IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12685 OF 2024

Varalaxmi Construction Co. ...Petitioner
Versus
Union of India & Ors. ...Respondents

Ms. Deepali Kamble for the Petitioner.
Mr. Ram Ochani a/w Niyati Mankad (through VC) and Priyanka Singh for Respondent Nos.1 to 3.

CORAM : M.S. Sonak &
Advait M. Sethna, JJ.

DATED : 08 September 2025

P.C.:- ***(Per M. S. Sonak, J.)***

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable immediately at the request of and with the consent of learned counsel for the parties.

3. At the outset we refer to the order dated 9 September 2024 made by our coordinate Bench, which reads thus: -

> ***"P.C.:***
>
> *1. Three show cause notices were issued to petitioner, details of which are in Paragraph No. 3 of the petition. Two show cause notices dated 6th October 2021 and 27th April 2021 for Rs.49,98,447/- and Rs.1,05,31,520/-, respectively, have been*

withdrawn. What remains is the show cause notice dated 30th December 2020 for Rs.3,26,07,913/-.

2. One of the main ground raised in the petition is that this show cause notice is not preceded by pre-consultation which is mandatory as per circular issued by the Central Board of Excise and Customs (the Board). Ms.Kamble submitted that though Section 73 of the Finance Act, 1994 provides for issuance of show cause notice for non payment of service tax, and though it does not specifically provide that the show cause notice should be preceded by pre-consultation, the same has been incorporated by virtue of Master Circular dated 10th March 2017 issued by the Board and subsequently clarified by the circular dated 19th November 2020. Ms.Kamble submitted that the circular dated 10th March 2017 expressly provides that where the amount involves demand of duty above Rs.50 Lakhs, pre show cause notice consultation is mandatory. Ms. Kamble submitted that therefore as held by various courts the show cause notice itself has to be quashed and set aside and consequently the impugned order dated 1st May 2024 based on the said show cause notice also cannot survive and has to be quashed.

3. Mr. Ochani stated that though the petition may have been served in July 2024, he received instructions to appear in the matter only yesterday and copy of the petition was also handed over to him by Ms.Kamble in the court. It is rather shocking that the officers do not even take the matters seriously and give prompt instructions. We have repeatedly observed that such inaction on the part of the officers would result in great prejudice being caused to the Government of India. We would place the responsibility at the door steps of the Principal Commissioners who are probably not ensuring their officers give prompt instructions to its advocate.

4. We have perused the impugned order where there is no reference to any pre-consultation notice or any pre-consultation. Mr. Ochani however submits that in Paragraph No. 3.2 of the impugned order (internal page no. 4 of 20) there is a reference to letter dated 8th June 2020 where petitioner has been allegedly asked to submit documents and petitioner failed to respond. Ms. Kamble promptly interjected to say no such notice has been however received by petitioner. Ms. Kamble also submitted that it is averred in Paragraph No.10(C) that at that time the firm was physically *closed due to corona pandemic and opened only in November 2020.*

5. Mr. Ochani also submitted that admittedly petitioner had appeared before the officer concerned and based on the discussion the second and third show cause notices referred to earlier were recalled. Mr. Ochani therefore requests that some short time be given to enable him to take instructions and file an affidavit in reply by also referring to the file notings as to whether any such pre show cause notice discussion or consultation happens. Mr. Ochani also has an ingenious point to submit that there is no format prescribed for any pre-consultation notice.

6. In the circumstances, though we are unhappy with the fact that respondent did not give prompt instructions, purely by way of indulgence we would grant an opportunity to respondent to file an affidavit in reply. The same shall be filed with specific reference to the points noted above and copy served on or before 27th September 2024. Rejoinder, if any, to be filed and copy served by 4th October 2024.

7. Stand over to 14th October 2024.

8. Until 30th November 2024, there shall be Ad-interim in terms of prayer clause (d) which reads as under :

> *(d) That pending the hearing and final disposal of this Petition this Hon'ble Court be pleased to by an order and injunction restrain the Respondents by themselves, their officers subordinates servants and agents to refrain from acting upon or taking any further proceedings/action in against the Petitioner."*

4. Thus, only the challenge to the show cause notice dated 30 December 2020 survives. One of the main grounds raised in this Writ Petition is that this show cause notice was not preceded by pre-consultation, which, the Petitioner contends, was mandatory given the circular No.1053/2/2017-CX dated 10 March 2017 issued by the Central Board of Excise & Customs, New Delhi (CBEC).

5. In pursuance of the order dated 9 September 2024, an affidavit has been filed on behalf of the Respondents. In paragraph 14 of this affidavit, it is stated that by letter dated 8 June 2020, information on returns/financials was sought from the Petitioner, and this letter was dispatched to the Petitioner on 15 June 2020. However, this letter was returned by the postal authorities with the remark “unclaimed”. Based upon this, it is contended that the requirement of pre-consultation stands fulfilled.

6. Mr. Ochani further argued that this requirement of pre-consultation may not be mandatory, and in any event, this issue was pending before the Hon’ble Supreme Court.

7. Ms. Kamble learned counsel for the Petitioner submitted that the Gujarat High Court and the Delhi High Court, by reference to the circular dated 10 March 2017, have held the requirement of pre-consultation as a mandatory requirement. Accordingly, she submitted that this was a case of failure to comply with a mandatory requirement.

8. Ms. Kamble further submitted that the letter dated 8 June 2020 seeking some information from the Petitioner does not amount to pre-consultation. Further, and in any event, she points out that this notice was issued when the Covid-19 pandemic was raging and therefore, the circumstance that this letter was unclaimed ought not to be held against the Petitioner.

9. The rival contentions fall for our determination.

10. Though the impugned show cause notice was issued under Section 73 of the Finance Act, 1994, and this provision does not speak about any pre-consultation as such, reference will have to be made to the CBEC circular dated 10 March 2017, relied upon by the Petitioner.

11. Clause 5.0 of the circular dated 10 May 2017 reads as follows: -

> *"5.0* ***Consultation with the noticee before issue of Show Cause Notice :*** *Board has made pre show cause notice consultation by the Principal Commissioner/Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs.50 lakhs (except for preventive/offence related SCN's) mandatory vide instruction issued from F. No. 1080/09/DLA/MISC/15, dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice."*

12. In ***Jay Mahakali Industrial Service Vs. Union of India, a Division Bench of the Gujarat High Court,*** has held that the requirement of pre-consultation where the demand of duty is above Rs. 50 lakhs (except for preventive/office-related show cause notices) is mandatory.

13. Similarly, the Delhi High Court in the case of ***Amadeus India Pvt. Ltd. Vs. Principal Commissioner***[1] has also held that the requirement of pre-consultation before issuance of a show cause notice involving a demand of more than Rs. 50 lakhs is mandatory.

[1] 2019-TIOL-1027-HC-DEL-ST

14. Mr. Ochani submitted that the decision of the Delhi High Court in the case of ***Amadeus India Pvt. Ltd.*** (supra) has been challenged before the Hon'ble Supreme Court, and the matter is pending. However, he agreed that the Hon'ble Supreme Court granted no stay. Mr. Ochani also submitted that the Petitioner replied to the impugned show cause notice, and this fact was suppressed. Admittedly, the reply to the show cause notice is annexed to the Petition at Exhibit-D.

15. Considering clause 5.0 of the CBEC circular and the decisions of the Gujarat High Court and the Delhi High Court, we are of the opinion that the requirement of pre-consultation should have been followed in this matter. Even if we were to assume that the letter dated 8 June 2020 was an invitation to a pre-consultation, the record still bears out that the Petitioner did not actually receive such a letter. There can be no dispute that at the time when the letter was sent, the COVID-19 pandemic was raging. On a cumulative consideration of these circumstances, we are satisfied that this requirement of pre-consultation was not complied with in this case.

16. On the above short ground, we set aside the impugned show cause notice dated 30 December 2020 and the order in original dated 1 May 2024 based upon the impugned show cause notice and grant the Respondents liberty to hold a pre-consultation as required under the circular. Since we had stayed further action, the issue of limitation will not arise provided the pre-consultation

notice is issued within six weeks from the date of uploading of this order. The Petitioner must also co-operate with the Respondents should a pre-consultation notice be issued to them within four weeks from the date of uploading this order.

17. The rule is made absolute in the above terms without any costs. All concerned must act on an authenticated copy of this order.

18. All contentions of all parties on the merits are explicitly kept open because we have not examined the same.

(Advait M. Sethna, J) **(M.S. Sonak, J.)**