

**THE HON'BLE SRI JUSTICE P.SAM KOSHY**

**AND**

**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

**W.P.No.26871 of 2019, W.P.Nos.1167, 2905, 2938, 3041, 3433,  
3435, 3454 and 3471 of 2020 and W.P.No.2840 of 2021**

**COMMON ORDER:** *(per Hon'ble Sri Justice P.SAM KOSHY)*

Heard Sri K. Durga Prasad, learned counsel for the petitioner and Sri B. Jithender, learned counsel for the respondent No.2.

**2.** Since the grounds of challenge in these Writ Petitions are on identical set of facts, they are being decided by way of this common order. For convenience, the facts in Writ Petition No.26871 of 2019 are taken up as the lead case for the purpose of deciding these Writ Petitions.

**3.** Writ Petition No.26871 of 2019 has been filed by the petitioner seeking for issuance of a Writ of Mandamus challenging the notice dated 10.07.2019 (Annexure P1) initiated under Rule 129 of the Central Goods and Services Tax Rules, 2017(for short 'CGST Act, 2017'). The petitioner had also sought for stay of all the further proceedings pursuant to the summons issued on 22.11.2019 (Annexure P2).

**4.** The notice and the summons under challenge in the present writ petitions are one which was issued by the respondent No.2/Directorate General of Anti-Profiteering. The said Department has since been closed and the notice and is now pursued by the Competition Commission of India. It appears that pursuant to the interim order granted by this Court in other similar Writ Petition, the respondents have not pursued the notice and summons issued any further.

**5.** A plain reading of the notice which is issued in the present writ petition would make it evidently clear that the reason the Department has issued the notice was on the allegation that the petitioner have not passed on the benefit of reduction of the entertainment tax to the end consumer or viewers. Therefore, it amounts to contravention of Section 71 of the CGST Act, 2017.

**6.** The petitioner have been called upon to furnish their reply to the notice and submit their explanation so far as whether the benefit of reduction of GST has been passed on to the recipients commensurate to the reduction in price or not. The subsequent summons which have been issued also has been asking the petitioner to appear before the authorities concerned to give evidence and produce documents as per the schedule attached to the summons. In

the absence of which, appropriate proceedings shall be drawn under the CGST Act, 2017.

**7.** According to the learned counsel for the petitioner, the said commensurate reduction of the prices can only be made in respect of sale of goods or sale of a particular article. Whereas, in the instant case, it is the services which is extended by the petitioner/cinema operator. It is therefore difficult to pass on the commensurate reduction of price of the tickets by the petitioners on their own for more than one reason. Firstly, for the reason that the price of the tickets are fixed by the State authorities and at the relevant point of time i.e. the period involved in the present case, the prices fixed by the Government was inclusive of the entertainment tax.

**8.** It was also the contention of the learned counsel for the petitioner that the price of the cinemas which are operated in the theatres varies considering the category to which they belong. Therefore, it is impracticable for passing on the benefits to the recipients, end user or the viewers in the instant case. It was further contended that admittedly in the instant case, the petitioner have made the payment of tax at the reduced rate and in the process though the price of the tickets were not reduced on some class, but the base price under those circumstances has been increased and the

tax to the Government has been paid on the increased base price and in the process the Government also stands benefitted by collecting more tax from the petitioner.

**9.** To the said submission made by the learned counsel for the petitioner, the learned counsel for the respondent No.2 who also now represents the Competition Commission of India submits that all these grounds and contentions that the petitioner is relying upon in the present Writ Petitions are in fact the defenses of the petitioners. The petitioners can very well raise these contentions in their response to the notice and summons which precisely has been issued for the petitioners. The petitioners can submit their explanation supported with relevant documents so that appropriate consideration can be made on the submissions that the petitioner would be making and appropriate decision can be taken by the concerned authorities.

**10.** It was the further contention of the learned counsel for the respondent No.2 that in the event if the petitioner is able to provide convincing reply, there is no reason why the authorities concerned will not appreciate the same and appropriate orders dropping the proceedings cannot be passed.

**11.** At this juncture, the learned counsel for the petitioner submits that another reason for filing the Writ Petition is that the respondent

No.2 is based at New Delhi and for every notice; they are required to appear physically at New Delhi which is too cumbersome and time consuming and is also not economical. Learned counsel for the petitioner submits that in fact the Competition Commission of India has refused permission to some petitioners to appear and contest their case virtually, it thus creates pressure and also great inconvenience to the petitioner.

**12.** Having heard the contentions put forth on either side and on perusal of records; particularly taking into consideration the contents of the notice and the summons, what is apparent is that the notice and the summons were issued calling upon the petitioner to enter appearance and to produce cogent, relevant documents as has been sought by the authorities concerned.

**13.** The Hon'ble Supreme Court of India in the case of **UNION OF INDIA AND ANOTHER *Versus* KUNISETTY SATYANARAYANA**<sup>1</sup> in paragraph Nos.13, 14 and 15 held as under:

“**13.** It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh*<sup>2</sup>, *Special Director v. Mohd. Ghulam Ghouse*<sup>3</sup>, *Ulagappa v.*

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<sup>1</sup> (2006) Supreme Court Cases 28

<sup>2</sup> (1996) 1 SCC 327 : JT (1995) 8 SC 331

<sup>3</sup> (2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467

*Divisional Commr., Mysore<sup>4</sup>, State of U.P. v. Brahm Datt Sharma<sup>5</sup>, etc.*

**14.** The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when the charges are not established. It is well settled that a writ petition lies when some right of any party is established. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

**15.** Writ jurisdiction is discretionary jurisdiction and hence such a direction under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.”

**14.** The Hon’ble Supreme Court of India also in the case of **SPECIAL DIRECTOR AND ANOTHER *Versus* MOHD. GHULAM GHOUSE AND ANOTHER<sup>6</sup>** had held as under:

“...Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of

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<sup>4</sup> (2001) 10 SCC 639

<sup>5</sup> (1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943

<sup>6</sup> (2004) 3 Supreme Court Cases 440

routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.”

**15.** In the given factual backdrop of the case, we are of the considered opinion that no strong case has been made out by the petitioner calling for interdiction of the notice and summons under challenge. The petitioner is at liberty to enter appearance before the authorities concerned by submitting their detailed reply in addition to any reply if they have already made in the past. The authorities concerned thereafter in turn is expected to proceed further in accordance with law after due consideration of the contents of the reply and documents which the petitioner shall be furnishing by way of their response.

**16.** It is also at this juncture directed that considering the fact when the entire country is going into the digital world and the Competition Commission of India also having its sitting only at New Delhi, it cannot be expected that every person can afford attending the hearing at New Delhi on all the dates of hearing. It is also not practically feasible to expect that the Competition Commission of India would be in a position to take up and decide all those matters

which are listed before them on a particular date which would cause further economical hardship to a certain sections of the petitioners who may not be so well to-do. Therefore, we are directing that the Competition Commission of India would take up steps in ensuring that the persons who are interested may be permitted to appear and contest their case before the Commission virtually rather than insisting upon their physical presence.

**17.** With the aforesaid directions and observations, all these Writ Petitions stands disposed of. No order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

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**P.SAM KOSHY, J**

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**N.TUKARAMJI, J**

**Date: 12.12.2023**  
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