

Sayali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 16140 OF 2024

Rishi Techtex Ltd ...Petitioner

Versus

Union of India and Others ...Respondents

**SAYALI
DEEPAK
UPASANI**

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SAYALI DEEPAK
UPASANI
Date: 2025.11.27
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WITH

WRIT PETITION NO. 18015 OF 2024

Rahul Chunnilal Visariya ...Petitioner

Versus

Union of India and Others ...Respondents

WITH

WRIT PETITION NO. 18016 OF 2024

Goodluck Agronet Industries ...Petitioner

Versus

Union of India and Others ...Respondents

WITH

WRIT PETITION NO. 18014 OF 2024

Kisan Agronet Industries ...Petitioner

Versus

Union of India and Others ...Respondents

WITH

WRIT PETITION NO. 18013 OF 2024

Green Shade Net Industries ...Petitioner

Versus

Union of India and Others ...Respondents

Mr Prakash Shah, Senior Advocate with Mr. Jas Sanghavi, Mr. Vikas Poojary i/b PDS Legal , for Petitioner.

Mr. Subir Kumar with Niyati Mankad with Ms. Priyanka Singh with Ms. Ashita Agarwal, for Respondent Nos. 4 to 7.

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

DATED: 24 NOVEMBER 2025

ORAL ORDER:- *(Per M. S. Sonak, J.)*

1. The learned Counsel for the parties state that these matters can be disposed of by a common order. In all these matters, the challenge is to the show cause notices dated 29 March 2024.

2. Mr Shah, the learned Senior Advocate, submits that the Authorities under the erstwhile Central Excise Act, 1944, have favoured the classification proposed by the Petitioners. He submits that there is now an amendment to the Customs Tariff Act that also supports the classification proposed by the Petitioners. He also refers to certain decisions of the original and Appellate Authorities under the GST Act, which, according to him, would support the Petitioners' classification case. He submits that all these decisions and amendments bind the Authorities under the GST Act, and the issuance of the impugned show cause notice is, therefore, "*wholly without jurisdiction*".

3. Mr Kumar, the learned Counsel for the Respondents, submits that presently, only a show cause notice has been issued

to the Petitioners and that it is open to the Petitioners to raise all permissible contentions or to rely upon all decisions and amendments which the Petitioners claim support their case of classification before the Adjudicating Authority. He submits that based upon the contentions now raised, this Court may not deviate from the rule of exhaustion of alternate remedies and entertain such a Petition.

4. Having considered the competing arguments, we are satisfied that this is a case where the Petitioners must, if they wish, respond to the show cause notice, raise all permissible defences, and produce all the material being sought in this Court for the first time. The Adjudicating Authority would be best placed to assess such defences and examine such material when deciding the classification issue.

5. The proper Adjudicating Authority has issued the show cause notice. In that sense, we cannot proceed on the basis that the issuance of this show cause notice is entirely without jurisdiction. The arguments now advanced can as well be considered by the adjudicating authority. Even arguments based on prior classification orders would require determining whether the goods are identical. This assessment can best be undertaken by the adjudicating authority.

6. When the law has provided for assessment through such specialised authorities, followed by tiers of appellate remedies, there is no point in this Court short-circuiting this salutary procedure prescribed by the statute and stalling the

adjudicatory process. This case, based on the arguments advanced, does not fall within the exceptions carved out in **Whirlpool Corporation v. Registrar of Trade Marks**¹

7. In the present matters, we are satisfied that these are not extraordinary cases in which we should circumvent or short-circuit the statutory remedies and entertain these Petitions. Ultimately, this is an issue of classification, and some investigation would be necessary to determine whether the decisions on which Mr Shah relies indeed apply to the products in question or whether there are any distinguishing features. Such an exercise can be best conducted by the Adjudicating Authority in the first instance.

8. In the case of **Union of India V. Coastal Container Transporters Association**², the Hon'ble Supreme Court did not approve the action of the High Court in quashing show cause notices, particularly when they related to the issue of classification. The Hon'ble Supreme Court held that where the case was neither a lack of jurisdiction nor any violation of the 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, an appeal lies to the Supreme Court. The Court held that in such circumstances, the Petitioner should be directed to respond to the show cause notices by placing all material in support of his stand so that the authority

¹ [1998] 8 SCC 1

² (2019) 62 GSTR 398

which has issued the show cause notice can examine the same and decide the issue.

9. In **Special Director V. Mohd. Ghulam Ghouse**³, the Hon'ble Supreme Court, has explained that unless the show cause notice which is impugned before the High Court was '*totally non-est in the eyes of the law*' or there was "*an absolute want of jurisdiction of the authority even to investigate the facts*", writ petitions should not be entertained for the mere asking and as a matter of routine. The Court held that the writ petitioner should invariably be directed to respond to the show cause notice and raise all defences and contentions which may be highlighted in the writ petition. The Court held that whether the show cause notice was founded on any legal premises or the jurisdictional issue, the recipient can urge it before the authority issuing the notice. Such issues can also be adjudicated by the authority issuing the notice.

10. In the case of **Mahanagar Telephone Nigam Ltd V. Chairman, Central Board, Direct Taxes (No.14) 2004 6 SCC 431**, the Hon'ble Supreme Court held that the litigation against show cause notices should not be encouraged. The Court held that even after adjudication, the Petitioner could still challenge the order by filing an appeal before the Appellate Authority.

11. Similarly, in the case of **Malladi Drugs and Pharma Ltd. Vs. In the Union of India**⁴, the Hon'ble Supreme Court approved

³ (2004) 3 SCC 440

⁴ (2020) 12 SCC 808

the action of the High Court in dismissing the writ petition against the mere show-cause notice. The High Court in that case held that the Petitioner should first raise all objections before the authority that issued the show cause notice.

12. In the case of the **State of Maharashtra V. Greatship (India) Limited**, the Hon'ble Supreme Court, after examining its earlier precedents on the issue of alternative remedies, held that Article 226 is not intended "*to short-circuit or circumvent statutory procedures.*" It is only when statutory remedies are entirely unsuitable to address extraordinary situations—for instance, when the very validity of the statute's vires is in question or when private or public wrongs are inseparably intertwined and require prevention of public injury and the vindication of public justice—that recourse to Article 226 of the Constitution may be justified; such exceptional jurisdiction can be invoked. However, even then, the Court must have substantial and compelling reasons to bypass the statutory alternative remedy. The Hon'ble Supreme Court further observed that, clearly, matters involving revenue, where statutory remedies are available, do not fall under such exceptional circumstances.

13. In **United Bank of India v. Satyawati Tondon & Ors.**⁵, the Hon'ble Supreme Court observed, "*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*

⁵ (2010) 8 SCC 110

obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged”.

14. In the case of **Oberoi Constructions Ltd Vs Union of India & Ors⁶**, we had the occasion to discuss the law and several legal precedents about exhaustion of alternate remedies. By adopting the reasoning therein and following the precedents referred to therein, we decline to entertain this Petition, leaving it open to the Petitioners to raise all contentions in response to the show cause notice. This would include the contentions now raised in this Petition or urged before us.

15. For all the above reasons, we dismiss these Petitions, leaving it open to the Petitioners to raise all permissible contentions before the Adjudicating Authority and to place all necessary material before the Adjudicating Authority.

16. Mr. Shah states that a reply has already been filed pursuant to this Court’s order dated 10 December 2024. If so, the Adjudicating Authority should consider the said reply, hear the Petitioners, and pass appropriate orders in accordance with law after taking into consideration the contentions raised in the said reply, including the contentions which are the subject matter of these Petitions.

17. We clarify that we have not adjudicated upon any of the contentions on merits or any of the contentions now raised in these Petitions, and therefore, it will be for the Adjudicating

⁶ 2024 SCC OnLine 3508

Authority to first consider such contentions when dealing with the Petitioners' replies to the show cause notices. We have adverted to the contentions for the limited purpose of deciding whether any exceptional case for bypassing the statutorily provided alternate remedies is made out. All contentions of all parties are explicitly left open for decision by the Adjudicating Authority in the first instance.

18. With the above liberty, these Petitions are dismissed without any costs order.

(Advait M. Sethna, J)

(M.S. Sonak, J)