

[2024] 167 taxmann.com 450 (Bombay)/[2024] 91 GSTL 114 (Bombay)/[2024] 106 GST 818 (Bombay)[14-10-2024]

GST : Where assessee filed writ petition alleging vagueness in show cause notice, since said notice was not vague and contained all relevant particulars, allegation of assessee was misconceived; thus, petition of assessee was to be dismissed with cost of Rs. 5 lakhs



[2024] 167 taxmann.com 450 (Bombay)

HIGH COURT OF BOMBAY

Viswaat Chemicals Ltd.

v.

Union of india*

**M.S. SONAK AND JITENDRA JAIN, JJ.
WRIT PETITION (L) NO. 27725 OF 2024
OCTOBER 14, 2024**

Demands - Tax or ITC not involving fraud, etc. - Show cause notice, defects in - Violation of natural justice - A show cause notice was issued to assessee and thereafter impugned adjudication order was passed - Assessee challenged same vide instant writ petition and submitted that show cause notice was vague and bereft of relevant particulars, as a result, assessee was deprived of an effective opportunity to respond to said notice - It was urged that there was violation of principles of natural justice, and since show cause notice was issued without jurisdiction, impugned order was a nullity - HELD : On perusal of show cause notice it was noticed that it was not at all vague, but rather contained all material particulars - Since grounds for alleged vagueness in show cause notice were misconceived, instant petition of assessee was to be dismissed with cost of Rs. 5 lakhs [Section 73 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017] [Para 20] [In favour of revenue]

CASES REFERRED TO

Whirlpool Corporation v. Registrar of Trade Marks [1998] 8 SCC 1 (para 11), *Special Director v. Mohd. Ghulam Ghouse* [2004] 50 SCL 93 (SC) (para 14), *Union of India v. Coastal Container Transporters Association* [2019] 104 taxmann.com 364/73 GST 211 (SC) (para 15), *Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board Direct Taxes* [2004] 137 Taxman 242/267 ITR 647 (SC) (para 16) and *Malladi Drugs & Pharmaceuticals Ltd. v. Union of India* 2004 taxmann.com 1287/166 ELT 153 (SC) (para 17).

Vishal Agrawal, Abhishek Deodhar and Rishabh Jain for the Petitioner. Jitendra B. Mishra, Ashutosh Mishra, Ms. Sangeeta Yadav, Rupesh Dubey, Satyaprakash Sharma and Ms. Megha Bajoria for the Respondent.

ORDER

1. Heard learned counsel for the parties.
2. The learned counsel for the Petitioners has only pressed for relief in terms of prayer clause (a) of this Petition, which reads as follows:-

"(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the validity and legality thereof quash and set aside the Impugned Order dated 22.07.2024 (Exhibit "A1") as also the Show Cause Notice dated 07.12.2023. "

3. The argument is that the impugned show cause notice dated 07 December 2023 was vague and bereft of the relevant particulars. As a result, the Petitioners were deprived of an effective opportunity to respond to the impugned show cause notice or otherwise defend themselves. On this ground, it was urged that there was a violation of principles of natural justice or, in any event, the impugned show cause notice dated 07 December 2023 was without jurisdiction. It was further urged that the order dated 22 July 2024 made on adjudicating the impugned show cause notice dated 07 December 2023 is, therefore, a nullity.

4. Mr Agrawal, the learned counsel for the Petitioners, submitted that the impugned show cause notice was utterly vague. He pointed out that in the impugned order dated 22 July 2024, the adjudicating authority had also admitted that the impugned show cause notice was vague. He submitted that under these circumstances, there is a gross violation of the principles of natural justice, thereby vitiating not only the impugned show cause notice dated 07 December 2023 but also the impugned order dated 22 July 2024, based upon the impugned show cause notice dated 07 December 2023.

5. On perusing the impugned show cause notice dated 07 December 2023 at Exhibit-I (pages 103 to 145 of the paper book in this Petition), we are satisfied that it is not at all vague but rather contains all material particulars, giving the Petitioners a very clear idea about the case that they were required to meet with. Therefore, the Petitioner made no serious grievance of any alleged vagueness in response to the notice.

6. The impugned show cause notice refers to the intelligence inputs based upon which the impugned show cause notice was issued. There is detailed reference to several factual aspects and the legal provisions, notifications and circulars proposed to be relied upon. There is also a reference to some Supreme Court decisions on the subject. The grounds on which the impugned show cause notice was issued are in paragraphs 6, *i.e.* paragraphs 6.1 to 6.11 of the impugned show cause notice. Detailed grounds with full particulars have been supplied. The allegation of vagueness is an afterthought besides being frivolous.

7. Paragraph 7 of the impugned show cause notice refers to the investigation findings. Annexure-A to the impugned show cause notice contains a list of relied-upon judgments. The answers on behalf of the Petitioners have also been incorporated in the impugned show cause notice. Thus, the charge about the impugned show cause notice being vague or bereft of any material particulars is frivolous and raised only to avoid resorting to the alternate remedial appeal available to the Petitioners.

8. The record suggests that the Petitioners have only tried to "take a chance in the matter". Upon receipt of the impugned show cause notice, the Petitioners filed a detailed reply to the show cause notice on 18 April 2024. This reply is in Exhibit-J (pages 147 to 177 of the Petition paper book). From the detailed reply, it is apparent that the Petitioners were not in the least prejudiced in either understanding the revenue case or responding to the multiple allegations in the impugned show cause notice. All possible defences were raised in the detailed reply. The reply nowhere seriously alleges any vagueness in the impugned show cause notice or the corresponding difficulties allegedly faced by the Petitioners in responding to the impugned show cause notice. In the context of invocation of the larger period of limitation, there is only one statement that the noticee could not comprehend the exact allegations. Still, no less than six arguments were urged regarding the invocation of the larger period of limitation.

9. The contention that the impugned order dated 22 July 2024 admits that the impugned show cause notice was vague is misconceived. There is no such admission in the impugned order. The impugned order, which is quite detailed, has to be construed holistically. This is not the occasion to examine the merits of the impugned order dated 22 July 2024 since the Petitioners are proposed to be relegated to the alternate remedy of appeal in this matter.

10. Incidentally, if the Petitioners genuinely regarded the impugned show cause notice as vague or if there were any real difficulties in responding to the allegations in the show cause notice, it was expected that the Petitioners challenge such show cause notice at the earliest instance. Here, the Petitioners filed a detailed response without making any serious grievance about the alleged vagueness in the impugned show cause notice. After the impugned show cause notice was adjudicated and the impugned order dated 22 July 2024 was made, this Petition was instituted *inter alia* to question the impugned show cause notice dated 07

December 2023. We are satisfied that this is nothing but an attempt to circumvent the alternate remedy and to take a chance to see whether any relief can be wriggled out of this Court.

11. In *Whirlpool Corporation v. Registrar of Trade Marks* (1998) 8 SCC 1 the Hon'ble Supreme Court has explained that writ petitions may be entertained against the show cause notices where the Petitioner seeks enforcement of any of the fundamental rights, where there is a violation of the principles of natural justice; or where the order or proceedings are wholly without jurisdiction, or vires of the Act is challenged. Of late, almost as a matter of routine in Petitions to challenge show cause notices, a challenge is thrown to some provisions of the statute.

12. In the present case, considering the relief pressed, the argument was about violating the principles of natural justice because of the alleged vagueness of the impugned show cause notice. However, as noted above, there was no vagueness in the impugned show cause notice. The impugned show cause notice was quite detailed and gave the Petitioners a complete idea of the case they were required to meet. The Petitioners' reply is pretty thorough, and no serious grievance was made about any alleged vagueness in the impugned show cause notice.

13. Mr Mishra, the learned counsel for the Revenue, pointed out that the impugned order least and considers no less than 15 grounds urged by the Petitioners in their defence. Accordingly, the allegations about the vagueness and consequent failure of principles of natural justice are wholly misconceived, and no case is made out to entertain the present Petition.

14. In *Special Director v. Mohd. Ghulam Ghouse* [2004] 50 SCL 93 (SC)/(2004) 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 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. The writ petitioner should invariably be directed to respond to the show cause notice and take all the grounds that may now be highlighted in the writ petition. Whether the show cause notice was founded on any legal premises is a jurisdictional issue which the recipient of the notice can even urge, and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court.

15. In *Union of India v. Coastal Container Transporters Association* [2019] 104 taxmann.com 364/73 GST 211 (SC)/(2019) 20 SCC 446 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.

16. In *Mahanagar Telephone Nigam Ltd. v. Chairman Central Board, Direct Taxes* [2004] 137 Taxman 242/267 ITR 647 (SC)/(2004) 6 SCC 431, 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.

17. In *Malladi Drugs & Pharmaceuticals Ltd. v. Union of India* 2004 taxmann.com 1287/166 ELT 153 (SC)/(2020) 12 SCC 808 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, by the impugned judgment, held that the appellant should first raise all the objections before the authority that has issued the show cause notice. If any adverse order was passed against the appellant, liberty was granted to approach the High Court.

18. For all the above reasons, we are satisfied that this Petition warrants dismissal with exemplary costs.

19. Several Petitions have been instituted to question the show cause notices. Most of these Petitions, like the present one, do not satisfy the parameters the Hon'ble Supreme Court laid down in *Whirlpool Corporation (supra)*. The entire objective of instituting such Petitions is to wriggle out some orders by taking undue advantage of the pressure on the Court's docket or to keep otherwise such matters pending and delay the adjudication proceedings by citing the pendency of the Petitions. In some cases, the object is to avoid the provisions requiring pre-deposit of some portion of the demanded amounts as a pre-condition for institution or

hearing of the statutory appeals. As noted earlier, the grounds for alleged vagueness in the impugned show cause notice so belatedly raised were entirely misconceived. Therefore, we are satisfied that this Petition deserves to be dismissed with exemplary costs. This will, however, not preclude the Petitioners from availing the alternate statutory remedies of appeal, etc., under the provisions of the CGST Act.

20. Accordingly, we dismiss this Petition with costs of Rs.5,00,000/- (Rupees Five Lakhs) payable by the Petitioners to the Maharashtra Legal Services Authority within four weeks from today. The Petitioners must file receipts/proof of payment with the Registry by 21 November 2024.

ANURAG

*In favour of revenue.