GST/4744/2024 – AE dated 01.08.2024 and the Din No.20240759XM000000B2B0 on the file of the 2nd respondent and to quash the same.

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|---|---|---|
| For Petitioner | : | Mr.J.V.Niranjan |
| For Respondents | : | Mr.K.S.Ramaswamy,<br>Senior Standing Counsel |

**ORDER**

Mr.K.S.Ramaswamy, learned Senior Standing Counsel takes notice for the respondents.

2. The present writ petition has been filed by the petitioner challenging the show cause notice dated 01.08.2024 issued by the 2nd respondent on the premise that the petitioner is admittedly engaged in circular trading and thus, any proposal to reverse the ITC would be contrary to Circular No.171/03/2022- GST dated 06.07.2022.

3. The learned counsel for the petitioner submitted that once the impugned show cause notice proceeds on the basis that there is a circular trading, then the respondent authorities would impose only penalty and there cannot be any proposal for reversal of ITC.

4. *Per Contra*, the learned Senior Standing Counsel appearing for the respondents submitted that the present writ petition has been filed by the petitioner challenging the Show Cause Notice is premature and thus, ought not to be entertained at the stage of Show Cause Notice. Moreover, ITC availed wrongly/fraudulently would be contrary to public policy. This Court is not inclined to examine the merits or otherwise of the case. This Court would only agree that the writ petition ought not be entertained at the stage of show cause notice except in exceptional circumstances. In this regard, it may be relevant to refer to the following judgments:

> ***i) Union of India Vs. Hindalco Industries*** reported in ***(2003) 5 SCC 194:***
>
> "12. *There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution either at the stage of the show-cause notice or at the stage of assessment where alternative remedy by way of filing a reply or appeal. ..."*
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> ***ii) State of U.P. Vs. Anil Kumar Ramesh Chandra Glass Works*** reported in ***(2005) 11 SCC 451 :***
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> "*6. ...In any event, this Court had repeatedly held that Article 226 should not be permitted to be invoked in order to challenge show-cause notices. ..."*

***iii) Union of India Vs. Kunisetty Satyanarayana*** reported in ***(2006) 12 SCC 28 :***

"*15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.*"

***iv) Special Director Vs. Mohd. Ghulam Ghouse*** reported in ***(2004) 3 SCC 440 :***

"*5.This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. ...*"

5. It may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of ***CIT Vs. Vijaybhai N. Chandrani*** reported in ***(2013) 14 SCC 661,*** wherein, while dealing with the challenge of the high court rejecting the writ petition filed against the show cause notice it was observed as under:

> *"14. .....In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the assessing authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act."*

6. In view thereof, it is open to the petitioner to file their objections to the show cause notice, within a period of four (4) weeks from the date of receipt of a copy of this order. If any such objections/reply is filed by the petitioner, the respondents shall consider the same, in accordance with law and after affording the petitioner a reasonable opportunity of hearing, proceed with assessment/adjudication process keeping in view that this

Court has not expressed any view of merits.

7. This writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**19.11.2024**

mrr
Index : Yes/No
Neutral Citation: Yes/No
Speaking Order (or) Non-Speaking Order

To

1.The Secretary (Revenue),
Ministry of Finance,
128 A, North Block,
New Delhi – 110 001.

2.The Assistant Commissioner of GST
and Central Excise,
Central Goods and Service Tax Commissionerate,
Chennai North,
M.G.Road,
Nungambakkam,
Chennai – 600 034.

**MOHAMMED SHAFFIQ, J.**

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