IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2022

Pronounced on : 02.02.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.12291 of 2019, 3354 of 2020, 5098 of 2020,
29286 of 2022 and
WMP.Nos.12579, 16137 and 19172 of 2019,
3893 of 2020, 6016 of 2020 and 28581 of 2022

WP.No.12291 of 2019

M/s.Amirta International Institute of Hotel Management,
(Now known as ChennaisAmirta International
Institute of Hotel Management),
Represented by Authorised Signatory Mr.R.Bhoominathan,
No.15/25, 3rd Cross Street,
West CIT Nagar, Nandanam,
Chennai-600 035. ... Petitioner

Vs

1.The Principal Commissioner of CGST & Central Excise,
GST Bhawan, 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Director General of GST Intelligence,
DGGI Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai-600 090. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records of the First Respondent in the impugned Order-In-Original No.07/2019 CH.N.GST (Commr.) dated

07.02.2019, quash the same as the same is beyond the scope of Section 174(2) of the CGST Act; without jurisdiction as it has been passed by the First Respondent when the Notice has been issued by the Second Respondent; travels beyond Section 66D(1) of the Finance Act, 1994 and Entry No.9, Notification No.25/2012 dated 20.06.2012 and having being passed without considering the objections and decisions relied upon by the Petitioner.

WP.No.3354 of 2020

Shri A.R.Rahman,
No.15, Dr.Subbarayan Nagar 4th Street,
Kodambakkam, Chennai-600 024. ... Petitioner

Vs

1.The Commissioner of CGST & Central Excise,
Chennai South,
MHU Complex, No.692, 5th Floor,
Anna Salai, Nandanam,
Chennai-600 035.

2.The Additional Director General of GST Intelligence,
DGGI Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records of the First Respondent in the impugned Order-In-Original No.27/2019 dated 17.10.2019, quash the same as the same is beyond the scope of Section 174(2) of the CGST Act, 2017; without jurisdiction as it has been passed by the First Respondent when the Notice has been issued by the Second Respondent; as it seeks to levy service tax on permanent transfer of copyright in musical works in violation of Section

65B(44) of the Finance Act, 1994 and denies exemptions conferred through Notification No.25/2012 dated 20.06.2012 and denies the rights conferred on the petitioner under the provisions of the Copyright Act, 1957.

For Petitioner (In both WPs) : Ms.Radhika Chandrasekhar

For Respondents (In WP.12291 of 2019) : Mr.R.Sankara Narayanan (for R1) Additional Solicitor General For Mrs.HemaMuralikrishnan, Senior Standing Counsel

(In WP.3354 of 2020) : Mr.RajnishPathiyil (for R1) Senior Central Government Standing Counsel

(In both WPs) Mr.V.Sundareswaran (for R2) Senior Panel Counsel

W.P.No.5098 of 2020

G.V.Prakashkumar,
New No.64, (Old No.32),
South Usman Road,
T.Nagar, Chennai-600 017. ... Petitioner

Vs

Joint Director,
Office of the Directorate General of
GST Intelligence (DGGI),
Chennai Zonal Unit, C-3, C-Wing, II Floor,
Rajaji Bhavan,
Chennai-600 090. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records in the proceedings in Show

Cause Notice No.11/2019 dated 09.04.2019, in F.No.INV/DGGSTI/CZU/ST/21/2018, issued by the Respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.V.Sundareswaran
Senior Panel Counsel

W.P.No.29286 of 2022:

C.R.Santhosh Narayanan,
Plot No.7, Ganesh Nagar,
Kollapakkam,
Chennai-600 122. ... Petitioner

Vs

1.The Joint Director of Central Tax
Chennai Outer Commissionerate,
Newry Towers, No.2054-I, II Avenue,
Anna Nagar, Chennai-600 040.

2.The Joint Director General of GST Intelligence,
Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to call for the records of the First Respondent in the impugned Order-In-Original No.43/2022(JC) dated 30.08.2022, quash the same as the same is beyond the scope of Section 174(2) of the CGST Act, 2017; without jurisdiction as it has been passed by the First Respondent when the Notice has been issued by the Second Respondent; as it seeks to levy service tax on permanent transfer of copyright in musical works in violation of

Section 65B(44) of the Finance Act, 1994 and denies exemptions conferred through Notification No.25/2012 and denies the rights conferred on the petitioner under the provisions of the Copyright Act, 1957.

For Petitioner : Ms.Radhika Chandrasekhar
For Respondents : Mr.V.Sundareswaran
Senior Panel Counsel

COMMON ORDER

A common order is passed in these Writ Petitions, since the legal issue upon which a determination is sought are one and the same in all the matters. The facts in W.P.Nos.3354, 5098 of 2020 and 29286 of 2022 are similar as they relate to liability to Service tax under the Finance Act 1994 ('in short Act') for transfer of copyright in musical work by music composers and the exemption they seek in terms of Exemption Notification 25/2012 dated 20.06.2012. The facts in W.P.No.12291 of 2019 vary substantially and are detailed in the paragraphs to follow.

2. The petitioner in W.P.No.12291 of 2019 is engaged in conducting professional and Executive Diploma courses in Hotel Management. It was in receipt of a show cause notice dated 30.08.2018 issued by the Director General of GST Intelligence (DGGI/R2) proposing to levy service tax for the period 01.01.2013 to 30.06.2017 upon the premise that the activity carried on by it

amounts to service as defined under Section 65B(44) of Finance Act, 1994 (in short Act), as amended in 2012.

3. According to the petitioner, the courses that its offers from part of a curriculum recognised by law including vocational courses covered in Group-15 to Schedule-I of the List of Designated Trades under the Apprentice Act, 1961. The allegations in the show cause notice were to the effect that the petitioner was not certified to enjoy recognition from the AICTE/UGC or any applicable authority.

4. The petitioner responded, both on the ground of maintainability as well as on the merits, the latter including the argument that the proceedings were bereft of limitation. Despite the objections raised, an order-in-original has come to be passed by the Principal Commissioner of CGST & Central Excise (R1) on 07.02.2009, rejecting the objections and confirming the proposals contained in the show cause notice.

5.The submission of Ms.Radhika Chandrasekhar, learned counsel, are as follows. Show cause notice dated 30.08.2018 was issued by the Director General of GST Intelligence proposing the levy of service tax for the period 01.01.2013 to 30.06.2017. Though the period in question is prior to the Goods and Service Tax (GST) regime, show cause notice has been issued post implementation of GST, that came into effect on and after 01.07.2017.

6. The notice proceeds on the basis that the impugned proceedings are saved in terms of Section 174(2) of the Central Goods and Service Tax Act, 2017 (in short Act/CGST Act). The petitioner has been directed by the DGGI who has issued notice, to appear before the Principal Commissioner of Central Tax and Central Excise, North Commissionerate. Thus the argument that the authority issuing the show cause notice cannot direct adjudication by another authority and since the two authorities, notice issuing authority and the adjudicating authority, are different, the proceedings are vitiated.

7. The petitioner argues that the proceedings are without jurisdiction as there is no provision under which the DGGI could have drawn power to have issued the show cause notice, legitimately. The source of power emanates from Notifications issued in the era prior to GST that have not been expressly saved under the new regime. Hence, since the source of power is in itself, invalid in law, the power assumed by the DGGI falls foul of statutory mandate.

8. The delegation of the power of adjudication by one authority to another is not a situation that has been saved under Section 174 of the CGST Act, that provides for repeal and savings. Chapter-V of Finance Act, 1994 has been omitted through Section 173 of the CGST Act. With this omission Chapter-V stands obliterated from the statute book. Any acts of delegation under the omitted enactment cannot be saved by virtue of the savings clause.

9. An exemption is engrafted under Section 6 of the General Clauses Act. Accordingly, the unconditional omission of a statute without saving clause will result in a situation where all transactions under that Act must grind to a halt commensurate with such omission coming into effect. Thus, with the omission of Chapter-V of Finance Act, 1994, all and any situations contemplated under the erstwhile chapter must stand obliterated.

10. The petitioner relies on the following judgments in support of the submissions above:

(i) *M/s.Rayala Corporation (P) Ltd. v. Director of Enforcement* [1969 (2) SCC 412]
(ii) *Kolhapur Canesugar Works Ltd. v. Union of India* [(2000) 2 SCC 536]
(iii) *Air India v. Union of India and Others* [(1995) 4 SCC 734]
(iv) *OWS Warehouse Services LLP v. Union of India* [2018 (19) G.S.T.L. 27 (Guj.)]
(v) *M/s.Sulabh International Social Service Organization, (Jharkhand State Branch) v. The Union of India [WP.(T)No.1599 of 2019 dated 04.04.2019]*
(vi) *M/s.Canon India Pvt. Ltd. v. Commissioner of Customs [2021-TIOL-123-SC-CUS-LB]*
(vii) *Shri Ishar Alloy Steels Ltd. v. JayaswalsNeco Ltd.* [(2001) 3 SCC 609]
(viii) *Kerala State Electricity Board v. Baiju Chandran* [(2020) 4 KLT 204]
(ix) *Commissioner of Cusoms v. Sayed Ali* [2011 (265) E.L.T. 17 (S.C.)]
(x) *Sri Balaji Rice Company v. Commercial Tax Officer* [(1984) 55 STC 292W (AP)]
(xi) *M/s.Redington (India) Limited v. Principal Additional Director General* (WP.No.12853 of 2020 & batch dated 17.06.2022)
(xii) *M/s.Thangamayil Jewellery Ltd v. The Additional Director General of GST Intelligence, Coimbatore Zonal Unit* [WP(MD)No.16271 of 2020 dated 24.02.2021]

(xiii) *M/s.Thangamayil Jewellery Ltd v. The Additional Director General of GST Intelligence, Coimbatore Zonal Unit* [Rev.Aplw(MD)No.45 of 2021 dated 04.10.2021]

11. On merits, the petitioner submits that the activity of dissemination of education, as part of a curriculum for obtaining a qualification recognised by law or as part of an approved vocational course, would fall under the negative list. In fact, on and post 14.05.2016 the exemption that was hitherto available to the negative list came to be extended by way of Notification bearing No.25 of 2012 dated 20.06.2012.

12. The petitioner is a member of an Association of Universities, and this entitled successful students to join higher education courses in India. Thus, it is entitled to such a course being recognised by law for the time being in force. This submission was rejected by the respondents stating that such entitlement is not equitable, but has to flow from a satisfaction of the statutory conditions.

13. According to the petitioner, this conclusion of the authority is contrary to the decision of the Customs Excise and Service Tax Appellate Tribunal (CESTAT) in the case of *ITM International Pvt. Ltd. v. Commissioner of Service Tax, Delhi* [2017 (7) G.S.T.L. 448 (Tri. – Del.)].

14. The authority was also was not right in concluding that non-affiliation with either the National Skill Development Council or National

Council for Vocational Training or State Council for Vocational Training was fatal to its case.

15. In fact, such affiliation is not necessary and ought not to have weighed with the respondents as, according to the petitioner, it is contrary to the law laid down in the case of *Commissioner of Service Tax, Delhi v. Ashu Exports Pvt. Ltd.* [2014 (34) S.T.R. 161 (Del.)] and *Wigan and Leigh College (India) Limited V. Joint Commissioner, ST Hyderabad* (2007 (8) STR 475 (Tri.Bang.) as well as *SRM Institute of Hotel Management V. Commissioner of Central Excise (ST), Trichy* (2014 (35) STR 843 (Tri.Chennai)).

16. On limitation, the petitioner would submit that the respondents were well aware of the activities of the petitioner even from the year 2014 onwards. Hence, the delay on the part of the respondents in issuing the show cause notice is fatal to their cause as the petitioner had never concealed any particulars or material in regard to the transactions that would justify the invocation of the longer period of limitation. Reliance is placed on the decision in *Commissioner of Customs v. Magus Metals P. Ltd.* [2017 (355) E.L.T. 323 (S.C.)].

17. The petitioner finally contended that there were several grounds raised by it that were omitted to be considered by the authority and thus the impugned order suffers from non-application of mind and relies in the regard upon a decision in the case of *Banas Security & Personal Force v.*

Commissioner of C. Ex. & Service Tax [2015 (38) S.T.R. 933 (Guj.)]. On the basis of the aforesaid submissions, the petitioner would urge that the impugned proceedings be quashed.

18. In W.P.No.3354 of 2020, the petitioner is a music composer of renown, composing songs and background score for films. He challenges an order-in-original dated 17.10.2019. Prior thereto, he was in receipt of show cause notice dated 21.10.2018 issued by the Additional Director General of GST (Intelligence).

19. The notice proposed levy of service tax on transfer of copyright in musical work for the period April, 2013 to June, 2017 on the assertion of the respondents that he was not the owner of the musical work composed, and hence no copyright as contemplated under Section 13(1)(a) of the Copyright Act, 1957, vested in him.

20. The notice proposed imposition of service tax under Section 66E(c) dealing with temporary transfer, or permitting the use or enjoyment of any intellectual property right. He had claimed exemption in respect of receipts from temporary transfer or permitting to the use or enjoyment of a copyright in terms of clause (15) of Notification No.25 of 2012.

21. The petitioner draws attention to Section 65B(44) of Finance Act, 1994 that defines ‘service’ and specifically excludes transfer of title in goods

by way of sale, gift or in any other manner. He would claim the benefit of exemption under Clause (a) of the above Notification, extracted below:

> '*Services provided by way of temporary transfer or permitting the use or an enjoyment of a copyright:-*
>
> *(a) Covered under clause (a) of sub-section (1) of Section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic work; or*
> *(b) of cinematograph films for exhibition in a cinema hall or cinema theatre.'*

22. Section 13 of the Copyright Act, 1957 reads as follows:

> *13. Works in which copyright subsists.— (1) Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say,—*
>
> *(a) original literary, dramatic, musical and artistic works;*
>
> *(b) cinematograph films; and*
>
> *(c) sound recording.*
>
> . . . .

23. The petitioner reiterates that he is the sole and absolute owner of the copyright that subsists in the musical works composed by him. Being the holder of such copyright, he assigns them to the film producer under agreements that he executes with them, in terms of which the producer could exploit that copyright.

24. On the assumption of jurisdiction, petitioner adopts the arguments advanced in the case of *Amrita International* (supra) placing emphasis on the

judgements in *Canon India Pvt. Ltd., Shri Ishar Alloy Steels Ltd., Kerala State Electricity Board., Sayed Ali* and *Sri Balaji Rice Company* cited by that petitioner as well.

25. The petitioner in W.P.No.29286 of 2022 is also a composer of music and background score for films, and challenges an order-in-original dated 30.08.2022. Prior thereto, he had received a show cause notice dated 24.10.2018 relating to the period 2013-14 to 2016-17 and calling for various particulars in respect of the aforesaid period. Upon receipt of the documents, the DGGI framed the issues for consideration under the following broad heads:

> *a) Consideration received in terms of Contract of employment as Composer with Producer of Movies where he has undertaken to perform several activities pertaining to composing, writing and creating the Music and arranging and orchestrating the same together with the lyrics, selecting, securing the services of and obtaining all necessary rights releases permissions and consents from any Musicians, making such alterations to the Music as is reasonably required by the Producer, supervising the editing of the Music, undertaking the preparation of music cue sheets containing such details as are reasonably required by the Producer and advising the Producer generally at the Producer's request on all matters relating to the Music and all such other services in relation to the film as the Producer may reasonably request and as are standard and customary for film composers in the film industry in India. All deliverables shall be composed and made in accordance with such ideas and directions deemed to be an integral part of the Film's story narration as Producer/Director may provide to the Composer from time to time as mutually agreed. Further, in some cases he has also (as an Assignor of right purportedly vested in him in respect of Musical Works and Sound Recording) assigned*

the presumed right to the Assignee (Film Producers) while retaining certain rights like right to live performance of such works, right to Publishing Royalties etc.

b) Composing music for advertisement and Promotional activities for the cinematographic film for which he had composed Music.'

26. After extracting various provisions of the Service Tax Act, Rules and Copyright Act, the authority proceeds to prima facie conclude that the petitioner has imported taxable services from outside India remitting consideration and foreign exchange. He thus fastens liability on the receipts from such services under Section 68(2) of the Act read with relevant Service tax and Point of Taxation Rules as well as Notification 30/2012 ST dated 20.06.2012.

27. He thereafter proceeds to quantify the tax, penalty and interest and in doing so, invokes the extended period on the ground that there has been a suppression of facts by the petitioner. A detailed response was filed on 09.02.2019, wherein the petitioner has raised objections on maintainability as well as on the merits of the matter. By and large, the submissions echo those made by the other petitioners whose cases are dealt with under this order and I hence do not reproduce the same in the interests of brevity.

28. In W.P.No.5098 of 2020, the petitioner, also a composer of music and background score for films, challenges a show cause notice dated 09.04.2019 issued for the period 01.10.2013 to 30.06.2017 invoking extended

period of limitation on the ground that the petitioner had suppressed various receipts and had not remitted tax in regard to the same. As in W.P.Nos.3354 of 2020 and 29286 of 2022, reliance is placed on mega Notification 25/2012 dated 20.06.2012, specifically clause (15) thereof. In addition, learned counsel would rely on the Service Tax Education Guide in support of the submissions made.

29. The decisions of this Court in *M.Suganthi V. Assistant Commissioner of Central Excise, Pollachi* (2011 (23) STR 7 (Mad) and the Allahabad High Court in *Nav Sahitya Prakash and ors. V. Anand Kumar and ors.* (AIR 1981 All 200) are relied upon. No reply has been filed by the petitioner to the show cause notice, and he has, confident in the present challenge, filed the present Writ Petition straightaway. On the question of law, the petitioner adopts the submissions advanced as recorded in the paragraphs supra.

30. On the legal issue raised, the respondents counter the challenge to legality of the impugned proceedings (orders-in-original and show cause notice), wholly relying upon Section 174(2) of the CGST Act and Notification No.2 of 2015 dated 10.02.2015. The aforesaid Notification empowers the Board under Rule 3 of the Service Tax Rules to notify the Principal Directors General who hold jurisdiction over Executive Principal Commissioners or Commissioners of Service Tax/Central Excise for assigning show cause notices issued by the DGGI for adjudication by those Executive Principal

Commissioners/Commissioners. This Notification is saved under the savings clause and hence there is no infirmity in the assumption of jurisdiction.

31. The judgment cited by the petitioner in *Rayala Corporation Private Limited* and *Kolahpur Canesugar Works Limited* are, according to the respondents, distinguishable. In the first instance, the Hon'ble Supreme Court considered a situation where the authority had invoked the provisions of Section 6 of the General Clause Act, 1897 (in short 'GC Act'). The Court had opined that Section 6 is applicable only to repealed and not expired statutes.

32. In the present case, there was no necessity for the DGGI to invoke the GC Act since Chapter-V of the Finance Act, 1994 that had been omitted by virtue of Section 173 of the CGST Act, had been saved by operation of Section 174(2). As far as the judgment in *Kolahpur Cane Sugar Works Limited* is concerned that was a situation where a new provision had been introduced without the old provision having been saved. Such a situation does not arise in the present case as Chapter-V has been duly saved.

33. Reliance is placed on Rule 3 of the Service Tax Rules whereunder the Central Government was conferred powers on the Central Board of Excise and Customs (in short 'Board'/'CBEC') to issue notifications. This power has been saved and there is thus no infirmity in the present impugned proceedings as they have drawn their powers from such validly issued notification.

34. Respondents rely on the judgment in the case of *Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and another* [2015 (326) ELT 209], *Fibre Boards v. Commissioner of Income Tax* [376 ITR 596] and *State of Rajasthan v. Harnik Singh* [2002 (3) SCC 481].

35. In these judgments, the Hon'ble Supreme Court has held that where statutory provisions were saved, such savings would be extended to allied rules and regulations as well. Thus, the argument of the petitioner that the rules, having not been specifically saved, the impugned proceedings are vitiated, is not tenable in law.

36. R1, the Commissioner of GST and Central Excise in W.P.No.3354 of 2020, relies upon the judgements in *Laxmi Narayan Sahu and Ors. v. Union of India and Ors.* [WP(C)2059, 1868/2018 and 7729/2017 dated 12.10.2018], *JSK Marketing Ltd. v. Union of India* [2021 (46) G.S.T.L. 369 (Bom.)] and *Union of India v. JSK Marketing Ltd.* [2022 (56) G.S.T.L. J10 (S.C.)]

37. Respondents in W.P.No.12291 of 2019 also rely on the decision of the Kerala High Court in *Sheen Golden Jewels (I) P. Ltd. v. State Tax Officer (IB), SgstDeptt., Thiruvananthapuram* [(2019) 23 GSTL 4], Karnataka High Court in *Prosper Jewel Arcade LLP v. Deputy Commissioner Commercial Taxes and Others* [(2018) SCC Online Kar 3887] and Delhi High Court in *Vianaar Homes Private Limited v. Assistant Commissioner, Central Goods & Services Tax and Others* [(2020) 43 GSTL 479] and R2 in WP.No.3354 of

2020), in addition, relies upon the decision in *Imagic Creative Pvt. Ltd. v. Commissioner of Commercial Taxes and Others* [(2008) 12 VST 371 (SC)]

38. By way of response, on behalf of the petitioners, it is pointed out that there is no specific reference to 'Notifications' under Section 174(2) of the CGST Act and hence one cannot simply assume that all prior Notifications had been saved. A comparison is drawn in this regard to Section 88(3)(1) of the Tamil Nadu Value Added Tax Act, 2006, dealing with repeal and savings that specifically states that Rules, Regulations, Notifications, Clarifications or Orders made or issued under the provisions of the Tamil Nadu General Sales Tax Act, shall continue to be in force.

39. The decision of the Delhi High Court in *Vianaar Homes* is distinguished pointing out that the notice in that case was issued by the audit authority and not the DGGI. Furthermore, they argue that reference to Section 24 of the GC Act is misplaced, since there is a conscious reference only to Section 6 of the GC Act in Section 174(3) of the CGST Act.

40. The maintainability of the writ petitions is assailed by the respondents on the ground of availability of an efficacious alternative remedy. The decision of the Division Bench of Allahabad in *Royal Bank of Scotland N.V. V. Commissioner of Customs and Central Excise, Noida* (2014 (35) STR 68 (All.)) is cited. That case dealt with a challenge to an order of the CESTAT. In that context, the Bench held that the Writ Petition was not maintainable as

the issue regarding the rate of tax/duty in regard to a service, or whether at all the service would be liable to tax, could be decided only by the Hon'ble Supreme Court in an appeal under Section 35 L of the Central Excise Act, 1944.

41. A Division Bench of the Madras High Court has in the case of *Thiruchitrambablam Projects Ltd. V. Customs, Excise and Service Tax Appellate Tribunal* (2016 (43) STR 531), has decided likewise holding that, as against an order of the CESTAT, a Writ Petition would not lie and it would remain for the aggrieved party to challenge the same by way of statutory appeal. To similar effect is the decision in the case of *TT Krishnamachari and Company V. Union of India* (W.P.No.1276 of 2010 dated 17.11.2014).

42. The submission is that since the impugned orders-in-original dated 07.02.2019 (W.P.No.12291 of 2019), 17.10.2019 (W.P.No.3354 of 2020) and 30.08.2022 (W.P.No.29286 of 2022) and show cause notice dated 09.04.2019 (W.P.No.5098 of 2020) touch upon the liability or otherwise to tax, it is only the appellate authority in statutory appeal who should look into the same and not the High Court.

43. In *Raza Textiles Ltd. V. Income Tax Officer, Rampur* ((1973) 1 SCC 633) three Judges of the Hon'ble Supreme Court opined that the maintainability of a Writ Petition would depend on whether the error committed by a quasi-judicial authority would amount to a decision on a jurisdictional fact. Thus,

even if the error in question concerned one of fact, the question that would arise is as to whether such fact constituted a jurisdictional fact, and if the answer were in the affirmative, such error would be open to examination in a Writ of Certiorari.

44. The petitioners rely upon the decisions in *TVS Srichakra Ltd. v. Commissioner of CGST &C.Ex., Madurai* [2018 (15) G.S.T.L. 182 (Mad.)] and *Industrial Mineral Company (IMC) v. Commissioner of Customs, Tuticorin* [2018 (18) G.S.T.L. 396 (Mad.) in support of the position that the existence of a statutory remedy is no bar to the Court entertaining a writ petition on a pure question of law.

45. The grounds raised are, broadly, two in nature. A common thread in all writ petitions relates to the assumption of jurisdiction by the DGGI which does constitute a pure question of law. All facts in regard to this ground are on record and admitted and in such circumstances, I see no justification in relegating the petitioners to alternate remedy in respect of this issue.

46. However, the position is different qua the other limb of the argument, that touch upon the merits of the claim of the petitioners. Detailed counters have been filed in the case of the petitioners in W.P.Nos.12291 of 2019, 3354 and 5098 of 2020. The counters, in the latter instances, elaborate on the nature of transactions that have been entered into by these petitioners in relation to

composition of music, royalties and live concerts, both domestic and international.

47. The respondents have interpreted the provisions of Section 18(1) of the Copyright Act, 1957 specifically the 3rd proviso concluding that these petitioners have not established that they are the sole and absolute owners of the copyright in the musical work. They point out that there is no prima facie evidence that has been produced by the petitioner in this regard.

48. R1, in W.P.Nos 3354, 5098 of 2020 and 29286 of 2022, relies upon the judgement of the Supreme Court in *Sushilaben Indravadan Gandhi and another v. New India Assurance Company Limited and others* [(2021) 7 SCC 151] touching upon the aspect of 'control' as an aid to differentiate between a contract *of* service and one *for* service.

49. It would not, in my opinion, appropriate to refer to the factual nature of the agreements qua these petitioners and third parties including film producers in writ proceedings. In any event, no agreements or other documents have been placed before this Court for appreciation, and rightly so. The nature of the Intellectual Property Right (IPR) vesting in the music composers, the terms inter se the composers and film producers/third parties, whether there has been an assignment of the IPR, the terms of the assignment, if at all, are all questions of fact that would have a bearing upon the intrinsic question, relating to the applicability of the Exemption Notification to these petitioners.

50. It is best that such issues be decided by the authorities who can call for relevant information from the petitioners for their appreciation, including the agreements. Interpretation of contractual clauses is not a matter that should concern this Court. Incidentally and moreover, the proceedings in the cases of the three music composers span the periods 2013-2017, specifically, 18.05.2013 to 28.04.2017 in W.P.No.29286 of 2022, and thus the length of the period would also entail a study of voluminous documentation that cannot be undertaken in these proceedings.

51. Though it is the persistent attempt of the petitioners to state that the liability to service tax can well be decided without reference to facts, agreements or contracts, in my considered view, that would be an utter over-simplification of the matter and even assuming so, such a determination would be purely academic. In the case of the petitioner in W.P.No.5098 of 2020, the challenge is to a show cause notice to which the petitioner has not even replied. The proceedings are, in my considered view, far too premature to be considered by this Court as even primary facts are to be established on the anvil of which the legal premise would thereafter be applied.

52. In the case of *Amirta International* as well, a spirited defence has been put up to the eligibility of that petitioner to the relief claimed that turn on an appreciation and assimilation of facts. The counter of the 2nd respondent

dated 04.06.2019 is detailed as regards the factual aspects of the matter, including the courses conducted by the petitioner.

53. The respondents submit that the petitioners have entered into a Memorandum of Understanding (MOU) with the Bharat Sevak Samaj (BSS) and Foreign Universities such as the Open University of Malaysia, Sheffield Academy, Malaysia, Sheffield College, Australia, London School of Business and Finance, Singapore and Malaysian Hospitality College, Australia.

54. The petitioner offers the courses of the Foreign Universities as well as of BSS as per their curriculum. Upon completion of the courses, it issues the professional Diploma Certificate of the foreign Universities and of BSS. The petitioner is merely a conduit and passes on the Certificates/Diplomas issued by BSS and the foreign Universities. The curriculum and the conduct of examination are by BSS and the foreign Universities, respectively. The Certificates/Diplomas issued are not recognised by any law for the time being in force such as by the UGC or AICTE and thus the claim of the petitioner for exemption is misplaced.

55. Exemption requires, as a pre-requisite, for the courses conducted to be duly accredited by the statutory authorities and recognised under law. As a consequence the Universities are themselves to hold such accreditation. However the list of UGC approved universities in India as on 07.08.2018 does

not include either the foreign Universities or BSS. Hence, the conditions under the Exemption Notification are not satisfied and the activity and receipts from the activity carried on are liable to tax.

56. The respondents also distinguish the decisions of the CESTAT upon which reliance has been placed by the petitioner as well as the decisions of the Delhi High Court in *Ashu Exports Private Limited* and *Wigan and Leigh College (India) Limited*.

57. On limitation, they point out that the petitioner had been regularly remitting tax for the period 01.04.2011 to 31.03.2012, but had stopped thereafter. This factor indicates a concerted and conscious effort by the petitioner to wriggle out of its statutory commitment. The extended period of limitation is thus well available to the respondent in such a situation. Respondents have relied upon the decision in *Sahitya Mudranalaya Pvt. Ltd. v. Additional Director General* [2021 (46) G.S.T.L. 245 (Guj.)], *Additional Director General of GST Intelligence v. Sahitya Mudranalaya Pvt. Ltd.* [2021 (48) G.S.T.L. J62 (S.C.)].

58. In this case too, I am of the view that the merits of the matter must be decided by the statutory authorities, though bearing in mind the decisions rendered by the High Courts and CESTAT on this account, as an examination of facts is inevitable on the rival positions as noticed above. All writ petitions,

to the extent to the legal issue raised, are held to be maintainable. The challenge on the merits is left open to be agitated in appeal, subject to the decision taken in the following paragraphs on the question of assumption of jurisdiction.

59. The submissions of the respondents are dealt with in common as regards the legal issue involved. Barring W.P.No.5098 of 2020 where the challenge is to a show cause notice and wherein the Joint Director, DGGI is arrayed as sole respondent, in the other three Writ Petitions, the authorities of GST Department as well as DGGI are arrayed as respondents.

60. Counters have been filed by all respondents, barring W.P.No.29286 of 2022, wherein learned counsel for the respondents have waived the necessity for counters, proceeding instead to adopt the stand of their counterparts in the other Writ Petitions, both oral and written.

61. The issue that falls for determination is as to whether, the Notifications under which the DGGI/officials of the Intelligence Department have drawn sustenance to issue show cause notices for assessment under the Finance Act 1994, survive the transition from the erstwhile regime of taxation (Service tax) to the new regime of Goods and Service tax (GST), effective from 01.07.2017, and as a consequence, whether the assumption of jurisdiction by the DGGI for issuance of show cause notice under Finance Act 1994 read with Section 174(2) of the CGST Act, is proper in law.

62. As a prelude, levies under several revenue enactments including service tax, stood subsumed into the GST regime, and Central and State Statutes were enacted from and with effect from 01.07.2017 as comprehensive codes to provide for all indirect levies under one umbrella. Finance Act 1994 levying Service tax was omitted by Section 173 of the CGST Act that states that '*Save as provided in this Act, Chapter V of the Finance Act, 1994 (32 of 1994) shall be omitted*'.

63. The GST enactments provide for sunset clauses and under the CGST Act, the relevant provision is Section 174. It is the scope and ambit of Section 174 that is under consideration in this order, in the context of Notifications issued under the repealed regime.

64. Some of the petitioners have raised an issue, albeit tentatively, in regard to the avowed distinction between 'omission' and 'repeal' and the impact of such differences on the legal issue, relying upon the judgement in *Rayala Corporation*. The Hon'ble Supreme Court had, therein, rendered observations in regard to Section 6-A of the General Causes Act to the effect that reference to 'omission' therein, was only in the context of an 'amendment' and not 'repeal'.

65. These observations was interpreted to mean that Section 6-A did not apply to a repeal. This interpretation was rejected as fallacious in a later

judgment of the Supreme Court in *Fibre Boards* (supra). The Court held that the term 'repeal' is a wide term, far wider than 'omission', of far larger import, and would include several situations of amendment, including 'omission'. The observations of the Court in *Rayala Corpn.* were held to be obiter on this aspect.

66. The issue was raked up by the assessee yet again in the case of *Shree Bhagawati Steel Rolling Mills* (supra), and after hearing the counsel in detail, the submissions of the petitioner were rejected. Thus this issue is no longer res integra and the arguments of the petitioner on this score are rejected.

67. Under the erstwhile Service tax regime, the assumption of jurisdiction for the purposes of issuing show cause notices and passing orders, came to be dealt with by way of the following Notifications. Under Notification No.22/2014 dated 16.09.2014, the Board has appointed officers of the Directorate General of Central Excise Intelligence and Directorate General of Service Tax, as Central Excise officers, investing them with all powers under Chapter V of Finance Act, 1994 and the rules made there under throughout the territory of India. The Notification reads thus:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI
NOTIFICATION NO.22/2014-ST., Dated: September 16, 2014

"In exercise of the powers conferred by clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944), read with clause (55) of section 658 of the Finance Act, 1994 (32 of 1994), rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994 and in supercession of the notification No. 46/98-SERVICE TAX, dated the 28th January, 1998, published vide number G.S.R. 59(E), dated the 28th January, 1998 and No. 7/2004-CE, dated the 11th March, 2004, published vide number G.S.R 187(E), dated the 11th March, 2004, the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Audit, Directorate General of Central Excise Intelligence and Directorate General of Service Tax specified in column. (2) of the Table below as Central Excise Officers and invests them with all the powers under Chapter V of the Finance Act, 1994 (32 of 1994) and the rules made there under, throughout the territory of India, as are exercisable by the Central Excise Officers of the corresponding rank as specified in column (3) of the said Table, namely:-

TABLE

Sl.No.	***Officers***	***Officers whose powers are to be exercised***
(1)	***(2)***	***(3)***
1.	*Principal Director General, Central Excise Intelligence or Principal Director General, Service Tax*	*Principal Chief Commissioner*
2.	*Director General, Audit*	*Chief Commissioner*
3.	*Principal Additional Director General, Central Excise Intelligence, Principal Additional Director General, Service Tax or Principal Additional Director General, Audit*	*Principal Commissioner*
4.	*Additional Director General, Central Excise Intelligence, Additional Director General, Service Tax or Additional Director General, Audit*	*Commissioner*
5.	*Additional Director, Central Excise*	*Additional*

	Intelligence, Additional Director, Service Tax or Additional Director, Audit	*Commissioner*
6.	*Joint Director, Central Excise Intelligence, Joint Director, Service Tax or Joint Director, Audit*	*Joint Commissioner*
7.	*Deputy Director or Assistant Director, Central Excise Intelligence, Deputy Director or Assistant Director, Service Tax or Deputy Director or Assistant Director, Audit*	*Deputy Commissioner or Assistant Commissioner*
8.	*Senior Intelligence Officer, Central Excise Intelligence, Superintendent, Service Tax or Superintendent, Audit*	*Superintendent*
9.	*Intelligence Officer, Central Excise Intelligence, Inspector, Service Tax or Inspector, Audit*	*Inspector*

2. This notification shall come into force on 15th October, 2014.

[F.No.137/29/2014-Service Tax]
(HimaniBhayana)
Under Secretary to the Government of India"

68. In terms of Notification No.2/2015-ST dated 10.02.2015, the Board had specified that the Principal Director General of Central Excise Intelligence shall have jurisdiction over the Principal Commissioners of Service Tax or the Commissioners of Central Excise as the case may be for the purpose of assigning Show Cause Notices issued by the Directorate General of Central Excise Intelligence, for adjudication, by such Principal Commissioner of Service Tax or the Principal Commissioners of Central Excise or the

Commissioners of Service Tax or Commissioners of Central Excise, in the following terms:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL BOARD OF EXCISE AND CUSTOMS
NEW DELHI
NOTIFICATION NO.2/2015-ST, Dated: February 10, 2015

"In exercise of the powers conferred by rule 3 of the Service Tax Rules, 1994, read with notification No. 6/2009-Service Tax dated the 30th January, 2009, published vide G.S.R. 60 (E) dated the 30th January, 2009 and notification No. 22/2014-Service Tax dated the 16th September, 2014, published vide G.S.R. 650 (E) dated the 16th September, 2014, the Central Board of Excise and Customs hereby specifies that the Principal Director General of Central Excise Intelligence shall have jurisdiction over the Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be, for the purpose of assigning show cause notices issued by the Directorate General of Central Excise Intelligence, for adjudication, by such Principal Commissioners of Service Tax or the Principal Commissioners of Central Excise or the Commissioners of Service Tax or the Commissioners of Central Excise, as the case may be."

[F.No.137/29/2014-Service Tax]

(HimaniBhayana)
Under Secretary to the Government of India"

69. Vide Notification 14 of 2017 dated 09.06.2017, the Central Government has directed that the powers exercisable by the Central Board of Excise and Customs under Rule 3 of the Central Excise Rules, 2002 and Rule 3

of the Service Tax Rules, 1994 may be exercised by the Principal Chief Commissioner of Central Excise and Service Tax or the Chief Commissioner of Central Excise and Service Tax for the purpose of assignment of adjudication of notices to show cause issued under the provisions of the Central Excise Act, 1944 or Finance Act, 1994 to Central Excise Officer subordinate to them. This Notification has been issued in supersession of notices issued in 2007 and 2009 only. Notification No.14/2017 reads as follows:

Notification No. 14 /2017-C. E. (N.T) dated 09-Jun-2017

Adjudication of show cause notices – power delegated to Chief Commissioners – Notification Nos.11/2007 – C.E. (N.T.) 16/2007 – S.T. and 6/2009 – S.T. Superseded.

In exercise of the powers conferred by section 37A of the Central Excise Act, 1944 (1 of 1944) read with section 83 of the Finance, Department of Revenue, Central Board of Excise and Customs vide numbers 11/2007-Central Excise (N.T), dated the 1st March, 2007, 16/2007-Service Tax, dated the 19th April, 2007 and 6/2009-Service Tax. dated the 30th January, 2009, published in the Gazette of India Extraordinary vide numbers G.S.R 151 (E) dated the 1st March, 2007, G.S.R 303 (E) dated the 19th April, 2007 and G.S.R 60 (E) dated the 30th January, 2009, respectively, except as respects things done or omitted to be done before such supercession, the Central Government hereby directs that the powers exercisable by the Central Board of Excise and Customs under rule 3 of the Central Excise Rules, 2002 and rule 3 of the Service Tax Rules, 1994, may be exercised by-

(a) the Principal Chief Commissioner of Central Excise and Service Tax; or

(b) the Chief Commissioner of Central Excise and Service Tax, for the purpose of assignment of adjudication of notices to show cause issued under the provisions of the Central Excise Act, 1944 (1 of

1944) or the Finance Act 1994 (32 of 1994), to the Central Excise Officers subordinate to them.

2. This notification shall come into force on a date to be notified by the Central Government in the Official Gazette.

70. The case of the petitioners is that the aforesaid Notifications under which the officials of the DGGI have assumed jurisdiction have not been expressly saved under Section 174(2) of the CGST Act and hence the impugned orders/notice are non-est in law. Section 173 of the CGST Act 2017 omitted the Chapter V of Finance Act 1994, and Section 174 thereof provides for repeals and saving in the following terms.

"Repeal and Saving:

174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not —

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) . . . .

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal."

71. Sections 6 of the General Clauses Act, 1897 which is also made applicable to the saving of the erstwhile provisions, states that *where this Act, or any Act of Parliament or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-*

> *(a) revive anything not in force or existing at the time at which the repeal takes effect; or*
> *(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
> *(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*
> *(d) after any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
> *(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*

72. The General Clauses Act also provides for the saving of orders, etc., issued under enactments repealed and re-enacted by specifying their continuance in the following terms—

> ***24. Continuation of orders, etc, issued under enactments repealed and re-enacted -*** *Where any Central Act or Regulation, is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under*

the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been made or issued under the provisions so re-enacted, unless and until it is superseded by any appointment notification order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act or Regulation, which, by a notification under section 5 or 5A of the 8 Scheduled Districts Act, 1874, (14 of 1874) or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from the re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section."

73. I have heard the submissions of Ms.Radhika Chadrasekar, learned counsel for the petitioner in W.P.No.12291 of 2019, 3354 of 2020 and 29286 of 2022, Mr.Joseph Prabhakar, learned counsel for the petitioner in 5098 of 2020, Mr.R.Sankara Narayanan, learned Additional Solicitor General, assisted by Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for R1 in W.P.No.12291 of 2019, Mr.V.Sundareswaran, learned Senior Panel Counsel for R2 in W.P.Nos.12291 of 2019 and 3354 of 2020 and for respondents in W.P.Nos.5098 of 2020 and 29286 of 2022 and Rajnish Pathiyil, learned Senior Central Government Standing Counsel for R1 in W.P.No.3354 of 2020.

74. Having extracted the relevant Notifications and applicable statutory provisions, I now discuss those cases cited by the parties, as I believe would have a bearing on the decision to be taken.

75. In the case of *Sheen Golden Jewels (I) P. Ltd.* and *Prosper Jewel Arcade LLP*, the Kerala and Karnataka High Courts held adverse to those petitioners rejecting their arguments that with the shift to the GST regime, all levies under the erstwhile service law regime had lapsed. The conclusion arrived at was that Section 174 of the respective State GST enactments saved all the rights, obligations or liabilities acquired, accrued or incurred under the repealed enactments which included Service Tax Act as well.

76. To be noted that neither of the aforesaid decisions had dealt with the specific question/issue raised in these matters as to whether the Notifications issued under the Service tax regime, survived the transition to the GST regime. In any event, though a lukewarm ground has been raised to this effect, it is admittedly not the case of the petitioners before me that the levy of service tax in itself erroneous post 01.07.2017, but only that the assumption of jurisdiction by the DGGI in issuing show cause notices, is. Had the notices been issued by the correct officer, the petitioner are unanimous in stating that the present challenge would be a non-starter.

77. In *Vianaar Homes Private Limited*, a Division Bench of the Delhi High Court considered a challenge to a notice issued by the officer in the audit wing of the Department in terms of Rule 5 A of the Service Tax Rules, 1994 read with Section 174(2)(e) of the CGST Act. The Delhi High Court had earlier

considered a similar challenge in the case of *Aargus Global Logistics Pvt. Limited V. Union of India* ((2020) 116 Taxmann.com 381) and had rejected the same.

78. Since the assessee *(Viannar Homes),* had urged that the matter requires re-consideration, their submissions were heard and reappraised by the Bench. The main plank of the argument related to whether Rule 5A of the Service Tax Rules had been saved with the transition to GST regime. According to those petitioners, the saving clause did not specifically use the term 'Rules' but had saved only the Finance Act, 1994. They were thus of the view that with the lapsing of the Rules, Notifications that had been issued under the erstwhile Rules no longer held any force.

79. That apart, it was their specific submission that jurisdiction could be assumed only by a proper officer under the CGST Act. Notwithstanding that the proviso to Section 3 of the CGST Act stipulated that officers appointed under the Central Excise Act, 1944 would be officers under the CGST Act, the officers appointed under the CGST Act cannot be assumed to be proper officers under the erstwhile Rules.

80. Reference was made inter alia to the judgments in *Kolhapur Cane Sugar Works* and *Air India* that were distinguished by the Division Bench noting that it was the legislative intention which is to be gleaned, to understand the saving provision in question. In the CGST Act, the repeal and enactment is

that of erstwhile central enactments, in which case, Section 6 of the General Clauses Act would squarely apply.

81. Section 174, according to the Bench, thus unequivocally saved all rights, obligations, privileges and liabilities that had enured under the old laws which would continue in the new regime. Likewise, they also held that the judgment in *Air India* does not support the case of the petitioner, as the factual situation was distinguishable. In conclusion, the Bench reiterated its view expressed in the case of *Aargus Global Logistics Pvt. Ltd.* holding against the petitioner.

82. The Bench also proceeded to reject the argument of that petitioner that Section 24 of the General Clauses Act, which had been relied upon by the revenue in support of the saving of Rule 5 of the Service Tax Rules, would be inapplicable.

83. In *Canon India*, the issue that arose was whether an officer of the Directorate of Revenue Intelligence (DRI) had the authority in law to issue a show cause notice under Section 28(4) of the Customs Act, 1962 when the goods were initially cleared for import by a Deputy Commissioner of Customs who was of the opinion that the said goods were exempted from duty. It was held that the officer of the DRI would not be a proper officer to review the original order of exemption granted by the Deputy Commissioner as the enactment did not provide for identically placed officers of different

Departments exercising the powers of re-assessment or review in regard to each other's orders.

84. That apart, they also held that the Additional Director General of the DRI who had issued the recovery notice was not the proper officer, by a combined reading of the definitions of 'proper officer' under Sections 2(34), 6 and 28 of the Customs Act. The ratio of this judgment, although rendered in a different context, may well support the revenue rather than the petitioners.

85. The proposition that when Statute directs a thing to be done in a particular way, it must be done that way alone, would, in my view, support a position that the practice and procedure accepted and followed over the years must not be disturbed or distorted except if the situation so warrants. The judgment in *Canon* has been followed by this Court in the case of *Redington (India) Limited* and *Thangamayil Jewellery Ltd*.

86. Incidentally, respondents point out that a Review Petition has been filed in re. the judgment in Canon India that is pending before the Hon'ble Supreme Court. That apart, the aforesaid decisions of the learned single Judge of this Court have not attained finality and are pending in appeal and there is an interim stay granted in some instances.

87. In *Sri Ishar Alloy Steels*, three Judges of the Hon'ble Supreme Court interpreted the expression '*the bank'* under the Negotiable Instruments

Act,1881 to mean the specific drawee bank and not the collecting bank of the payee. Thus the presentation of the instruments must be before the drawee bank within the statutory period of 90 days in order to trigger the proceedings under the Negotiable Instruments Act. Presentation elsewhere would be no consequence in this regard.

88. The above judgments are relied upon in furtherance of the argument that when there the reference made by Legislature is specific, in this case to the Finance Act 1994 alone, then such specificity cannot be diluted or whittled down by a process of interpretation. This would be, the petitioners state, contrary to the letter of the law.

89. In *Vianaar Homes*, the challenge was to a notice issued by the officer in the audit department, where that officer had drawn power under Section 5A of the Service Tax Rules. Rule 5A granted access to a registered premise, to an officer authorized by the Commissioner in this behalf for the purpose of carrying out scrutiny, verification and checks as may be necessary to safeguard the interests of the revenue. Rule 5A(2) refers to such entitlement qua an officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Controller and the Auditor General of India or a Cost Accountant or a statutorily nominated Chartered Accountant.

90. The appointment of the Audit officers was in terms of Notification No.2/2017 dated 29.07.2017 and the submission was thus that the repeals and savings clause did not save the service tax rules. In repelling this argument, the Bench has taken note of Section 24 of the GC Act, which provides for the continuance of subordinate legislation.

91. To be noted that Section 174(3) only refers to Section 6 of the GC Act and not 24. However, I am of the considered view that in interpreting the effect of repeal and savings clauses, one will adopt a view that ensures smooth continuity rather than one that disrupts the flow of the levy itself. In doing so, the Court must consider if the new enactment specifically militates against such the continuance.

92. The case of *Brihan Maharashtra Sugar Syndicate Ltd. V. Janardan Ramchandra Kulkarni and others* (AIR 1960 SC 794) supports this proposition. That matter related to an application filed by shareholders who were respondents in the matter accusing them of oppression under the Companies Act, 1913.

93. The application was filed before the District Judge, Poona, who was vested with the jurisdiction to deal with such application under a Notification issued by the Government of Bombay under Section 3(1) of the erstwhile 1913 Act. Pending consideration of that application, 1913 Act was repealed and the

1956 Act was enacted. The company thus took the plea that the District Judge ceased to have jurisdiction to deal with the matter, which application was dismissed.

94. The appeal before the High Court met with the same fate. The aforesaid orders were reversed by the Hon'ble Supreme Court which opined that Section 6 of the GC Act would save the situation. The repeals and savings clause being Section 658 in the 1956 Companies Act, provided for the application of Section 6 of the GC Act with respect to the effect of repeal. The Court thus held that reference to Section 6 would suffice to continue the proceedings and the District Judge would be competent to hear the application despite the repeal of the 1913 Act.

95. The above conclusion support the view expressed above, though I am conscious of the fact that the application in that case had been filed under the old regime. In *State of Punjab V. Mohar Singh* (AIR 1955 SC 84), the Hon'ble Supreme Court held that the effect of repeals and savings must be arrived at in a wholistic fashion by deciding whether there was a contrary intention that is manifest in the new enactment to confirm that rights under the old enactment were destroyed.

96. The case of *Air India* (supra) turns on different factual and legal matrices. The subject of interpretation there, was Section 8 of the Air

Corporations (Transfer of Undertakings and Repeal) Act, 1994 that reads as follows:

> *8. Provisions in respect of officers and other employees of corporations - (1) Every officer or other employee of a corporation (except a Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of the corporation) serving in its employment immediately before the appointed day shall, in so far as such officer or other employee is employed in connection with the undertaking which has vested in a company by virtue of this Act. become. as from the appointed day, an officer or other employee, as the case may be, of the company in which the undertaking has vested and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, passage, insurance, superannuation scheme, provident fund, other funds, retirement, pension, gratuity and other benefits as he would have held under that corporation if its undertaking had not vested in the company and shall continue to do so an officer or others employee, as the case may be, of the company or until the expiry of a period of six months from the appointed day if such officer or other employee opts not to be the officer or other employee of the company, within such period.*
>
> *(2) Where an officer or other employee of a corporation opts under sub-section (1) not to be in the employment or service of the company in which the undertaking of that corporation has vested. such officer or other employee shall be deemed to have resigned.*
>
> *(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947) or in any other law for the time being in force, the transfer of the services of any officer or other employee of a corporation to a company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.*
>
> *(4) The officers and other employees who have retired before the appointed day from the service of a corporation and are entitled to*

any benefits, rights or privileges shall be entitled to receive the same benefits, rights or privilegs from the company in which the undertaking of that corporation has vested.

(5) The trusts of the Provident Fund or Pilots Group Insurance and Superannuation Scheme of the corporation and any other bodies created for the welfare of the officers or employees would continue to discharge their function in the company as was being done hitherto in the corporation. Tax exemption granted to Provident Fund or Pilots Group Insurance and Superannuation Scheme would continue to be applied to the company.

(6) Notwithstanding anything contained in this Act or in the companies Act, 1956 (1 of 1956) or in any other law for the time being in force or in the regulations of a corporation. no Director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or a substantial part of the business and affairs of that corporation shall be entitled to any compensation against that corporation or against the company, as the case may be, for the loss of office or for the premature termination of any contract of management entered into by him with that corporation.

97. Upon a perusal thereof, it is clear that the saving envisaged in regard to the erstwhile Air Corporation Act, 1953 is pointed and specific. This is what the Court states at paragraphs 9 as follows:

Section 8 of the 1994 Act does not in express terms save the said Regulations, nor does it mention them. Section 8 only protect the remuneration, terms and conditions and rights and privileges of those who were in Air India's employment when the 1994 Act came into force. Such saving is undoubtedly "to quieten doubts" of those Air India employment who were then in service. What is enacted in Section 8 does not cover those employees who joined Air India's service after the 1994 Act came into force. The limited saving enacted in Section 8 does not, in our opinion, extend to the said Regulations.

98. Indirect tax departments have, over the years, followed the practice of issuance of show cause notices by one authority with adjudication by another. While there can be no dispute with the proposition that what is prescribed has to be done as per the prescription, and in no other way, the duel procedure followed hitherto, is explained by the respondents, as a measure, and in the interests of, administrative feasibility. This is a legitimate explanation and the aforesaid procedure has withstood the test of time.

99. In answering the legal issue therefore, and interpreting the provisions of Section 174 of the CGST act, this Court will be guided by the consistency in procedure adopted/followed by the authorities and for this reason I examine the procedure followed in adjudication, including issuance of show cause notices, post the introduction of GST.

100. Section 3 of the CGST Act deals with officers under the Act and states that Government shall, by Notification, appoint various classes of officers for the purpose of this Act. The categories are

(a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
(b) Chief Commissioners of Central Tax or Directors General of Central Tax,
(c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
(d) Commissioners of Central Tax or Additional Directors General of Central Tax,

(e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
(f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
(g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
(h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
(i) any other class of officers as it may deem fit.

101. Thereafter, Notifications/Circulars have been issued in F.No349/75/2017 – GST Circular No. 31/05/2018 dated 09.02.2018 on the subject of designation of Proper Officer under Sections 73 and 74 of the CGST and IGST Acts 2017. The Circular reads thus:

Circular No. 31/05/2018 - GST

F. No. 349/75/2017-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

GST Policy Wing
***

New Delhi, 9th February 2018

……..

2. It has now been decided by the Board that Superintendents of Central Tax shall also be empowered to issue show cause notices and orders under section 74 of the CGST Act. Accordingly, the

following entry is hereby being added to the item at Sl. No. 4 of the Table on page number 3 of Circular No. 3/3/2017-GST dated 5th July, 2017, namely:-

……

6. The central tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGSTI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent central tax officer of the Executive Commissionerate in whose jurisdiction the noticee is registered*. In case there are more than one noticees mentioned in the show cause notice having their principal places of business falling in multiple Commissionerates, the show cause notice shall be adjudicated by the competent central tax officer in whose jurisdiction, the principal place of business of the noticee from whom the highest demand of central tax and/or integrated tax (including cess) has been made falls.*

7. Notwithstanding anything contained in para 6 above, a show cause notice issued by DGGSTI in which the principal places of business of the noticees fall in multiple Commissionerates and where the central tax and/or integrated tax (including cess) involved is more than Rs. 5 crores shall be adjudicated by an officer of the rank of Additional Director/Additional Commissioner (as assigned by the Board), who shall not be on the strength of DGGSTI and working there at the time of adjudication. Cases of similar nature may also be assigned to such an officer.

8. In case show cause notices have been issued on similar issues to a noticee(s) and made answerable to different levels of adjudicating authorities within a Commissionerate, such show cause notices should be adjudicated by the adjudicating authority competent to decide the case involving the highest amount of central tax and/or integrated tax (including cess).

(Emphasis supplied)

102. The above Circular has been amended in F.No.CBIC-20016/2/2022-GST/Circular No 169/01/2022-GST to read thus:

Circular No.169/01/2022-GST

F. No. CBIC-20016/2/2022-GST
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Indirect Taxes & Customs,
GST Policy Wing
*****

New Delhi, dated the 12th March, 2022

……

Vide Notification No. 02/2022-Central Tax dated 11th March, 2022, para 3A has been inserted in the Notification No. 2/2017-Central Tax dated 19th June, 2017, ***to empower Additional Commissioners of Central Tax/ Joint Commissioners of Central Tax of some of the specified Central Tax Commissionerates, with All India Jurisdiction for the purpose of adjudication of the show cause notices issued by the officers of the Directorate General of Goods and Services Tax Intelligence.*** *Consequently, para 6 and 7 of the Circular No. 31/05/2018-GST, dated 9th February, 2018 are hereby amended as below:*

"6. The Central Tax officers of Audit Commissionerates and Directorate General of Goods and Services Tax Intelligence (hereinafter referred to as "DGGI") shall exercise the powers only to issue show cause notices. A show cause notice issued by them shall be adjudicated by the competent Central Tax officer of the executive Commissionerate in whose jurisdiction the notice is registered when such cases pertain to jurisdiction of one executive Commissionerate of Central Tax only.

7.1 In respect of show cause notices issued by officers of DGGI, there may be cases where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax

Commissionerates or where multiple show cause notices are issued on the same issue to different noticees, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates. For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax, holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax.

……..

7.2 In respect of a show cause notice issued by the Central Tax officers of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central

Tax Commissionerates, a proposal for appointment of common adjudicating authority may be sent to the Board.

7.3 In respect of show cause notices issued by the officers of DGGI prior to issuance of Notification No. 02/2022-Central Tax dated 11th March, 2022, involving cases mentioned in para 7.1 above and where no adjudication order has been issued till date, the same may be made answerable to the Additional/Joint Commissioners of Central Tax, having All India jurisdiction, in accordance with the criteria mentioned in para 7.1 above, by issuing corrigendum to such show cause notices."

(Emphasis supplied)

103. Thus, the duality in the adjudicatory process continues. Quoting Bennion on Statutory Interpretation, 2nd Edn., at pp.494 and 495, the Hon'ble Supreme Court in *Air India* (supra) states that *"saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation'.* Paragraph 7 of the SCC Report then states, *"Very often a saving is unnecessary, but is put in ex abundanti cautela to quieten doubts". The updated text of the Interpretation Act, 1978, (set out in Bennion's book at page 897) puts into statutory form in Section 15what is otherwise recognised in law, namely, that the repeal of an enactment does not, unless the contrary intention appears, affects any right or privilege accrued under that enactment.* The practice and procedure, both pre and post GST are consistent and involve participation of the officer of the DGGI in issuance of show cause notices.

104. The expansive constitution of Section 88 of the Tamil Nadu Value Added Tax Act that specifically includes subordinate legislation has been cited by the petitioners as a counter to the move restricted construction of Section 174. Notwithstanding this difference, I would reiterate that in interpreting the reach of Section 174, this Court does not wish to loose sight of the necessity to ensure a seamless application of the levy following the consistent procedure followed under the old and new enactments.

105. I also take a cue from the proviso to Section 174(2)(c) that is extracted at paragraph 70 supra. Section 174(2) states that repeal as per sub-section (1) shall not affect any rights, privileges or obligations or liability acquired, accrued or incurred under the old Act and the proviso carves out an exception in regard to tax exemption granted as an investment against investment through '*Notification*'. In such cases, such exemptions shall continue until rescinded. What I gather by implication, is that Notifications in other situations continue.

106. For the aforesaid reasons, I hold that the assumption of jurisdiction by the officials of the DGGI is valid. These writ petitions are dismissed and the petitioners in W.P.Nos.12291 of 2019, 3354 of 2020 and 29286 of 2022 are granted liberty to approach the appellate authority by way of statutory appeal. Such appeal, if filed within four (4) weeks from date of receipt of a copy of this

order, shall be entertained by the authority without reference to limitation, but subject to all other statutory compliances. The petitioner in W.P.No.5098 of 2020 who challenges a show cause notice is permitted to file a response within four weeks from date of receipt of this order and take matters forward, in accordance with law.

107. Connected Miscellaneous Petitions are closed with no order as to costs.

02.02.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
Vs/Sl

To

1.The Principal Commissioner of CGST & Central Excise,
GST Bhawan, 26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.The Director General of GST Intelligence,
DGGI Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

3.The Commissioner of CGST & Central Excise,
Chennai South,
MHU Complex, No.692, 5th Floor,
Anna Salai, Nandanam,
Chennai-600 035.

4.The Additional Director General of GST Intelligence,
DGGI Chennai Zonal Unit,
C-3, C-Wing, II Floor, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

Dr.ANITA SUMANTH, J.

Vs/sl

W.P.Nos.3354 of 2020, 12291 of 2019, 5098 of 2020,
29286 of 2022 and
WMP.Nos.12579, 16137 and 19172 of 2019,
3893 of 2020, 6016 of 2020 and 28581 of 2022

02.02.2023