Chaitanya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 822 OF 2021

Rochem Separation Systems (India) Pvt. Ltd. a company incorporated under the Companies Act, 1956 and having its registered office at 101, Dheeraj Arma, Anant Kanekar Road, Bandra (East), Mumbai-400051 … Petitioner

Versus

1. The Union of India Through its Secretary, Department of Revenue, Ministry of Finance, Government of India, Central Secretariat, North Block, New Delhi - 110001
2. The Principal Commissioner CGST & CX, Mumbai East Commissionerate having office at 9th Floor, Lotus Info Center, Station Road, Parel (East), Mumbai-400012
3. The Joint Commissioner CGST & CX, Mumbai East Commissionerate having office at 9th Floor, Lotus Info Center, Station Road, Parel (East), Mumbai-400012 … Respondents

WITH
WRIT PETITION NO. 1466 OF 2021

Pyramid Developers … Petitioner
Having office at 5th Floor,

Gayatri Plaza, Turner Road,
Bandra, Mumbai – 400 050
Through its Partner
Mr. Rafique Maqbool Qureshi

Versus

1. The Union of India
   represented by the Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block
   New Delhi – 110 001
2. Commissioner of CGST & CX,
   Mumbai West Commissionerate
   1st Floor, Mahavir Jain Vidhyalaya
   C.D. Barfiwala Road, Juhu Lane
   Andheri (West), Mumbai–400 058 … Respondents

WITH

WRIT PETITION NO. 825 OF 2021

Leighton India Contractors Pvt. Ltd.
having its office at Tower No 3, 6th
Floor Equinox Business Park, Off
Bandra Kurla Complex, Mumbai - 70 … Petitioner

Versus

1. The Union of India
   Through its Secretary,
   Department of Revenue
   Ministry of Finance, Government
   of India, Central Secretariat,
   North Block, New Delhi-110001
2. The Principal Commissioner CGST … Respondents
   The Joint Commissioner CGST
   & CX, Mumbai East
   Commissionerate having office at
   9th Floor, Lotus Info Center,
   Station Road, Parel (East),

Mumbai-400012

WITH

WRIT PETITION NO. 1822 OF 2021

Abhyudaya Co-Operative Bank Ltd.
a Co-operative Bank registered under the Multi-State Co-operative Societies Act 2002 and having its registered office at KK Tower, Abhyudaya Bank Lane, Ground floor, Off GD Ambekar Marg Parel Village, Mumbai – 400 012 … Petitioner

Versus

1. The Union of India through,
   The Joint Secretary,
   Department of Revenue, Ministry of Finance, 46/North Block, New Delhi-110001
2. The Central Board of Indirect Taxes and Customs
   Department of Revenue, Ministry of Finance, 46, North Block, New Delhi-110 001
3. The Director General
   Directorate General of GST Intelligence
   having his office at West Block 8, Wing-3, Sector-1 RK Puram, New Delhi – 110066
4. The Principal Additional Director General
   Directorate General of GST Intelligence Mumbai Zonal Unit
   having his office at NTC House, III Floor 15 NM Road, Ballard Estate, Mumbai - 400001 … Respondents

WITH

WRIT PETITION NO. 1449 OF 2021

M. R. Realtors
Having office at Ground Floor,
Galaxy Royale, Teen Dongri,
Yashwant nagar, Goregaon West,
Mumbai-400062
Through its partner Abdul Aziz Ak
Barudgar … Petitioner

Versus

1. The Union of India
   represented by the Secretary,
   Department of Revenue,
   Ministry of Finance,
   North Block
   New Delhi – 110 001
2. Commissioner of CGST & CX,
   Mumbai West Commissionerate
   1st Floor, Mahavir Jain
   Vidhyalaya
   C.D. Barfiwala Road, Juhu Lane
   Andheri (West), Mumbai–400
   058 … Respondents

WITH

WRIT PETITION NO. 1714 OF 2021

Galaxy Realtors
Having office at Durwankur
C.H.S.L. Gr.1, Wing – B
Shahji Raje Marg, Vile Parle
Mumbai – 400 0057 … Petitioner

Versus

1. The Union of India
   represented by the Secretary,
   Department of Revenue,

Ministry of Finance,
North Block
New Delhi – 110 001

2. Commissioner of CGST & CX,
Mumbai West Commissionerate
1st Floor, Mahavir Jain
Vidhyalaya
C.D. Barfiwala Road, Juhu Lane
Andheri (West), Mumbai–400
058 … Respondents

WITH

WRIT PETITION NO. 5375 OF 2022

Dr Vinod Ranvirsing Vij
Proprietor `Clinque Aesthetica'
Navi Mumbai 400703 … Petitioner

Versus

1 The Union of India
(Through Chairman C.B.I.C.)

2. Joint Commissioner,
CGST &Central Excise,
Belapur Commissionerate
Mumbai South … Respondents

Mr. Prithiviraj Choudhary a/w Mr. Ankit Trivedi, Ms. Kausar Jahan Sayed i/b Vashi Assocaites for the Petition in WP/1822/2021.

Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani, Ms. Dhanishta Kawale i/b UBR Legal, for the Petitioner in WP/1466/2021, WP/1449/2021, WP/1714/2021 and WP/5375/2022.

Mr. Prakash Shah, Senior Advocate a/w Mr. Mihir Mehta, Mr. Mohit Raval i/b PDS Legal, for the Petitioner in WP/822/2021, 825/2021.

Ms. Maya Majumdar a/w Mr. Saket Ketkar, for the Respondent in WP/825/2021.

Mr. J. B. Mishra a/w Ms. Maya Majumdar, Mr. Rupesh Dubey, for the Respondent in WP/5375/2022.

Mr. Satyaprakash Sharma a/w Ms. Sangeeta Yadav, Mr. Harpreet Kaur, for the Respondent in WP/822/2021.

Mr. J. B. Mishra a/w Mr. Dhananjay B. Deshmukh, Ms. Sangeeta Yadav, Mr. Rupesh Dubey, for the Respondent in WP/1466/2021.

Mr. J. B. Mishra a/w Mr. Dhananjay B. Deshmukh, Mr. Abhishek Mishra, Mr. Rupesh Dubey, for the Respondent in WP/1822/2021.

Mr. J. B. Mishra a/w Ms. Mamta Omle, Mr. Rupesh Dubey, for the Respondent in WP/1449/2021.

Mr. J. B. Mishra a/w Mr. Dhananjay B. Deshmukh, Mr. Abhishek Mishra, Ms. Mamta Omle, Mr. Rupesh Dubey, for the Respondent in WP/1714/2021.

Mr. Yashodeep Deshmukh, for the Respondent No.5 in WP/1822/2021.

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

DATED : 23 September 2025

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

1. Heard the learned counsel for the parties.

2. Rule was issued in all these Petitions on 30 January 2023 by a Co-ordinate Bench comprising Nitin Jamdar, J. (as His Lordship then was) and Abhay Ahuja, J. Interim relief was also granted by the same order.

3. The order dated 30 January 2023, issuing Rule and granting interim reliefs, is transcribed below for the convenience of reference.

> *" Heard the learned Counsel for the parties.*
>
> *2. Common ground raised in these petitions is that the impugned Show Cause Notices raising demand of service tax issued to the Petitioners are not preceded by pre consultation which is mandatory as per circular issued by the Central Board of Excise and Customs. Section 73 of the Finance Act, 1994 deals with service tax provides for issuance of Show Cause Notice. Though section 73 does not provide that Show Cause Notice for recovery of service tax under section 73 should be preceded by pre-consultation, the same has been incorporated by virtue of Master Circular No. 1053/02/2017-CS dated 10 March 2017 issued by the Central Board of Excise and Customs and subsequently clarified by circular dated 19 November 2020.*
>
> *3. Master circular on Show Cause Notices dated 10 March 2017 states that consultation with noticee before issuance of Show Cause Notice is mandatory for claim above fifty lakhs and it is an important steps towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing Show Cause Notice. It is common ground that the demands made in these petitions are all above fifty lakhs.*
>
> *4. Whether pre show cause consultation in the stipulated circumstances is mandatory or otherwise has fallen for consideration of various Courts. The learned Counsel for the parties have placed on record the following decisions : Amadeus India Pvt. Ltd. Versus Principal Commissioner, Central Excise, Service Tax and Central Tax Commissioneate, Tube Investment of India Ltd. Versus Union of India, Hitachi Power Europe GMBH Versus C.B.I. & C., Freight Systems (India) Pvt. Ltd. Versus Commr. of CGST & C. Ex., Chennai, Siemens Ltd. Vs. State of Maharashtra and Ors., Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate Versus Amadeus India Pvt. Ltd., M/s. Excellency Service Versus Union of India, DHR Holding India Pvt. Ltd. Versus Union of India, Back Office IT Solutions Pvt. Ltd. Versus Union of India, Yaduka Agrotech Pvt. Ltd. Versus Commissioner of CGST, The Commissioner of CGST, Kolkata Audit -I, Commissionerate vs. M/s. Saumya Agrotech Private Limited & Ors., M/s.Victory Electric Vehicles International Pvt. Ltd. Vs. Union of India & Anr., L and T Hydrocarbon*

Engineering Ltd. Vs. Union of India, Commissioner of Central Excise Versus Ratan Melting and Wire Industries, Union of India Versus Garware Nylons Ltd., Hindustan Ferodo Ltd. Versus Collector of Central Excise, Bombay, Nanya Imports & Exports Enterprises Versus Commr. of Cus. Chennai, Chairman, Board of Mining Examination and Chief Inspector of Mines versus Ramjee, Union of India Versus Bajaj Tempo Limited, B P L Ltd. Versus State of Madhya Pradesh, K. P.Varghese v. Income-tax Officer , Raza Textiles Ltd. Versus Income Tax Officer, Rampur, ITW Signode India Ltd. Versus Collector of Central Tax, Phoenix Mills Ltd. Versus Union of India, Alpa Management Consultants P. Ltd. Versus Commr. of S.T. Bangalore, Commr. of S.T. Bangalore Versus Alp Management Consultants P. Ltd., Kush Constructions Versus CGST Nacin, ZTI, Kanpur, Commissioner of C. Ex., Bangalore Versus Brindavan Beverages (P) Ltd., Sharma Fabricators & Electors Pvt. Ltd. Versus C.C.E. Allahabad, Union of India Versus Vicco Laboratories, State of West Bengal Versus Calcutta Club Limited, Kothari Petrochemicals Ltd. Versus Union of India, Union of India Versus Kothari Petrochemicals Ltd.and Sai Cuisine Hospitality Pvt. Ltd. & Anr. Versus Union of India & Ors.

5. As regards the decision of the High Court of Delhi in the case of Amadeus India Pvt. Ltd. (supra), a Special Leave Petition (Civil) Diary No (s). 35886 of 2019 was filed by the Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate and on 4 November 2019, while issuing notice, the Hon'ble Supreme Court has passed the following order:

> *"Delay condoned.*
>
> *Learned Additional Solicitor General submits that if a fresh show cause notice is to be issued as directed by the High Court after pre-consultation, the Department may be given liberty to revive the earlier show cause notice to obviate any objection in regard to limitation.*
>
> *Issue notice confined to the above issue, returnable in eight weeks".*

Consequently, the Division Bench of Delhi High Court in the case of Back Office IT Solutions Pvt. Ltd. (supra) has taken note of the order dated 4 March 2019 and has passed certain directions remanding the matter to the Respondents.

6. Before us, one of the issue that is agitated is the consequences of setting aside the Show Cause Notices on the

> *aspect of limitation. We note that it is on this restricted aspect notice is issued by the Hon'ble Supreme Court.*
>
> *7. Prima facie, from the limited argument advanced by the Revenue and the issue being restricted to the limitation aspect, the mandatory nature of pre consultation is impliedly accepted by the Revenue. In these circumstances, we deem it appropriate that since the issue is pending before the Hon'ble Supreme Court and to avoid any further litigation, to list the petitions for hearing.*
>
> *8. Since the arguable questions are raised,* ***Rule*** *in these petitions. The learned Counsel appearing for the Respondents waive service. Rule made returnable on 10 April 2023. Liberty to the parties to apply.*
>
> *9. In the meanwhile, the execution and operation of the impugned Show Causes Notices is stayed."*

4. The main issue involved in all these Petitions is whether a pre-consultation notice would be mandatory, before the impugned show cause notices which are the subject matter of these Petitions were issued, given the provisions of Section 73 of the Finance Act, 1994, read with Circular No. 1053/02/2017-Cx- dated 10 March 2017 [Master Circular] and Circular No. 1076/02/2020-Cx- dated 19 November 2020.

5. In all these matters, there is no dispute that a pre-consultation notice was never issued. However, the Revenue argues that issuing a pre-consultation was not a mandatory requirement, and failing to issue such a notice does not make the impugned show cause notices invalid.

6. Section 73 of the Finance Act, 1994, does not refer to the issue of any pre-consultation notice. However, the Central

Board of Excise and Customs, New Delhi ("CBEC") issued Circular No. 1053/02/2017-Cx- dated 10 March 2017 [Master Circular] consolidating the Circulars issued from time to time regarding show cause notices, adjudication and recovery proceedings.

7. Clause 5.0 of this Master Circular dated 10 March 2017 is relevant and the same reads as follows:

> *"5.0 Constitution with the noticee before issue of Show Cause Notice : Board has made pre show cause notice consultation by the Principal Commissioner/ Commissioner prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs (except for preventive/offence related SCN's mandatory vide instruction issued from F. No. 1080/09/DLA/MISC/15, dated 21st December 2015. Such consultation shall be done by the adjudicating authority with the assessee concerned. This is an important step towards trade facilitation and promoting voluntary compliance and to reduce the necessity of issuing show cause notice."*

8. The CBIC issued yet another Circular No. 1076/02/2020-Cx, dated 19 November 2020, about clarification regarding the holding of pre-show cause notice consultations. Clause 4 of this Circular is relevant and the same reads thus:

> *"4. Due to the above change in monetary limits of adjudication and to lend clarity on this issue, it is hereby clarified that "Pre-show cause notice consultation with assessee, prior to issuance of SCN in case of demands of duty is above Rupees 50 Lakhs (except for preventive/offence related SCN's), is mandatory and*

> *shall be done by the Show Cause Notice issuing authority."*

9. The Hon'ble Supreme Court in the case of **K. P. Varghese Vs Income Tax Officer, Ernakulam And Anr.**[1]**, Commissioner of Customs, Calcutta And Ors. Vs Indian Oil Corpn. Ltd. And Anr.**[2]**, Union of India And Ors. Vs Arviva Industries India Limited And Ors.**[3] has held that Circulars issued by the Central Board of Direct Taxes ("CBDT") or the CBEC are binding upon the department. Similarly, even this Court, in the case of **Commissioner of Income Tax Vs. Camco Colour Co.**[4] has held that the CBDT's instructions bind the department. As noted earlier, the above two Circulars provide that the issuance of pre-consultation notices to the Assessee prior to the issuance of show cause notices in cases where the demand for duty exceeds Rs. 50 lakhs (except for preventive/offence related show cause notices), are mandatory and shall be done by the show cause notice issuing authorities.

10. In **Amadeus India Pvt. Ltd. Vs Pr. Commr. of. C. EX., S.T. & Central Tax**[5]**,** the Division Bench of Delhi High Court comprising Dr. S. Muralidhar, J. (as His Lordship then was) and Prateek Jalan, J., was concerned with the precise issue as to whether a pre notice consultation with the Assessee in terms of paragraph 5 of the Master Circular dated 10 March

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1 (1981) 4 SCC 173

2 (2004) 3 SCC 488

3 (2014) 3 SCC 159

4 (2002) 173 CTR 255

5 2019 (25) G.S.T.L. 486 (Del.)

2017 (Master Circular) issued by the CBEC was a mandatory requirement. The Delhi High Court held that such a requirement was mandatory and traced the mandatory character of the Master Circular to Section 83 of the Finance Act, 1994, which makes Section 37B of the Central Excise Act, 1944, applicable in relation to service tax. The Court noted that in terms of Section 37B of the Central Excise Act, 1944, instructions issued by the CBEC would be binding on the officers of the department.

11. The Delhi High Court referred to the Supreme Court's decision in the case of **State of Tamil Nadu vs India Cements Limited**[6] to hold that such Circulars and instructions are binding upon the department. Specific to the Master Circular dated 10 March 2017, the Delhi High Court referred to the decision of the Madras High Court in **Tube Investment of India Ltd. Vs Union of India And Ors.**[7], in which, after noticing that paragraph 5 of the Master Circular was not adhered to, the Madras High Court set aside the show cause notice and relegated the parties to a stage prior to the issuance of the show cause notice.

12. Another Division Bench of the Delhi High Court in the case of **Back Office IT Solutions Pvt. Ltd. Vs Union of India**[8], comprising Rajiv Shakdhar, J. (as His Lordship then was) and

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6 2011 (13) SCC 247

7 2019 (69) GSTR 78 (Mad.)

8 2021 (50) G.S.T.L. 522 (Del.)

Talwant Singh, J. relying upon *Amadeus India Pvt. Ltd.* (supra) held that pre-consultation before issuance of a show cause notice was mandatory and could not be deviated from, unless the case fell within the two exceptions provided in the Circulars.

13. In **Dharamshil Agencies Vs Union of India**[9]**,** the Division Bench of the Gujarat High Court comprising Ms. Bela M. Trivedi, J. (as Her Ladyship then was) and Dr. Ashokkumar C. Joshi, J., after referring to paragraph 5 of the Master Circular dated 10 March 2017 held that issuance of a pre-show cause notice or a pre-consultation notice was mandatory prior to issue of show cause notice in cases involving demands of duty above Rs. 50 lakhs. The Court held that such consultation was to be conducted by the adjudicating authority with the Assessee as an important step towards trade facilitation and to promote necessary compliance, thereby reducing the need for issuing show cause notices. Because a show cause notice was issued without complying with such mandatory requirement of pre-consultation notice, or rather an illusory compliance, the Court quashed the impugned show cause notice.

14. In fact, before the Gujarat High Court, a pre-show cause notice was issued to the Assessee on 12 April 2019, by delivering it at 13:55 hours and calling upon them to remain present before the adjudicating authority at 16:00 hours. The Assessee's request for a reasonable time for effective

[9] 2022 96 GSTR 220

consultation was summarily rejected, and a show cause notice was issued on the same day, i.e., 12 April 2019. In these circumstances, the Gujarat High Court held that this was a high-handed action that deserved to be deprecated and seriously viewed.

15. The Court further held that the action on the part of the adjudicating authority in issuing the illusory pre-show cause notice for consultation only two hours before the hearing was not only arbitrary, but in utter disregard and contravention of the very object and purpose of the Master Circular dated 10 March 2017. The Court held that such consultation, mandated by the Master Circular, was an important step towards trade facilitation, promoting voluntary compliance and reducing the necessity of issuing a show cause notice. The impugned show cause notice was set aside, and the Revenue was directed to pay the cost of Rs . 20,000/-.

16. Another Division Bench of the Gujarat High Court, comprising Bhargav D. Karia and D. N. Ray, JJ., in the case of **Jay Mahakali Industrial Services Vs Union of India**[10], has held that a pre-consultation notice was mandatory and a show-cause notice issued without complying with these mandatory requirements was vulnerable.

17. In *Tube Investment of India Ltd.* (supra), the learned Single Judge of the Madras High Court, in the precise context

[10] 2025 (393) E.L.T. 28 (Guj.)

of paragraph 5 of the Master Circular dated 10 March 2017, held that issuance of a pre-consultation show cause notice was mandatory, and the show cause notice issued without compliance with such mandatory requirement was liable to be quashed.

18. In **Hitachi Power Europe GMBH Project Office, Represented by its Commercial Manager Vs Central Board of Indirect taxes and Customs And Ors.**[11]**,** another Single Judge of the Madras High Court, after referring, inter alia to paragraph 5 of the Master Circular dated 10 March 2017 held that such pre SCN consultation was mandatory, and a SCN issued without complying with such mandatory procedure was liable to be set aside.

19. This Court, in the case of **Varalaxmi Construction Co. vs. Union of India and Ors.,** has also taken the view that a pre-consultation notice is mandatory, given the Circulars dated March 10, 2017, and November 19, 2020, as well as the plethora of precedents supporting this view.

20. Mr Mishra, the learned counsel for the Respondents, however, submitted that the lead Judgment taking the view that a pre-consultation notice was mandatory was that of the Delhi High Court in the case of *Amadeus India Pvt. Ltd.* (supra). He submitted that the Revenue has instituted a Special Leave Petition (Civil) Diary No. (s) 35886 of 2019 to

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[11] 2019 SCC OnLine MAD 4005

challenge the said order. He also pointed out that on 04 November 2019, the Hon'ble Supreme Court issued the following order:

> *"Delay condoned.*
>
> *Learned Additional Solicitor General submits that if a fresh show cause notice is to be issued as directed by the High Court after pre-consultation, the Department may be given liberty to revive the earlier show notice to obviate any objection in regard to limitation.*
>
> *Issue notice confined to the above issue, returnable in eight weeks".*

21. Based on the above, Mr Mishra contended that the decision of the Delhi High Court in the case of *Amadeus India Pvt. Ltd.* (supra) has lost its precedential value, or in any event, a cloud is cast on the said view by the Hon'ble Supreme Court's order dated 04 November 2019. He submitted that not only the view in *Amadeus India Pvt. Ltd.* (supra) but all other decisions which take the view that a pre-consultation notice is mandatory, should now not be followed. Instead, he commended that we follow the decision of the Madras High Court in **Brilliant Corporate Services Private Limited (Now known as M/s. Brivas Private Limited) Vs Commissioner of GST and Central Excise, Chennai**[12], of Patna High Court in **Ramnath Prasad Vs Principal Commissioner of CGST and Central Excise Patna And Anr.**[13] and **Singh Caterers and Vendors Vs Directorate General of GST Intelligence (Govt. of India) Department of Revenue, New Delhi And Ors.**[14], and

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12 (2022) 104 GSTR 296

13 (2025) 144 GSTR 556

14 (2025) 144 GSTR 576

Tata Teleservices Limited Vs Commissioner of CGST Delhi East And Anr.[15]. He also relied on **Ruchi Soya Industries Ltd. Vs Union of India And Anr.**[16]**,** in support of his contention that the Master Circular was not binding on the department or in any event, the requirement of pre-consultation notice was not a mandatory requirement.

22. In the context of the argument based on the order dated 04 November 2019 issued by the Hon'ble Supreme Court in the SLP challenging the decision of the Delhi High Court in the case of *Amadeus India Pvt. Ltd.* (supra), the Co-ordinate Bench of this Court, in its order dated 30 January 2023, while issuing a rule in these petitions, made a prima facie observation that the limited argument presented by the Revenue in its SLP appeared to be restricted to issues of limitation that would arise if the impugned show cause notices were quashed. The Co-ordinate Bench also expressed a prima facie view that this suggested the Revenue had implicitly accepted the mandatory nature of a pre-consultation notice.

23. Furthermore, from a reading of the Hon'ble Supreme Court's order dated 04 November 2019, it appears that the notice was issued *"confined to the above issue",* meaning at least prima facie, that the Hon'ble supreme Court was only considering the issue of the impact of limitation, where the

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15 2025 SCC OnLine Del 1374

16 (2021) 17 GSTR-OL 346

show cause notice was to be set aside on the grounds of non-compliance with the pre-consultation notice. The issue of the mandatory nature of the requirement to issue a pre-consultation notice was concluded.

24. Of Course, at this stage, it would not be appropriate for this Court to make any observations regarding the scope of challenge in the Revenue's Special Leave Petition against the decision in the case of *Amadeus India Pvt. Ltd.* (supra), which is pending before the Hon'ble Supreme Court. However, based upon the order dated 04 November 2019, we cannot accept Mr Mishra's submission that the precedential value of the decisions of the Delhi High Court, Gujarat High Court and the Bombay High Court has been dented or that some serious cloud has been cast upon the view taken in those decisions. Significantly, the order dated 04 November 2019 does not even stay the Delhi High Court's decision in *Amadeus India Pvt. Ltd.* (supra).

25. Even the Gujarat High Court in the case of *Jay Mahakali Industrial Service* (supra) rejected the argument identical to that made by Mr Mishra based on the Hon'ble Supreme Court's Order dated 4 November 2019 in the Special Leave Petition to challenge the Delhi High Court's decision in the case of *Amadeus India Pvt. Ltd.* (supra). The Gujarat High Court held that the issue pending before the Hon'ble Supreme Court was of the revival of the show cause notice to obviate

the objection regarding limitation, meaning thereby that no dent was made to the position of the mandatory character of the requirement of issuing a pre-consultation notice or undertaking a pre-consultative process.

26. Mr Mishra did include the decision in the case of *Ruchi Soya Industries Ltd* (supra) in the compilation that he handed in. However, on perusing the same, we were unable to comprehend the reasons why this decision was cited. It does not appear to have any link with the issue raised in these Petitions, and at least none was pointed out by Mr Mishra.

27. In the case of *Ramnath Prasad* (supra), the Patna High Court, at paragraph 26 has held that "*so far as the submission of the learned senior counsel that a pre-show-cause notice consultation would be mandatory in certain circumstances but a bare reading of the Circular referred to would show that the pre-consultation notice is not mandatory for the cases booked under fraud, collusion, wilful mis-statement, suppression of facts, evasion of tax, etc.* This means that a pre-show cause notice would be mandatory in cases where no issue of fraud, collusion, willful misstatement, suppression of facts or evasion of tax is involved.

28. In Singh *Caterers and Vendors* (supra) it is not as if the Patna High Court has dissented from the view taken by the Delhi High Court in the case of *Amadeus India Pvt. Ltd.* (supra). In paragraph 24, the Patna High Court has merely distinguished this decision by pointing out that there was no challenge to the show cause notice. Significantly, the Petitioner, without raising any objection regarding the pre-

consultation notice, requested the adjudicating authority to decide the case on its merits.

29. Therefore, neither of the decisions by the Patna High Court serves as authority for the proposition that a pre-show cause consultation is unnecessary or that it is not a mandatory requirement. It is well established that even a mandatory requirement made for the benefit of a party can be waived by that party in certain circumstances.

30. In **Tata Teleservices Limited Vs Commissioner CGST Delhi East And Anr.**[17]**,** the issue of pre-consultation notice appears to have been raised by the Petitioners. However, upon perusal of the decision, it is evident that the Delhi High Court did not decide this issue in the said case, as the Petitioner was relegated to the CESTAT. The Court observed that the dispute was factual in nature and since the Order-in-Original was appealable, there was no reason to entertain the Writ Petition.

31. In *Brilliant Corporate Services Pvt Ltd* (supra), the issue before the learned Single Judge of the Madras High Court was indeed whether the impugned show cause notice was contrary to the CEBC Master Circular dated 10 March 2017, as no pre-consultation notice preceded it. The learned Single Judge of the Madras High Court dismissed the Petition by merely observing that the Master Circular was intended to facilitate parties in coming forward to pay the amount, thereby not burdening the department with show cause proceedings. The

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17 2025 SCC OnLine Del 1374

Court went on to hold that Circulars are not binding on the Courts, as was held by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise, Bolpur Vs Ratan Melting & Wire Industries**[18].

32. In the above decision, the learned Single Judge of the Madras High Court noted the decisions of two other learned Single Judges in the case of *Tube Investment of India Ltd* (supra) and *Hitachi Power Europe GMBH* (supra). However, without any discussion on the said decisions or even expressing any disagreement with them, the learned Single Judge appears to have struck a different chord by deciding that the requirement in the Master Circular dated 10 March 2017 regarding a pre-consultation was not mandatory.

33. With respect, we disagree with the decision of the learned Single Judge of the Madras High Court in the case of *Brilliant Corporate Services Pvt Ltd* (supra) for at least three reasons. Firstly, we are not entirely certain whether it was open for the learned Single Judge to adopt a view contrary to that taken by two Single Judges in previous decisions, i.e., *Tube Investment of India Ltd* (supra) and *Hitachi Power Europe GMBH* (supra). The two prior decisions by a co-equal bench were acknowledged but were not considered as per incuriam or sub silentio for simply being overlooked. No reference was made to any larger bench for an authoritative ruling on the matter.

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[18] (2008) 231 ELT 22 (SC)

34. Secondly, the decision has not taken into account the decisions of the Hon'ble Supreme Court in the cases of *K P Varghese* (supra), *Indian Oil Corpn Ltd* (supra), and *Arviva Industries India Limited* (supra), which hold that Circulars issued by the CBDT, CBEC, or CBIC are binding upon the department. The issue involved was not whether CBEC Circulars bind the Courts. Of course, they do not. However, the issue involved was whether the CBEC Circulars bind the department and whether the department could have acted in breach of the directions or instructions contained in such Circulars.

35. Thirdly, the issue in *Ratan Melting & Wire Industries* (supra) was whether the law established by the Hon'ble Supreme Court would take precedence over the Board's circulars. The Hon'ble Supreme Court held that applying a Circular from the State or Central Government instead of a precedent set by the High Court or the Supreme Court was not appropriate. *Ratan Melting & Wire Industries* (supra) thus serves as an authority for the principle that the precedents of Constitutional Courts are binding on the Executive, and the Executive cannot disregard such precedents by relying on Circulars, which are in the nature of executive instructions.

36. The decision in *Brilliant Corporate Services Pvt Ltd* (supra) does not refer to any decision of the larger Bench of the Madras High Court or the Hon'ble Supreme Court holding that pre-consultation notice was not a mandatory

requirement, despite what was set out in the Circulars dated 10 March 2017 and 19 November 2020. Therefore, there was no conflict between the Circulars and any binding precedent of the Constitutional Courts. In fact, when *Brilliant Corporate Services Pvt Ltd* (supra) was decided, there were already two decisions of the Madras High Court holding that a pre-consultation notice was mandatory. These decisions were noted, but without any discussion or reference to a larger bench, the two decisions were simply not followed.

37. All the above reasons persuade us to take a view that aligns with the views taken by the other two Single Judges of the Madras High Court in the cases of *Tube Investment of India Ltd* (supra) and *Hitachi Power Europe GmbH* (supra), namely that the issuance of a pre-consultation notice is a mandatory requirement. As discussed earlier, these views also align with those held by the Delhi, Gujarat, and Bombay High Courts.

38. Mr. Mishra then referred to an order of the Hon'ble Supreme Court in the case of **Yaduka Agrotech Pvt. Ltd. Vs Commissioner of CGST**[19] to submit that the Calcutta High Court had taken the view that a pre-consultation notice is not a mandatory requirement, and the assessee's SLP against the said decision was dismissed by the Hon'ble Supreme Court. Based upon this, Mr Mishra submitted that the Hon'ble Supreme Court had already endorsed the view of the Calcutta High Court that a pre-consultation notice was not mandatory.

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39. Mr Mishra did not present to us the decision of the Calcutta High Court in the case of *Yaduka Agrotech Pvt. Ltd.* (supra). But the Hon'ble Supreme Court's order which was cited before us records that the High Court had issued categorical directions to the effect that show cause notice dated 11 October 2021 be read as additional information to the audit observation dated 1 October 2021, with a further direction to the Assessing Officer, that the Petitioner assessee shall be accorded a personal hearing and the matter shall be discussed at length. The Hon'ble Supreme Court held that, in view of such directions, it was satisfied that there was substantial compliance with the principle of natural justice and the Petitioner had sufficient opportunities to satisfy the authorities that there was no reason to proceed against it based on the show cause notice, which was issued without a pre-consultation process. With these observations, the Special Leave Petition was disposed of.

40. From the above, it is apparent that the decision in the case of *Yaduka Agrotech Pvt. Ltd.* (supra) turned on facts which were peculiar to the said matter. These peculiar facts were taken note of by the Hon'ble Supreme Court, and it was only in view of those peculiar facts that the decision of the Calcutta High Court was not interfered with. Such peculiar facts are not found in any of the cases before us in this batch of Petitions. The order relied upon by Mr Mishra does not suggest that the Hon'ble Supreme Court has taken the view that a pre-consultation notice was not mandatory.

41. The requirement of a pre-consultative process cannot be dismissed as some empty formality. The master circular and the Circular of 19 November 2020 style this requirement as mandatory in cases where the tax demand exceeds Rs 50 lakhs, unless, of course, the case falls in any of the exceptions. Such circulars bind the Department. Apart from its binding character, we cannot ignore that such a requirement has been introduced as an important step towards trade facilitation and to promote necessary compliance, thereby reducing the need for issuing show-cause notices in every case. This requirement promotes an alternate dispute resolution process, which is now accepted as vital for the ease of doing business. During the pre-consultative process, it is possible that the department convinces the assessee or is itself convinced regarding the necessity or otherwise of raising tax demands or the quantum thereof. Such issues can always be resolved or at least seriously attempted to be resolved during the pre-consultative process. Even the Commercial Code mandates a pre-conciliation before proceedings are launched, and no urgent interim reliefs are claimed. For all the above reasons, we are satisfied that no case has been made out to persuade us to take any view that is inconsistent with our position in the case of *Varalaxmi Construction Co.* (supra) or similar views adopted by the Delhi High Court and Gujarat High Court on this issue.

42. Accordingly, a case is made out to quash the impugned show cause notices because, admittedly, such show cause

notices were issued without adopting the pre-consultation process mandated by the Master Circulars dated March 10, 2017, and November 19, 2020. No arguments were made on behalf of the Revenue to attract any of the exceptions provided in the Circulars.

43. Though we are quashing the impugned show cause notices, we believe it is necessary to mould the relief in all these matters. This is because we do not wish to prejudice the interests of the Revenue on the issue of limitation by including the periods during which interim reliefs stayed further proceedings, or the time required to complete the pre-consultative process.

44. Mr Mishra submitted that we must not allow the assessee's to raise the plea of limitation. Mr Shah submitted that while excluding the period during which the stay was operational, and the time spent on the pre-consultative process may be reasonable, the assessee should not be precluded from contending that the show-cause notices or pre-consultative notices were already barred at the time of their issue or that the time for disposal had expired, even after excluding such periods.

45. As noted earlier, by our interim order dated January 30, 2023, we had stayed further proceedings in pursuance of the impugned show cause notices. Therefore, it would not be appropriate to count the period between 30 January 2023 and the date of quashing of the impugned show cause notices, i.e.,

the date of disposal of these Petitions, for the purposes of limitation for either issuance of show cause notices or completion of their adjudication.

46. Similarly, suppose a pre-consultation process needs to be initiated. In that case, the time spent on this process should not be counted for the purpose of determining the limitation for issuing a show-cause notice or completing its adjudication. The Revenue cannot be prejudiced during the above-mentioned periods when, in practice, its hands were tied due to interim orders made by this Court or because of the Court's directives to adhere to the pre-consultation process.

47. In the above context, useful reference could be made to the observations in paragraphs 10 and 11 of the decision of the Division Bench of the Gujarat High Court in the case of *Dharamshil Agencies* (supra), which read as follows: -

> *"10. It is required to be noted that as such the demand made in the impugned show-cause notice was within the prescribed time-limit. Now, since the said notice is sought to be set aside on the ground that adequate opportunity of hearing was not given to the petitioners for consultation prior to the issuance of the said notice, the petitioners cannot be permitted to take unfair advantage on the ground that the demand made in the notice had now become time-barred in view of the statutory provisions. A precise observations made by the Supreme Court in this regard in case of Director of Inspection of Income-tax (Investigation), New Delhi [1974] 96 ITR 390 (SC); AIR 1975 SC 67 be reproduced as under (page 395 in 96 ITR) :*
>
> > *"6.... The court in exercising its powers under article 226 has to mould the remedy to suit the facts of a*

case. If in a particular case a court takes the view that the Income-tax Officer, while passing an order under section 132(5) did not give an adequate opportunity to the party concerned it should not be left with the only option of quashing it and putting the party at an advantage even though it may be satisfied that on the material before him the conclusion arrived at by the Income-tax Officer was correct or dismissing the petition because otherwise the party would get unfair advantage. The power to quash an order under article 226 can be exercised not merely when the order sought to be quashed is one made without jurisdiction in which case there can be no room for the same authority to be directed to deal with it. But, in the circumstances of a case, the court might take the view that another authority has the jurisdiction to deal with the matter and may direct that authority to deal with it or where the order of the authority which has the jurisdiction is vitiated by circumstances like failure to observe the principles of natural justice, the court may quash the order and direct the authority to dispose of the matter afresh after giving the aggrieved party a reasonable opportunity of putting forward its cas Otherwise, it would mean that where a court quashes an or because the principles of natural justice have not been complied with, it should not while passing that order permit the Tribunal or the authority to deal with it again irrespective of the merits of the case..."

11. In view of the above, without expressing any opinion on the merits of the demand raised in the impugned show-cause notice, the court hereby sets aside the impugned notice dated April 12, 2019 (annexure D) on the ground that the petitioners were not granted an adequate opportunity for the consultation prior to the issuance of the said notice. The parties are relegated to the stage prior to the issuance of the impugned show-cause notice. Respondent No.2 will now issue afresh pre-show-cause notice for consultation in view of the circular

dated March 10, 2017 giving the petitioner a reasonable opportunity of making effective consultation, and the respondent No.2 shall issue the show-cause notice only on having been satisfied for issuance of the same. It is clarified that the petitioner shall extend full co-operation to the respondent-authority by providing necessary information that may be asked for and shall not raise the issue of limitation in respect of the demand, if made, by the respondent-authority, as the action of raising demand was taken by the respondent-authority within the prescribed time limit, in view of the decision of the Supreme Court in case Director of Inspection of Income-tax (Investigation), New Delhi [1974] 96 ITR 390 (SC) ; AIR 1975 SC 67."

48. For all the above reasons, we dispose of these Petitions by making the following order: -

ORDER

(a) The impugned show cause notices are hereby quashed and set aside.

(b) The Revenue is given the opportunity to carry out the pre-consultative process by issuing a pre-consultation notice within four weeks from the date this order is uploaded.

(c) If such a pre-consultation notice is issued, the Assessees must file their replies within two weeks of their receipt.

(d) The pre-consultation process must be completed one way or the other, in accordance with law, within a period of a further six weeks from the date of receipt of the Assessees' replies.

(e) Depending on the outcome of the pre-consultation process, the Revenue would be entitled to issue fresh show-cause notices.

(f) The period of limitation from 30 January 2023 until the fresh show cause notices are issued (if at all), within the timeline indicated above, shall not be counted for the purpose of limitation.

(g) The exclusion of limitation which we have directed above shall be in addition to any other exclusion or extension that the Revenue can claim under the law. This includes exemptions or extensions granted due to the COVID-19 pandemic.

49. The Rule in all these petitions is made absolute in the above terms without any order for costs.

50. All concerned are to act on an authenticated copy of this order.

(Advait M. Sethna, J) **(M.S. Sonak, J)**