*2024:KER:26848*

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 8TH DAY OF APRIL 2024 / 19TH CHAITHRA, 1946

WP(C) NO. 3611 OF 2024

PETITIONER/S:

ASIANET DIGITAL NETWORK PRIVATE REPRESENTED BY ITS ASSISTANT VICE PRESIDENT (F&A) MR. RAJESH. V S
2A, 2ND FLOOR, LEELA INFOPARK, TECHNOPARK, KARYAVATTOM, THIRUVANANTHAPURAM, PIN - 695581

BY ADVS.SRI V LAKSHMIKUMARAN
KARTHIK S. NAIR; PRABHAKARAN P.M.

RESPONDENT/S:

1 UNION OF INDIA, REPRESENTED BY REVENUE SECRETARY, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI, PIN - 110001

2 ADDITIONAL DIRECTOR GENERAL, DIRECTORATE GENERAL OF GST INTELLIGENCE, THIRUVANANTHAPURAM REGIONAL UNIT, T.C. NO. 14/3646/1, KESAVADASAPURAM,PATTOM P.O., THIRUVANANTHAPURAM, PIN - 695004

3 ADDITIONAL COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, THIRUVANANTHAPURAM COMMISSIONERATE, GST BHAVAN, PRESS CLUB ROAD, THIRUVANANTHAPURAM, PIN - 695001

4 COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, THIRUVANANTHAPURAM COMMISSIONERATE, GST BHAVAN, PRESS CLUB ROAD, THIRUVANANTHAPURAM, PIN – 695001

BY ADVS.SRI N VENKATARAMAN ASGI; P.R.SREEJITH; SMT.PREETHA S. NAIR, CENTRAL BOARD OF EXCISE AND CUSTOMS; SREEJITH P. R

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.04.2024, ALONG WITH WP(C).30147/2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

*2024:KER:26848*



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 8TH DAY OF APRIL 2024 / 19TH CHAITHRA, 1946

WP(C) NO. 30147 OF 2022

PETITIONER/S:

ASIANET DIGITAL NETWORK PRIVATE LTD.
2A, 2ND FLOOR, LEELA INFOPARK, TECHNOPARK, KARYAVATTOM, THIRUVANANTHAPURAM REPRESENTED BY ITS ASSISTANT VICE PRESIDENT (F&A) MR. RAJESH. V .S., PIN - 695581

BY ADVS.V LAKSHMIKUMARAN; KARTHIK S. NAIR
PRABHAKARAN P.M.

RESPONDENT/S:

1 UNION OF INDIA, REPRESENTED BY REVENUE SECRETARY, MINISTRY OF FINANCE, NORTH BLOCK, NEW DELHI, PIN - 110001

2 PRINCIPAL ADDITIONAL DIRECTOR GENERAL DIRECTORATE GENERAL OF GST INTELLIGENCE, KOCHI ZONAL UNIT, CENTRAL EXCISE BHAVAN, KATHRIKADAVU, KALOOR P.O, KOCHI, PIN - 682017

3 COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE GST BHAVAN, PRESS CLUB ROAD THIRUVANANTHAPURAM, PIN - 695001

BY ADVS.SRI N VENKATARAMAN ASGI
P.R.SREEJITH; SMT.PREETHA S. NAIR, SC, CENTRAL BOARD OF EXCISE AND CUSTOMS; SREEJITH P. R

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08.04.2024, ALONG WITH WP(C).3611/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

[WP(C) Nos. 30147/2022, 3611/2024]

Heard Sri V Lakshmikumaran learned Counsel for the petitioner and Sri N Venkataraman, learned Additional Solicitor General of India and Sri P R Sreejith learned Senior Standing Counsel for the Central Board of Indirect Taxes and Customs (CBIC) on behalf of the respondents.

2. These two writ petitions have been filed by the petitioner/Asianet Digital Network Private Ltd, a Company registered under the provisions of the Companies Act impugning two show cause notices in Ext.P1 in both the writ petitions issued under Section 73 of the Central Goods and Services Tax Act 2017 (for short, 'CGST Act') for the period February 2017 to June 2017 in W.P.(C) No.30147/2022 and from July 2017 to March 2020 in W.P.(C) No.3611/2024.

**Facts in brief**:

3. In October 2015, Asianet Broadband Private Ltd was

formed as a wholly owned subsidiary of Asianet Satellite Communications Ltd (for short, 'Parent Company'). 'Asianet Broadband Private Ltd' was renamed 'Asianet Digital Cable TV Private Ltd' in March 2017 and again renamed 'Asianet Digital Network Private Ltd' in January 2018.

3.1 During the initial period *i.e.*, 1993-2000, the Parent Company used to provide cable television services directly to the subscribers. The Parent Company receives different channels broadcasted by various broadcasting entities and provides access to such channels to its subscribers on payment of subscription charges. This system of providing signals to its subscribers directly is known as Multi-System Operator (for short, 'MSO'). In the areas where the Parent Company did not have network coverage, it started providing input services to Local Cable Operators (for short, 'LCO'), who, in turn, re-transmit the signal of various channels to the subscribers of LCOs.

3.2 The cable operator service was brought under the Service Tax net in 2002. According to the petitioner, the Parent

Company had been paying service tax at applicable rates on the amounts received by them as consideration for the services provided to the subscribers as well as the LCOs. It is said that during the period April 2015 to June 2017, the Parent Company was providing services to around 1200 LCOs in addition to their direct subscribers. Till 2015, cable television signals could be received by its subscribers through either analog or digital systems. However, from 01.02.2017 in pursuance of the implementation of Digital Addressable Systems by the Government, *vide* the Telecommunication (Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 (for short, 'DAS Regulations') as well as Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017 (for short, '2017 Regulations') the cable television signals were provided only through digital system *i.e.*, through set-top boxes.

**Allegations**:

**Show cause notice dated 19.07.2022 in W.P.(C) No.30147/2022**:

4. The petitioner is registered as a Multi System Operator (MSO) with the Ministry of Information and Broadcasting. They are engaged in providing digital cable television services to subscribers under the brand name 'Asianet' throughout Kerala. They are registered for service tax and have been paying service tax on monthly subscription amounts collected from their subscribers in respect of digital cable television services provided to subscribers and also on other services rendered *viz*. broadcasting services, maintenance or repair services etc.

4.1 Intelligence enquiry done by the officers of Directorate General of Goods and Services Tax Intelligence (for short, 'DGGI'), Thiruvananthapuram Regional Union indicated that various LCOs linked to Asianet were collecting payments from subscribers. And after retaining part of the amount collected from the subscribers the LCO would remit the remaining amount to the petitioner. The petitioner was not accounting for the

amounts retained by its linked LCOs in their financial documents and was thus suppressing taxable value and service tax liability. According to TRAI regulations under the DAS regime, the 'service provider'-'service recipient' relationship in respect of digital cable TV services is between Asianet, an MSO, and the subscriber-only and the LCO has no direct role in the supply of service to the subscriber.

4.2 The DAS has been implemented from 01.02.2017. The petitioner provided data on the amounts raised on LCOs *i.e.*, the revenue share of MSO for the period from February 2017 to June 2017 and billing data of LCO-linked subscribers were not available for the said period. In the absence of billing data of LCO-linked subscribers of the petitioner, provisions of Section 70 of the Finance Act 1994 have been invoked against the petitioner.

4.3 After synchronising the response to the summons issued to the petitioner and considering the submissions of their representative and the relevant Rules and Regulations, the

authorities had been of the considered opinion that:

(a) the entire amount collected as subscription charges from LCO-linked subscribers is the consideration for the services rendered by the MSO to said subscribers and the amount retained by LCOs is the consideration for the services rendered by LCO to MSO.

(b) The petitioner has not accounted for the amount retained by its linked LCOs in its books of account, thus suppressing taxable value and tax liability for the period from February 2017 to June 2017.

(c) The petitioner had not correctly assessed their service tax liability for the said period.

(d) The petitioner had suppressed the value of taxable services effected by them from 01.02.2017 to 30.06.2017 in ST-3 returns filed for the said period.

**Show cause notice dated 29.12.2023 in W.P.(C) No.3611/2024**:

5. The petitioner had rendered digital cable TV services with the assistance of cable operators linked to Asianet and has

collected amounts monthly from its subscribers through its linked LCOs. In lieu of services provided by LCOs to Asianet, LCOs retained a part of the total collected amount with them depending upon the number of active Set-Top Boxes (STB) and packages of channels running on STBs of subscribers linked to LCOs.

5.1 After considering the submissions of their representative and the relevant Rules and Regulations, the authorities had been of the considered opinion that:

(a) The petitioner had not issued an invoice for the entire amount collected as monthly subscription charges from LCO-linked subscribers. The petitioner had also not issued an invoice for the amount of subscription retained by the LCO.

(b) The petitioner did not account for the amount retained by its linked LCOs in its books of account, thus suppressing taxable value and tax liability for the period from July 2017 to March 2020.

(c) The petitioner had not correctly assessed their GST liability for the said period.

(d) The petitioner had suppressed the value of taxable services effected by them, from 01.07.2017 to 31.03.2020 in monthly GST returns filed for the said period.

**Outcome**:

**Show cause notice dated 19.07.2022 in W.P.(C) No.30147/2022**:

6. The impugned show cause notice in Ext.P1 was issued to the petitioner requiring the petitioner to show cause as to why:

(a) the provisions of Section 72 of the Finance Act 1994 should not be invoked in the absence of billing data of LCO-linked subscribers of Asianet for the period from 01.02.2017 to 30.06.2017 and why the taxable value of services rendered in respect of LCO-linked subscribers of Asianet *i.e.*, the amount retained by LCOs from monthly subscription charges which escaped service tax, should not be estimated at Rs.49,37,94,750/- during the period from 01.02.2017 to 30.03.2017, under Section 72 of the Finance Act 1994.

(b) the service tax amounting to Rs.6,91,31,265/-, Swachh Bharat Cess (SBC) of Rs.24,68,974/-, and Krishi Kalyan Cess (KKC) of Rs.24,68,974/- totalling to Rs.7,40,69,213/- being the service tax including Cesses non-paid/short-paid on the value of taxable services of Rs.49,37,94,750/- rendered by them in respect of LCO-linked subscribers of Asianet, during the period from 01.02.2017 to 30.06.2017, should not be demanded and recovered under the proviso to Section 73(1) of the Finance Act 1994, besides imposition of interest and penalty under the provisions of Sections 75, 77(2) and 78 of the Finance Act 1994.

**Show cause notice dated 29.12.2023 in W.P.(C) No.3611/2024**:

7. The impugned show cause notice in Ext.P1 was issued to the petitioner requiring the petitioner to show cause as to why:

(a) in the absence of billing data of LCO-linked subscribers, the provisions of Rule 31 of the CGST Rules 2017 be not invoked for the period from July 2017 to June 2019 and why the taxable value of services rendered in respect of LCO-linked subscribers of the petitioner which allegedly had escaped

from payment of GST should not be estimated at Rs.3,10,18,90,446/- under Section 15 of the CGST Act 2017 read with Rule 31 of the CGST Rules 2017.

(b) an amount of Rs.70,48,76,414/- [CGST @ 9% plus SGST @ 9%], besides Kerala Flood Cess @ 1% amounting to Rs.68,76,120/- should not be demanded and recovered under Section 74 of the CGST Act/Kerala SGST Act 2017.

(c) interest under Section 50 of the CGST/SGST Act and penalty under Section 74 of the CGST Act should not be invoked under the Act.

**Submissions**:

**Petitioner's**:

8. Sri V Lakshmikumaran learned Counsel for the petitioner has submitted that the power exercised under Section 73(1) of the Finance Act 1994 provides for the issuance of show cause notice in case of non-levy or non-payment or short-levy or short-payment of service tax or erroneous refund of service tax. The nature of this power is like the power to recover the tax, not

paid or short paid and is broadly a power to review the earlier assessment (which includes self-assessment). The power to order re-assessment must be exercised by the same Officer or his successor and not by another officer or another department, though he may be designated to be an officer of the same rank. The Statute confers the said power to be performed by 'the officer' and acts on a different officer(s), especially when they belong to different departments, they cannot exercise their powers in the same case.

8.1 Section 73 of the Finance Act 1994 empowers '*the*' Central Excise Officer to issue a show cause notice and '*the*' Central Excise Officer is the officer within whose jurisdiction the assessee has obtained registration, pays tax, files returns and complies with all the other formalities and compliances under the Act.

8.2 Sub-section (2) of Section 73 of the Finance Act 1994 provides for a particular officer who can issue a show cause notice and the adjudication of the show cause notice should be done by

'*the*' same Central Excise Officer who has issued the show cause notice.

9. Notification No.13/2017-C.E.(N.T.) dated 09.06.2017 sets out the jurisdiction of the Principal Commissioner/Commissioners etc. As per the notification applicable to the State of Kerala, the Principal Commissioner/ Commissioner of Central Excise and Service Tax, Thiruvananthapuram, would have jurisdiction over Districts of Thiruvananthapuram, Kollam, Pathanamthitta, Alappuzha and Kottayam.

9.1 The petitioner is registered within the jurisdiction of the 3rd respondent i.e., Commissioner, Central Tax and Central Excise, Thiruvananthapuram where it files its returns and does the self-assessment of tax payable under the Finance Act 1994. The petitioner is not registered and has not filed returns with the 2nd respondent or any other officer of the DGGI/DGCEI. Therefore, the 3rd respondent is 'the Central Excise Officer' under Section 73 of the Finance Act 1994 competent to issue show

cause notice to the petitioner and adjudicate the same. As the petitioner has filed the service tax return before the 3rd respondent, the 3rd respondent would only be the Adjudicating Authority having the power to issue a show cause notice and re-open the assessment. The submission is that the show cause notice issued by the 2nd respondent is without jurisdiction inasmuch as the 3rd respondent is the proper Central Excise Officer who can issue the show cause notice and adjudicate the same.

10. Alternatively, it has been submitted that from 12.10.2020 to 16.10.2020, a team of officers of the Central Tax and Central Excise, Audit Circle-1, Thiruvananthapuram conducted an audit of records of the Parent Company pertaining to the period April 2015 to June 2017. After the audit, the final audit report dated 10.12.2020 was issued wherein the following observations were made by the audit party:

> "i. Advances received (accounted as current liabilities) were not included in the taxable value and to that extent, the

taxable value is suppressed;

ii. Service tax has not been paid under reverse charge on services received from foreign entities;

iii. Service tax has not been paid under reverse charge on manpower supply services received;

iv. Non-reversal of cenvat credit pertaining to exempted services;

v. Charges for late payment has not been included in the taxable value of the service."

10.1 As per the Final Audit Report, there was a short payment of tax to the tune of Rs.2,15,89,222/- and a show cause notice dated 29.12.2020 was issued by the 3rd respondent/Commissioner (Audit). The said show cause notice was adjudicated by the 3rd respondent who passed Order-in-Original dated 27.12.2021 confirming the part of tax demand (i.e., Rs.45 lakhs out of the proposed demand of Rs.2.15 crores) and imposing a penalty on the Parent company for the period April 2015 – June 2017. Against the said show cause notice, the Parent Company has filed the appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore,

which is pending disposal. It is, therefore, submitted that when '*the*' Central Excise Officer has already adjudicated upon the matter for the period *i.e.*, up to June 2017, the issuance of the impugned notice for the same period is not only illegal but without jurisdiction.

11. The next submission is that the impugned show cause notice is wholly barred by limitation as Section 73(1) of the Finance Act 1994 prescribes that the show cause notice must be issued within a period of 30 months from the relevant date. However, the impugned show cause notice has been issued after a period of 58 months from the relevant date by erroneously invoking the extended period of limitation. The question of limitation is a question of jurisdiction, and the quasi-judicial authority does not have the jurisdiction to issue a show cause notice which is barred by limitation.

11.1 As per the provisions of Section 73(1) of the Finance Act 1994, the existence of fraud/ collusion/ wilful misstatement/ suppression of facts/ contravention of the provisions of the

Finance Act or Rules made thereunder with an intent to evade payment of service tax are jurisdictional facts on which the extended period of limitation of five years can be invoked. No such jurisdictional facts are in existence to invoke the extended period of limitation for issuing the impugned show cause notice and, therefore, the show cause notice is without jurisdiction, *non-est* and void *ab initio*.

12. In the present case, the issue involved is whether the petitioner, *i.e.*, MSO, is liable to pay service tax on the gross amount collected by LCOs or on the amount which the petitioner gets from the LCOs after deduction of the share by the LCOs from the gross amount.

13. Learned Counsel for the petitioner has vehemently submitted that the CESTAT while examining the tax liability in respect of such amounts collected by the LCOs, held in ***Reetika Cable v. CCGST***[1] that the LCOs are liable to pay service tax on the gross value of services received by them and are entitled to

[1] 2021 (53) GSTL 261 (Tribunal – Chandigarh)

avail the Cenvat credit of the service tax paid on the amount remitted to the MSO. It was also held that the extended period is not invocable since there was confusion in the industry during the relevant period whether the alleged LCOs were liable to pay service tax, or the MSOs were liable to pay service tax on their activity. Therefore, the benefit of the doubt goes in favour of the appellants/LCOs.

13.1 It is further submitted that in the present case, the revenue is demanding tax from the MSOs which is contrary to the aforesaid decision of the Tribunal as well as the stand of the Revenue in the said case. The invocation of the extended period would not be justifiable if there is a change of opinion in the Department. In the present case, the Department has now changed its stand, by demanding the tax from the petitioner i.e., the MSOs.

13.2 The Revenue has been conducting audits of the records of the Parent Company regularly. More than ten audits have been conducted over a period of 15 years. The invoice

raised by the Parent Company to the LCOs would clearly show the number the connections and the computation of the amount collected from the LCOs. These documents were verified by the Department on multiple occasions. The Department has never raised any objections regarding the requirement of the MSO to pay tax on the total amount collected by the LCOs from their customers. Which would mean that the stand adopted by the Parent Company was accepted by the Department. No objection had been raised in the audit that was just conducted before the DGGI investigation, which was well within their jurisdiction. It is submitted that the issue raised by the DGGI is nothing but a change of opinion of the officer and a mere change of opinion of the Assessing Officer cannot give rise to a cause of action to invoke the benefit of the extended period of limitation.

14. It is further submitted that before 2004 *i.e.*, between 16.08.2002 to 09.09.2004 only services rendered to a subscriber were taxable and the subscription amount paid by the subscriber to the LCO (or to the MSO when transmitting directly) was

exigible to service tax. As a result of the amendment to the Finance Act with effect from 10.09.2004 and Circular No.80/10/2004-ST dated 17.09.2004 issued by the CBIC, services from the MSOs to the cable operators were also taxable, in addition to the services rendered to the ultimate customers. Further, the services rendered by the LCOs to the end subscriber were also independently susceptible to service tax.

14.1 The submission is that the petitioner is liable to pay service tax only on the amount received from the LCOs and the LCOs, wherever they cross the threshold limit as prescribed under the Finance Act, be registered under the service tax law, and pay service tax. The LCOs were filing service tax returns under the category of 'Cable Operator' and were availing Cenvat Credit of service tax paid on the invoice raised by MSO. It is also submitted that it was well-settled law that the MSOs are not liable to pay service tax on the amount collected by the LCO from their subscribers, as was reiterated in ***Reetika Cable*** (supra). Therefore, the show cause notice is bad in law.

**GST Department's**:

15. Sri N Venkataraman learned Additional Solicitor General of India has raised the preliminary objection regarding the maintainability of the writ petition against the impugned show cause notice. It is submitted that the 3rd respondent, who is the Adjudicating Authority, is free to take a decision either confirming or dropping the demand after examination of the relevant documents and contentions to be raised by the petitioner in their reply to the show cause notice. Notice has been issued in conformity with the principles of natural justice and a challenge to the show cause notice at this stage invoking the writ jurisdiction of the High Court is premature. Therefore, the writ petition is not maintainable.

15.1 It is stated that the challenge to a show cause notice is available only in case of a breach of fundamental right; a violation of principles of natural justice; an excess of jurisdiction or a challenge to the vires of the Statute or delegated legislation. None of the aforesaid grounds is available in the present writ petition,

wherein the show notice dated 19.02.2022 has been challenged.

16. The officers of the Directorate General of Central Excise Intelligence (now the Directorate General of GST Intelligence) have been appointed as Central Excise Officers as per Notification No.22/2014-ST dated 16.09.2014. The officers of the Directorate General of Central Excise Intelligence have been conferred with all the powers under Chapter V of the Finance Act 1994 and the Rules made thereunder throughout the territory of India. The 2nd respondent is a Central Excise Officer as invested by the Central Board of Indirect Taxes and Customs with the powers of the Central Excise Officer. The jurisdiction of the officers of the Directorate General of Central Excise Intelligence would be throughout the territory of India.

16.1 It is submitted that Notification No.30/2005-ST dated 10.08.2005 was amended by Notification No.44/2016-ST dated 28.09.2016 read with CBIC Circulars Nos.994/01/2015-CX dated 10.02.2015 and 1000/7/2015-CX dated 03.03.2015, the officers of the DGGI are empowered to issue notice and its adjudication

is to be done by the jurisdictional Commissioner. The aforesaid notifications also prescribe the monetary limits for adjudication of the service tax cases by the different authorities.

16.2 In view of the aforesaid, it is submitted that there is no irregularity or legal infirmity in issuing the impugned show cause notice by the Additional Director General of the Directorate of GST Intelligence and its adjudication by the jurisdictional Central GST and Central Excise Commissioner.

17. Learned Additional Solicitor General of India has further submitted that the impugned show cause notice is issued demanding the differential service tax on the amount of subscription retained by the LCOs during the period from 01.02.2017 to 30.06.2017. It cannot be disputed that the petitioner became liable to pay the service tax on the amount of subscription retained by the LCOs only with effect from 01.02.2017, the date from which the petitioner had provided the cable television signals exclusively through the digital system using set-top boxes in compliance with the Telecommunication

(Broadcasting and Cable Services) Interconnection (Digital Addressable Cable Television Systems) Regulations 2012 and the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations 2017. In view of the aforesaid legal position, the question of raising such objections in the audit conducted by the Departmental Auditors during the period prior to 01.02.2017 would not arise at all.

17.1 It is also not in dispute that the amount retained by the LCOs from the subscriptions collected by them from the subscribers has not been accounted by the petitioner in their books of accounts, and, therefore, the show cause notice has been issued proposing to compute the amount as per the best judgment method under Section 72 of the Finance Act 1994. The departmental audit is conducted on the test check of the books of accounts of the petitioner and when the petitioner has admitted that the amount was not at all reflected in the books of accounts of the petitioner, the question of the audit raising any objection on that count would not arise.

18. It is further submitted that the notices issued by the Department on previous occasions were in respect of the specific issues mentioned in the said notices and not in respect of the present issue. It is also submitted that the current issue had come to notice only after the initiation of the investigation based on the intelligence. Had the investigation not been conducted, the issue would have gone unnoticed. Therefore, the claim of the petitioner, that the department knew about the activity of the petitioner and hence the extended period of limitation would not be available, does not merit consideration. Furthermore, the petitioner had the opportunity to satisfy the adjudicating authority that there was no suppression of fact, and this Court may not dwell into the said question in the present writ petition. In view thereof, it is submitted that the writ petition is without merit and liable to be dismissed.

19. Learned ASG has submitted that as clarified in paragraphs 4 and 5 of Circular No.1079/3/2021-CX dated 11.11.2021 issued by the CBIC, the exclusion from pre-show

cause notice consultation is case-specific and not formation-specific. Pre-show cause notice consultation is not mandatory for those cases booked under the Central Excise Act 1944 or Chapter V of the Finance Act 1994 for recovery of duties or taxes not levied for paid or short-levied or shot-paid or erroneously refunded by reasons of (a) fraud; (b) collusion; (c) wilful misstatement; (d) suppression of facts or (e) contravention of any of the provisions of the Central Excise Act 1944 or Chapter V of Finance Act 1994 or the Rules made thereunder with the intent to evade payment of duties or taxes. The impugned show cause notices would suggest that they have been issued also invoking the extended period of limitation on the ground of the existence of the reasons specified above, in the Circular dated 11.11.2021. Therefore, these show-cause notices would come within the exception as mentioned in paragraph 5 of the said Circular and no pre-show cause notice consultation was mandatory.

20. Chapter V of the Finance Act 1994 is a complete code in itself. It provides for adjudication and appeal machinery for the

resolution of disputes under the Act. Hence, it would not be appropriate for this Court to entertain the writ petition at this stage, inasmuch as the show cause notices cannot be said to be without jurisdiction.

21. Sri V Lakshmikumaran learned Counsel for the petitioner has submitted that the availability of the alternate remedy of appeal is not a bar to entertaining a writ petition against the show cause notice if the jurisdictional fact or point of law is involved. He further submits that the High Court, in the exercise of its powers under Article 226 of the Constitution of India, can examine the merit of the matter where a writ petition has been filed impugning an order against which a statutory remedy of appeal is provided or against a show cause notice as the show cause notice is without jurisdiction or against the law. In support of his submission, the learned Counsel for the petitioner has placed reliance on the judgment of ***Godrej Sara Lee Ltd v. Excise and Taxation Officer-cum-Assessing Authority***.

**Citations**:

***Godrej Sara Lee Ltd v. Excise and Taxation Officer-cum-Assessing Authority***[2]

22. It is submitted that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and any limitation on the exercise of such power must be traceable in the Constitution, as held in the aforesaid judgment. On the mere fact that the petitioner has not pursued the alternative remedy available to him, the writ petition ought not to be dismissed mechanically. The High Court must exercise its discretion judiciously to decide whether to entertain the writ petition or not, bearing in mind the facts of each case.

22.1 The existence of an alternate remedy for not entertaining the writ petition is a self-imposed restriction evolved through judicial precedents. The mere existence of an alternate remedy of appeal or revision to a party invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India would not oust the jurisdiction of the High

[2] (2023) 109 GSTR 402

Court and render a writ petition 'not maintainable'. The writ petition cannot be dismissed on the grounds of availability of an alternate remedy or as 'not maintainable'. If the High Court may refuse to entertain the writ petition on the ground of the existence of statutory or efficacious alternate remedy to the petitioner, however, it cannot be said that the writ petition would not be maintainable.

***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai***[3].

22.2 The Supreme Court in ***Godrej Sara Lee Ltd*** has taken note of a long series of decisions starting from ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*** to say that a decision can be questioned as suffering from illegality if its maker fails to understand the law that regular decision-making power correctly or if he fails to give effect to any law that holds the field and binds the parties. The Supreme Court has extracted the exceptions as carved out in ***Whirlpool Corporation*** where the writ court would be justified in entertaining the writ petition

[3] (1998) 8 SCC 1

despite the existence of effective, efficacious statutory alternate remedy, which on reproduction would read as under:

> "(i) where the writ petition seeks enforcement of any of the fundamental rights;
> (ii) where there is violation of principles of natural justice;
> (iii) where the order or the proceedings are wholly without jurisdiction; or
> (iv) where the vires of an Act is challenged."

***Union of India v. Kunisetty Satyanarayana***[4]

22.3 The Supreme Court, however, in a series of judgments has held that the writ petition against show cause notice or charge sheet ordinarily would not be maintainable, except in rare and exceptional cases where the High Court can quash a charge sheet or show-cause notice if it is found to be wholly without jurisdiction or otherwise wholly illegal.

22.3.1 It is also well-settled that the High Court should not quash the show cause notice in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India where

[4] (2006) 12 SCC 28

there is no lack of jurisdiction, nor violation of principles of natural justice. If there is the existence of a disputed question of fact, the High Court ought not to interfere with the show cause notice if it is otherwise not without jurisdiction.

***Union of India v. Coastal Container Transporters Association***[5]

22.4 The Supreme Court, in the facts of the said case, held that the case relates to the classification of services rendered by the Association. If the show cause notice culminates into an order, the appeal would lie. Where there is serious dispute with regard to classification of service, the assessee ought to have responded to the show cause notices by placing material in support of their stand and there would be no reason to approach the High Court questioning the very show cause notice.

***Union of India v. Guwahati Carbon Limited***[6]

22.5 The Supreme Court held that the writ petition before the High Court questioning the correctness or otherwise of the

[5] (2019) 20 SCC 446
[6] (2012) 11 SCC 651

orders passed by the Tribunal would not be justified. The Excise Law is a complete code and to seek redressal in Excise matter, the writ would not be an appropriate remedy.

23. Sri Lakshmikumaran learned Counsel for the petitioner has, therefore, submitted that the writ petitions would be maintainable in the facts of the case and this Court should examine the issue and take a decision.

24. I have heard the learned Counsel appearing on both sides and perused the records.

**Discussion**:

25. In the exercise of powers conferred under Section 4A of the Cable Television Networks (Regulation) Act 1995 the Digital Addressable System (DAS) was made obligatory in four metropolitan cities *vide* S.O. 2534(E) dated 11.11.2011 issued by the Ministry of Information and Broadcasting. In Phase I, in four Metropolitan cities only, with effect from 30.06.2012, which was then extended to 31.10.2012, DAS was made mandatory. In Phase II, effective from 31.03.2013, more cities were brought

under DAS. In Phase III, all other urban areas (Municipal Corporations/ Municipalities) except cities/ towns/ areas specified for Phase I and Phase II were brought under DAS with effect from 30.09.2014, which was later extended to 31.01.2017. In Phase IV rest of India was brought under DAS with effect from 31.12.2014, which was later extended to 31.03.2017. The State of Kerala would fall under Phase III (urban areas) and IV (rural areas). It is not in dispute that the entire operations of M/s Asianet were brought under DAS with effect from 01.02.2017.

26. Under the DAS system, only the MSOs like M/s. Asianet can receive signals from the broadcasters as per the Cable Television Rules as amended by notification dated 28.04.2012. The channels received are sent through cable TV network in digital and encrypted form. The Department's stand is that only users authorized by the MSO can receive channels using a STB, which decrypts the transmitted signal. The MSO is required to maintain a Subscriber Management System (SMS) and details regarding each customer and his/her channel preferences are

stored in the Subscriber Management System. The consumers can choose channels/ services of their choice and pay only for the same.

26.1 The stand of the Department is that with effect from 01.02.2017 the control of access to channels by the ultimate consumer/subscriber has been with the petitioner. In view of the definition of 'Cable Service' and as per Section 65(105)(zs) of the Finance Act 1994, any services provided by the petitioner to subscribers through cable operator would be 'taxable service'.

27. The judgment in ***Reetika Cable*** [Final Order No.60870/2021 dated 07.07.2021 in Appeal No.ST/61668/2018] (supra) by the CESTAT is in respect of the exemption Notification No.6/2005-S.T. dated 01.03.2005 where the Department denied the benefit of the said notification to M/s.Fastway Transmission Private Ltd., an MSO on the ground that the M/s.Fastway Transmission Pvt Ltd was providing branded service and therefore, they were not entitled to exemption notification.

27.1 In the present case the question involved is that

*whether the petitioner is liable to pay the service tax on the entire subscription collected by LCO from the subscriber after the petitioner has implemented DAS with effect from 01.02.2017 or the petitioner is liable to pay the service tax only on the amount it receives from LCO after the LCO keeps a portion of the subscription amount collected from the subscribers.*

27.2 Therefore, in my considered view the judgment in ***Reetika Cable*** [Final Order No.60870/2021 dated 07.07.2021 in Appeal No.ST/61668/2018] (supra) by the CESTAT may not be of much relevance.

28. The learned Counsel for the petitioner, having placed reliance on the judgment of ***Canon India Pvt. Ltd v. Commissioner of Customs***[7] and the definition of the term "assessment" in Rule 2(b) of the Service Tax Rules 1994, the provisions of Section 69 and 70 of the Finance Act 1994 and the definition of 'Central Excise Officer' in Section 73(1) of the Finance Act 1994, with reference to the provisions of Sections

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2(b) and 12E of the Central Excise Act 1944 and Rule 3 of the Service Tax Rules 1994, has contended that the 2nd respondent does not have jurisdiction to issue show cause notice and therefore, the notice is without authority of law. The petitioner is registered within the jurisdiction of the 3rd respondent; where the petitioner files returns and files the self-assessment of tax payable under the Finance Act 1994 and, therefore, the 3rd respondent is the 'Central Excise Officer' under Section 73 of the Finance Act 1994 who would be empowered to issue the show cause notice to the petitioner and adjudicate the same.

28.1 The officers of the Directorate General of Central Excise Intelligence [Now Directorate General of GST Intelligence] have been appointed as Central Excise Officers as per Notification No.22/2014-ST dated 16.09.2014 and they have been conferred with all the powers under Chapter V of the Finance Act 1994 and the Rules made thereunder throughout the territory of India. The 2nd respondent is a Central Excise Officer, invested by the Central Board of Indirect Taxes and Customs

(CBIC) with the powers of the Central Excise Officer. The question here is *whether the 2nd respondent under the provisions of Section 73(1) of the Finance Act 1994 is empowered to issue show cause notice to the petitioner, or it would be the 3rd respondent who would be empowered to issue notice under Section 73(1) of the Finance Act 1994, under whose jurisdiction the petitioner has obtained registration, paid taxes and filed return*.

28.2 The judgment in the case of ***Canon India Pvt. Ltd*** (supra) is in respect of the Customs Act and Rules made thereunder. It is not the judgment in the context of Section 73(1) of the Finance Act 1994. The Notification No.22/2014-ST dated 16.09.2014 has specifically appointed the Officers of the Directorate General of Central Excise Intelligence [Now Directorate General of GST Intelligence] as Central Excise Officers, vesting them with the powers under Chapter V of the Finance Act, 1994 and the Rules made thereunder. It may further be noted that in ***Canon India Pvt. Ltd*** the show cause notice was

issued under Section 28(4) of the Customs Act 1962 for recovery of duties allegedly not levied or paid when the goods have been cleared for import by the Deputy Commissioner of Customs, who decided that the goods were exempted. The goods imported were subjected to an assessment by the Deputy Commissioner of Customs, the 'Proper Officer' in terms of Section 17 of the Customs Act 1962 as it existed then. It is the Deputy Commissioner of Customs who allowed clearance after the assessment and the show cause notice was issued by the Directorate of Revenue Intelligence seeking to reopen the assessment made by the 'Proper Officer'.

28.3 Paragraphs 25 to 28 of the judgment in ***Canon India Pvt. Ltd*** (supra), where facts have been given, are extracted hereunder:

> "25. The case was presented for scrutiny of the Customs officers on 20-3-2012 along with the Bill of Entry and literature consisting of specifications of the cameras.
>
> 26. The Bill of Entry made a statement that these are Digital Still Image Video Camera packed for retail sale (COOLPIX S4300,

S2600 etc.). This was supported by literature which clearly stated that "... the single maximum recording time for a single movie is 29 minutes, even when there is sufficient free space on the memory card for longer recording". This meant that even if the camera could record more than 29 minutes when it had sufficient free space (which depends on the capacity of the card providing extended memory) the maximum time for which it could record a single sequence was 29 minutes.

27. In other words, the camera could record more than one single sequence but not 30 minutes and more in a single sequence. It is obvious that the Deputy Commissioner took the view that the camera complied with the requirement of exemption i.e. it could only record up to less than 30 minutes in a single sequence. At this juncture, it is not relevant to see whether the Deputy Commissioner was right or not in taking this decision to clear the goods as exempted goods. What is important is to see whether the importers made any wilful misstatement or suppression of facts and induced the delivery of goods.

28. It is pertinent to note that the importer had asked for a first check and had shown the cameras and the cameras were offered on 20-03-2012 along with Bill of Entry and literature detailing specifications of models. The camera could have been operated to see the length of time of the single sequence and whether recording of the single sequence exhausts the total memory of the camera (including extended memory) and whether the cameras were eligible for exemption. It is difficult in such circumstances to infer that there was any wilful misstatement of

facts. In these circumstances, it must, therefore, follow that the extended period of limitation of five years was not available to any authority to re- open under Section 28(4)."

28.4 The Supreme Court, while interpreting the provisions of Section 28(4) held that when the Statute confers the power to perform an act on different officers, especially when they belong to different Departments, a different officer cannot exercise their powers in the same case. Where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer. Paragraphs 10 to 16 of the said judgment are extracted hereunder:

> "10. There are only two articles 'a (or an)' and 'the'. 'A (or an)' is known as the Indefinite Article because it does not specifically refer to a particular person or thing. On the other hand, 'the' is called the Definite Article because it points out and refers to a particular person or thing. There is no doubt that, if Parliament intended that any proper officer could have exercised power under Section 28(4), it could have used the word 'any'.
>
> 11. Parliament has employed the article "the" not accidently but with the intention to designate the proper officer who had assessed the goods at the time of clearance. It must be clarified that the proper officer need not be the very officer who cleared

the goods but may be his successor in office or any other officer authorised to exercise the powers within the same office. In this case, anyone authorised from the Appraisal Group. Assessment is a term which includes determination of the dutiability of any goods and the amount of duty payable with reference to, inter alia, exemption or concession of customs duty vide Section 2(2)(c) of the Customs Act, 1962.

12. The nature of the power to recover the duty, not paid or short paid after the goods have been assessed and cleared for import, is broadly a power to review the earlier decision of assessment. Such a power is not inherent in any authority. Indeed, it has been conferred by Section 28 and other related provisions. The power has been so conferred specifically on "the proper officer" which must necessarily mean the proper officer who, in the first instance, assessed and cleared the goods i.e. the Deputy Commissioner Appraisal Group. Indeed, this must be so because no fiscal statute has been shown to us where the power to re-open assessment or recover duties which have escaped assessment has been conferred on an officer other than the officer of the rank of the officer who initially took the decision to assess the goods.

13. Where the statute confers the same power to perform an act on different officers, as in this case, the two officers, especially when they belong to different departments, cannot exercise their powers COURT in the same case. Where one officer has exercised his powers of assessment, the power to order reassessment must also be exercised by the same officer or his

successor and not by another officer of another department though he is designated to be an officer of the same rank. In our view, this would result into an anarchical and unruly operation of a statute which is not contemplated by any canon of construction of statute.

14. It is well known that when a statute directs that the things be done in a certain way, it must be done in that way alone. As in this case, when the statute directs that "the proper officer" can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. We find it completely impermissible to allow an officer, who has not passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorised to make the assessment. The nature of the power conferred by Section 28(4) to recover duties which have escaped assessment is in the nature of an administrative review of an act. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. In other words, an officer who did the assessment, could only undertake reassessment which is involved in Section 28(4).

15. It is obvious that the reassessment and recovery of duties i.e. contemplated by Section 28(4) is by the same authority and not by any superior authority such as Appellate or Revisional Authority. It is, therefore, clear to us that the Additional Director

> General of DRI was not "the" proper officer to exercise the power under COURT Section 28(4) and the initiation of the recovery proceedings in the present case is without any jurisdiction and liable to be set aside.
>
> 16. At this stage, we must also examine whether the Additional Director General of the DRI who issued the recovery notice under Section 28(4) was even a proper officer. The Additional Director General can be considered to be a proper officer only if it is shown that he was a Customs officer under the Customs Act. In addition, that he was entrusted with the functions of the proper officer under Section 6 of the Customs Act. The Additional Director General of the DRI can be considered to be a Customs officer only if he is shown to have been appointed as Customs officer under the Customs Act."

Thus, the Supreme Court held that the Additional Director General of DRI who issued the recovery notice under Section 28(4) was not a ‘Proper Officer’ for re-opening the assessment completed by the Deputy Commissioner of Customs.

28.5 In ***Canon India Pvt. Ltd*** (supra) in the first instance an assessment of customs duty was made by the Proper Officer on the Bill of Entry filed by the importer in terms of the provisions of Section 17 of the Customs Act 1962 and the assessment was

sought to be reopened by the notice issued under Section 28 of the Customs Act 1962 by the Additional Director General of Directorate of Revenue Intelligence. Section 17 of the Customs Act 1962, on reproduction, would read as under:

> "SECTION 17. Assessment of duty. -
>
> (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.
>
> (2) The proper officer may verify the self assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary:
>
> (3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.
>
> (4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty

leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding the valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re- assessment of the bill of entry or the shipping bill, as the case may be."

The provisions regarding assessment under the Customs Act 1962 and the Finance Act 1994 are not *pari materia*. This Court is of the view that the judgment in ***Canon India Pvt. Ltd*** (supra) regarding the definition of 'Proper Officer' may not be applicable while interpreting the term 'the Central Excise Officer' under Section 73 of the Finance Act 1994.

28.6 The Notification No.30/2005-ST dated 10.08.2005 as amended by Notification No.44/2016-ST dated 28.09.2016 prescribes the monetary limits for adjudication of service tax cases by different authorities. The relevant part of the notification

is extracted hereunder:

> "In exercise of the powers conferred by section 83A of the Finance Act, 1994 (32 of 1994), the Central Board of Excise and Customs hereby confers on the Central Excise Officer specified in column (2) of the Table below, such powers as specified in the corresponding entry in column (3) of the said Table, for the purposes of adjudging a penalty under Chapter V of the said Finance Act or the rules made thereunder:

| Sl No | Rank of the Central Excise Officer | Amount of service tax or CENVAT credit specified in a notice issued under the Finance Act 1994 |
|---|---|---|
| (1) | (2) | (3) |
| (1) | Superintendent | Not exceeding rupees ten lakh (excluding the cases relating to taxability of services or valuation of services and cases involving extended period of limitation) |
| (2) | Assistant Commissioner or Deputy Commissioner | Not exceeding rupees fifty lakh (except cases where superintendents are empowered to adjudicate) |
| (3) | Joint Commissioner or Additional Commissioner | Rupees fifty lakh and above but not exceeding rupees two crore |
| (4) | Commissioner | Without limit |

28.7 The Circular Nos.994/01/2015-CX dated 10.02.2015 and 1000/7/2015-CX dated 03.03.2015 issued by the CBIC

prescribes the guidelines for adjudication of Central Excise and Service Tax cases booked by DGGI. Both the Circulars are reproduced hereunder:

> "**Circular No. 994/01/2015 CX dated 10.02.2015**:
>
> "Attention is invited to Notification no 38/2001 C.E (N.T) dated 26-06-2001 as amended from time to time whereby the officers of various ranks of Directorate General of Central Excise Intelligence have been appointed by the Board as the officers of Central Excise of the corresponding ranks for exercise of all powers under the Central Excise Act, 1944 and rules made there under, throughout the territory of India.
>
> 2. Officers of DGCEI, as Central Excise Officers, issue show cause notices in cases investigated by them. These Show Cause Notices are adjudicated by either the field Commissioners or by the Commissioner (Adjudication). Cases to be adjudicated by Commissioner (Adjudication) were specified by the orders of the Board.
>
> 3. Pursuant to the Cadre structuring and reorganization of CBEC, new posts in the rank of Principal Commissioners of Central Excise or Commissioners of Central Excise have been created in DGCEI, for various purposes including for adjudication of cases. Additional Director General (Adjudication) in DGCEI shall adjudicate cases where the show cause notices are issued by the officers of DGCEI. The practice of adjudication of DGCEI cases by field Commissioners shall also continue."

**Circular No. 1000/7/2015 CX dated 03.03.2015**:

Attention is invited to Circular No. 994/01/2015 dated 10.02.2015 on the above subject. Reference has since been received from DGCEI regarding the difficulties in implementing the instructions. The issue has been examined and it has been decided to substitute paragraph 5 of the said Circular dated 10.02.2015 with the following paragraph –

"5. To assign cases for adjudication amongst the Additional Director General (Adjudication) and the field Commissioners, following general guidelines may be followed:-

(i) Cases including cases pertaining to the jurisdiction of multiple Commissionerates, where the duty involved is more than Rs 5 crore shall be adjudicated by the ADG (Adjudication). However in case of large pendency of cases or there being a vacancy in the rank of ADG (Adjudication), Director General, CEI may assign cases involving duty of more than Rs 5 crore to the field Commissioners following clauses (iv) and (v) of the guidelines.

(ii) Director General, CEI may issue general orders assigning the show cause notices involving duty of more than Rs 5 crore issued by the specified Zonal Units and/or the DGCEI Headquarters to a particular ADG (Adjudication).

(iii) Where ADG (Adjudication) is the adjudicating authority in one of the cases involving identical issue or common evidence the Director General, CEI may assign all such cases to that ADG (Adjudication).

(iv) Cases to be adjudicated by the executive Commissioner, when pertaining to jurisdiction of one executive Commissioner of Central Excise, shall be adjudicated by the said executive Commissioner of the Central Excise.

(v) Cases to be adjudicated by the executive Commissioners, when pertaining to jurisdiction of multiple Commissionerates, shall be adjudicated by the Commissioner in whose jurisdiction, the noticee from whom the highest demand of duty has been made, falls. In these cases, an order shall be issued by the Director General, CEI exercising the powers of the Board, assigning appropriate jurisdiction to the executive Commissioner for the purposes of adjudication of the identified case."

On a conjoint reading of the above Notifications and Circulars, it can be seen that there is no irregularity or illegal infirmity in the show cause notice issued by the Additional Director General of the Directorate of GST Intelligence. Its final adjudication will be carried out by the jurisdictional Central GST and the Central Excise Commissioner.

28.8 In view thereof this Court does not find that the 2nd respondent does not have authority or power under the Finance Act 1994 read with the Notifications and Circulars mentioned

above to issue the impugned show cause notices. The impugned show cause notices do not suffer from jurisdictional error as contended by the learned Counsel for the petitioner.

29. The question of whether the extended period of limitation would be available to the Department or not and whether one or more jurisdictional facts for invoking the extended period of limitation is/are available or not, is a mixed question of fact and law, which can be decided after considering the response of the petitioner to the show cause notices issued. However, this Court would not like to embark upon the detailed enquiry on factual aspects inasmuch as the challenge before this Court is the impugned show cause notices.

30. It is well settled that the High Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, should not interdict the initial stage of enquiry in the show cause notice unless the show cause notice is without jurisdiction or in violation of the law or vires of an Act is challenged. If there is the existence of the disputed question of fact, the High Court

should not interfere with the show cause notice in the exercise of its jurisdiction under Article 226 of the Constitution of India.

**Conclusion**:

31. In view of the aforesaid, this Court is of the considered view that the petitioner has been issued only two show cause notices impugned in these two writ petitions, which involve separate factual and legal aspects. The enquiry is at the threshold. Therefore, this Court is not inclined to interfere with the ongoing proceedings in pursuance of the impugned show cause notices. The petitioner should file a reply to the show cause notices if already not filed and would be free to make all the submissions available to them under the law. This Court also considers Chapter V of the Finance Act 1994, a complete code with respect to the Service Tax, and if, after adjudication of the show cause notices, orders are passed and the petitioner is aggrieved, the petitioner may avail the remedy available to them under the Finance Act 1994 itself. In view thereof, this Court is not inclined to interdict the proceedings in respect of the two show cause

notices issued.

**Result**:

Thus, both the writ petitions are dismissed. If the petitioner has not filed the reply to the show cause notices, the petitioner should file the reply to the show cause notices within a period of four weeks from today and pursue the case before the competent authority.

All Interlocutory Applications as regards interim matters stand closed.

**Sd/-**

**DINESH KUMAR SINGH**

JUDGE

jjj

APPENDIX OF WP(C) 30147/2022

PETITIONER EXHIBITS

| | |
|---|---|
| Exhibit P1 | TRUE COPY OF THE IMPUGNED SHOW CAUSE NOTICE NO. 35/2022-23 ST (TRU)-PR ADG DATED 19.07.2022 (DIN: 2207DSS50000908873) ISSUED BY THE 2ND RESPONDENT |
| Exhibit P2 | TRUE COPY OF THE SAMPLE INTERCONNECTION AGREEMENT |
| Exhibit P3 | TRUE COPY OF THE FINAL AUDIT REPORT AR NO. 105/TVM/TVM/2017-18(ST) DATED 10.12.2020 |
| Exhibit P4 | TRUE COPY OF THE SHOW CAUSE NOTICE NO. 20/2020-21-ST DATED 29.12.2020 |
| Exhibit P5 | TRUE COPY OF THE ORDER-IN-ORIGINAL NO. TVM-EXCUS-000-COM-10-2021-22 DATED 27.12.2021 PASSED BY THE 3RD RESPONDENT |
| Exhibit P6 | TRUE COPIES OF SAMPLE ST3 RETURNS FILED BY LCOS |
| Exhibit P6(a) | TRUE COPIES OF SAMPLE ST3 RETURNS FILED BY LCOS |
| Exhibit P7 | TRUE COPY OF THE BUSINESS TRANSFER AGREEMENT ALONG WITH THE ADDENDUM |
| Exhibit P8 | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P8(a) | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P8(b) | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P9 | TRUE COPY OF THE RELEVANT PAGES OF THE AUDITED FINANCIAL STATEMENT OF THE PETITIONER COMPANY FOR FY 2017-18 |

| | |
|---|---|
| Exhibit P10 | TRUE COPY OF THE RELEVANT PAGES OF AUDITED FINANCIAL STATEMENT OF THE PARENT COMPANY FOR FY 2017-18 |
| Exhibit P11 | True copy of office memorandum dated 14.10.2022 issued by the Ministry of Information and Broadcasting |

APPENDIX OF WP(C) 3611/2024

PETITIONER EXHIBITS

| | |
|---|---|
| Exhibit P1 | TRUE COPY OF THE IMPUGNED SHOW CAUSE NOTICE NO. 42/2023-24DATED 29.12.2023 (DIN: 202312DSS5000000E3EF) ISSUED BY THE 2ND RESPONDENT |
| Exhibit P2 | TRUE COPY OF THE BUSINESS TRANSFER AGREEMENT DATED 25.03.2017 ALONG WITH THE ADDENDUM |
| Exhibit P3 | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P3(a) | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P3(b) | TRUE COPIES OF THE CERTIFICATE OF INCORPORATION OF THE PETITIONER COMPANY |
| Exhibit P4 | TRUE COPY OF THE LETTER DATED 28.02.2018 |
| Exhibit P4(a) | TRUE COPY OF THE LETTER DATED 01.09.2018 |
| Exhibit P5 | TRUE COPY OF THE RELEVANT PAGES OF THE AUDITED FINANCIAL STATEMENT OF THE PETITIONER COMPANY FOR FY 2017-18 |
| Exhibit P6 | TRUE COPY OF THE RELEVANT PAGES OF AUDITED FINANCIAL STATEMENT OF THE PARENT COMPANY FOR FY 2017-18 |
| Exhibit P7 | TRUE COPY OF THE SAMPLE INTERCONNECTION AGREEMENT |
| Exhibit P8 | TRUE COPY OF THE FINAL AUDIT REPORT AR NO. 105/TVM/TVM/2017-18(ST) DATED 10.12.2020 |
| Exhibit P9 | TRUE COPY OF THE SHOW CAUSE NOTICE NO. 20/2020-21-ST DATED 29.12.2020 |

| | |
|---|---|
| Exhibit P10 | TRUE COPY OF THE ORDER-IN-ORIGINAL NO. TVM-EXCUS-000-COM-10-2021-22 DATED 27.12.2021 PASSED BY THE 4TH RESPONDENT |
| Exhibit P11 | TRUE COPY OF SHOW CAUSE NOTICE NO. 35/2022-23 ST (TRU)-PR ADG DATED 19.07.2022 (DIN: 2207DSS50000908873) |
| Exhibit P12 | TRUE COPY OF THE LETTER DATED 08.09.2023 |
| Exhibit P13 | TRUE COPY OF THE LEGAL OPINION DATED 28.07.2022 ALONG WITH COVERING LETTER DATED 28.07.2022 |
| Exhibit P14 | TRUE COPY OF THE LETTER DATED 20.07.2022 |
| Exhibit P15 | TRUE COPY OF SAMPLE INVOICE ISSUED TO SUBSCRIBER BY LCO |
| Exhibit P16 | TRUE COPY OF SAMPLE GSTR-1 OF LCO |
| Exhibit P17 | TRUE COPY OF SAMPLE GSTR-3B FILED BY LCOS |
| Exhibit P18 | TRUE COPY OF THE SCREENSHOT OF GST RETURNS FILING TABLE OF LCO |