



*W.P.Nos.12853 of 2020 and etc. batch*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	02.02.2022, 04.02.2022 and 28.01.2022
Pronounced On	17.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

**W.P.Nos.12853, 17941 of 2020 and W.P.Nos.14036, 14039, 17383, 17385, 17496, 17498, 17937, 18485, 24677, 17938, 18490, 18492, 18496, 24680, 24960 of 2021 and W.P.Nos.1570 and 1571 of 2022**  
and  
**W.M.P.Nos.15883, 22245 of 2020 and W.M.P.Nos.14916, 14919, 15883, 18435, 18438, 18591, 18592, 19713, 25974, 19146, 19716, 19718, 19719, 25975, 26274 of 2021 and W.M.P.Nos.1686 and 1687 of 2022**

**W.P.No.12853 of 2020**

M/s.Redington (India) Limited,  
Represented by its Authorised Officer,  
V.Ramesh, Vice President (Taxation),  
Redington House, Centre Point,  
Plot No.8&11, (SP), Thiru-Vi-Ka Industrial Estate,  
Guindy,  
Chennai – 600 032.

... Petitioner

vs.

Principal Additional Director General,  
Directorate General of Goods and Services Tax,  
Intelligence, Chennai Zonal Unit,  
Tower – II, BSNL Building, 8<sup>th</sup> Floor,  
No.16, Greams Road, Thousand Lights,  
Chennai – 600 006.

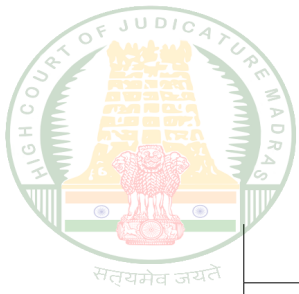
... Respondent



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**WEB COPY** Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the Respondent department relating to issuance of the Notice dated 30.07.2020 in reference No.F.No.INV/DGGI/CZU/ST/98/2019/5769 and quash the same.

For Petitioner in W.P.No.12853 of 2020	:	Mr.S.R.Raja Gopal Senior Counsel for Mr.V.Anil Kumar
For Petitioner in W.P.Nos.14036,14039,17 383, 17496, 17937, 18485, 17385 & 17498, 17938, 18490, 18492, 18496 of 2021, 1570 and 1571 of 2022	:	Mr.Raghavan Ramabadrn for M/s.Lakshmi Kumaran & Sridharan Attorneys
For Petitioner in W.P.Nos.24677 and 24680 of 2021	:	Mr.Hari Radhakrishnan
For Petitioner in W.P.Nos.17941 of 2021	:	Mr.Rahul Unnikrishnan
For Petitioner in W.P.No.24960 of 2021	:	M/s.M.Sneha
.....		
For Respondent in W.P.No.12853 of 2020	:	Mr.V.Sundareswaran Senior Panel Counsel

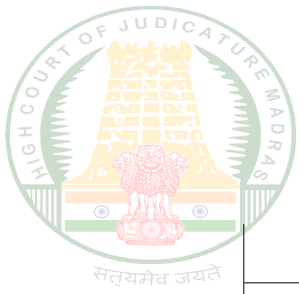


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	:	
For R1	:	Mr.Rajnish Pathiyil Senior Standing Counsel
For R2 to R4 W.P.Nos.1570 & 1571 of 2022	:	Mr.M.Santhanaraman Senior Standing Counsel.
For R1 to R5 in W.P.Nos.14036,14039, 17385, 17496,17498 & 17937 of 2021	:	Mr.V.Sundareswaran Senior Panel Counsel
For R1 in W.P.No.12853 of 2020	:	
For R1 to R4	:	Mr.V.Sundareswaran Senior Panel Counsel
For R5 in W.P.No.18485 of 2021	:	Mrs.R.Hemalatha Senior Standing Counsel
For R1 to R3 in W.P.No.24677 of 2021	:	Mr.V.Sundareswaran Senior Panel Counsel
For R1 to R4	:	Mr.V.Sundareswaran Senior Panel Counsel
For R5 in W.P.No.18490 of 2021	:	Mrs.R.Hemalatha Senior Standing Counsel
For R1 to R4 in W.P.Nos.18492 & 18496 of 2021	:	Mr.V.Sundareswaran Senior Panel Counsel
For R5 in W.P.No.18496 of 2021	:	M/s.R.Hemalatha Senior Standing Counsel



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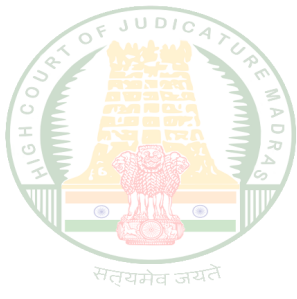
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For Respondents in W.P.No.17941 of 2020	:	Mr.V.Sundareswaran Senior Panel Counsel
For R1 to R3 in W.P.No.24680 of 2021	:	Mr.V.Sundareswaran Senior Panel Counsel
For R1 & R2	:	Mr.V.Sundareswaran Senior Panel Counsel
For R3 to R5 in W.P.No.24960 of 2021	:	M/s.R.Hemalatha Senior Standing Counsel

### **COMMON ORDER**

By this common order, all the below mentioned 19 cases are being disposed. Since the 19 cases are being disposed by this common order, it is divided into 7 Parts as follows:-

<b><i>Part No.</i></b>	<b><i>CONTENT</i></b>	<b><i>Paragraphs</i></b>
I	Introduction.	1-15
II	Text of the impugned Notice No.22/2014- S.T. dated 16.09.2014	16 & 17
III	Category -1	18 - 44
IV	Category- 2	45 - 116
V	Category- 3	117 - 129



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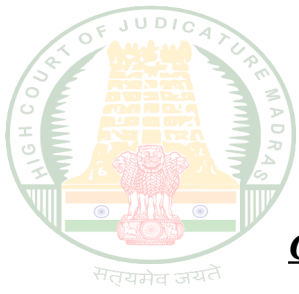
<b><i>Part No.</i></b>	<b><i>CONTENT</i></b>	<b><i>Paragraphs</i></b>
VI	Discussion.	130 - 201
VII	Conclusion	202 -208

## **PART I – INTRODUCTION**

There are three categories of Writ Petitions. They are categorized as follows:-

**Category No.1:** Writ Petitions have been filed against the impugned Notification No.22/2014- ST, dated 16.09.2014 issued by the Central Board of Excise and Customs under power conferred by clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944), read with Clause (55) of Section 65B 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.

**Category No.2 :**Writ Petitions have been filed against the impugned Show Cause Notices (SCNs) issued by the Additional Director General, Directorate of GST Intelligence of the respective Zonal Units and Principal Additional Director General, Directorate of GST Intelligence, Chennai Zonal Unit and Additional Director General, Directorate of GST Intelligence (Hqrs.), New Delhi.



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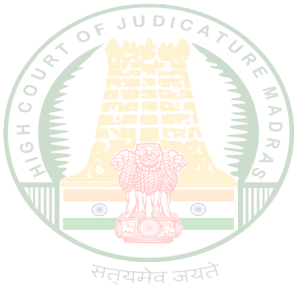


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**Category No.3:** Writ Petitions have been filed against the impugned Orders-in-Original passed by the Adjudicating Authority which proceeded Show Cause Notices issued by the the Additional Director General, Directorate of GST Intelligence of the respective Zonal and Principal Additional Director General, Directorate of GST Intelligence, Chennai Zonal Unit.

2. Particulars of the Writ Petitions in **Category No.1** are as detailed below:-

<b>Sl. No.</b>	<b>W.P.No.</b>	<b>Name of Petitioner / Company</b>	<b>Prayers</b>
1	14036/2021	IL & FS Tamil Nadu Power Corporation Ltd.	For issuance of a Writ of Certiorari, to call for the records relating to the impugned Notification No.22/2014-ST, dated 16.09.2014 issued by the third respondent * Central Board of Excise & Customs and quash the same
2	1570/2022	M/s.NLC India Limited	
3	17383/2021	M/s.NLC India Limited	
4	17496/2021	M/s.NLC Tamil Nadu Power Limited	
5	17937/2021	Qualitas Medical Group Private Limited	
6	18485/2021	M/s.Sify Technologies Limited	
7	24677/2021	Ms/.G.K.Shipping Services Pvt. Ltd	



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Note:-

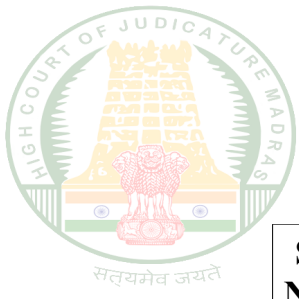
WEB COPY \* first respondent in W.P.No.24644 of 2021

- second respondent in W.P.No.1570 of 2022

3. In these Writ Petitions, the petitioners have challenged the impugned Notification No.22/2014, dated 16.09.2014 issued by the Central Board of Excise and Customs ( presently Central Board of Indirect Taxes and Customs).

4. In Writ Petitions at Sl.Nos.1, 3, 4 & 5 to the above Table, i.e. W.P.Nos.14036, 17383, 17496 & 17937 of 2021, an interim stay was granted along with the connected W.P.Nos.14039 & 17385 of 2021 in **Category No.2**, on 18.07.2021, 19.08.2021, 23.08.2021 & 31.08.2021 respectively.

5. Writ Petitions in **Category No.2** have been filed against the impugned Show Cause Notices (SCNs) as detailed below:-



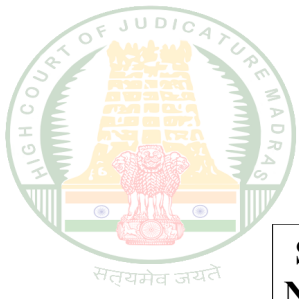
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<b>Sl. No.</b>	<b>W.P.No.</b>	<b>Name of Petitioner / Company</b>	<b>Prayers</b>
8	24960/2021	M/s.Sun TV Network Limited	For issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Show Cause - cum - Demand Notice F.No.IV (6) LdZU/ST/06/ 2020-21/ 1967 dated 23 October 2020 and DIN Number as 202010DNN500006L17EF2 (Impugned Notice / SCN) received on 03 November 2020 issued by the second respondent Additional Director General, Directorate General of Goods and Service Tax Intelligence, Ludhiana Zonal Unit and quash the same



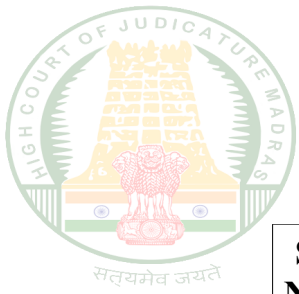


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Sl. No.	W.P.No.	Name of Petitioner / Company	Prayers
9	17941/2020	Chennai Super Kings	For issuance of a Writ of Certiorari, to call for the records of the first respondent Additional Director General, Directorate General of GST Intelligence, Ludhiana Zonal Unit relating to show cause notice bearing number F.No.IV(6)LdZU/ST/05/2020-21/1961, dated 23.10.2020 and quash the same.
10	12853/2020	M/s.Redington (India) Limited	For issuance of Writ of Certiorari, to call for the records of the respondent Principal Additional Director General, Director General of Goods and Services Tax Intelligence, Chennai Zonal Unit relating to issuance of the Show Cause Notice dated 30.07.2020 bearing reference F.No.INV / DGGI / CZU / ST / 98 / 2019 / 5769 and quash the same.
11	14039/2021	IL & FS Tamil Nadu Power Corporation Ltd.	For issuance of Writ of Certiorari, to call for the records relating to the Show Cause Notice No.02/2021-ST dated 01.03.2021 issued by the first respondent Additional Director General, Directorate of GST Intelligence, Coimbatore Zonal Unit and quash the same.
12	17385/2021	M/s.NLC India Limited	For issuance of Writ of Certiorari, to call for the records relating to the Show Cause Notice No.63/2020-ST dated 30.12.2020 issued by the first

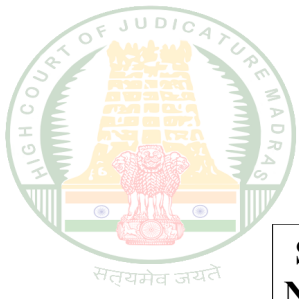


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Sl. No.	W.P.No.	Name of Petitioner / Company	Prayers
			respondent Additional Director General, Directorate of GST Intelligence, Coimbatore Zonal Unit and quash the same
13	17498/2021	M/s.NLC Tamil Nadu Power Limited	For issuance of Writ of Certiorari, to call for the records relating to the Show Cause Notice No.01/2021-ST dated 18.02.2021 issued by the first respondent Additional Director General, Directorate of GST Intelligence, Coimbatore Zonal Unit and quash the same.
14	18490/2021	M/s.Sify Technologies Limited	For issuance of a Writ of Certiorari, to call for the records relating to the Show Cause Notice – cum – Demand Notice No.F.No.51/INT/DGGI/HQ/2019/6757 dated 23.10.2019 issued by the first respondent Additional Director General, Directorate of GST Intelligence (Hqrs.), New Delhi and quash the same.
15	18492/2021	V.Ramanujan	For issuance of a Writ of Certiorari, to call for the records relating to the Show Cause Notice – cum – Demand Notice No.F.No.51/INT/DGGI/HQ/2019/6758 dated 23.10.2019 issued by the first respondent Additional Director General, Directorate of GST



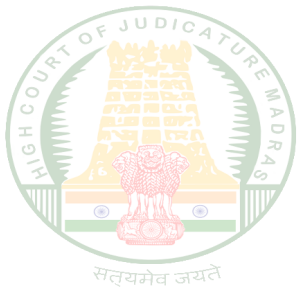
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Sl. No.	W.P.No.	Name of Petitioner / Company	Prayers
			Intelligence (Hqrs.), New Delhi and quash the same.
16	18496/2021	M.P.Vijay Kumar	For issuance of a Writ of Certiorari, to call for the records relating to the Show Cause Notice – cum – Demand Notice No.F.No.51/INT/DGGI/HQ/2019/6759 dated 23.10.2019 issued by the first respondent Additional Director General, Directorate of GST Intelligence (Hqrs.), New Delhi and quash the same.
17	1571/2022	M/s.NLC India Limited	For issuance of a Writ of Certiorari to call for the records relating to the Show Cause Notice No.32/2021, dated 11.10.2021 issued by the first respondent Principal Additional Director General, Directorate of GST Intelligence, Chennai Zone Unit and quash the same.

6. Particulars of the Writ Petitions in **Category No.3** are as detailed below:-



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<b>Sl. No</b>	<b>W.P.No</b>	<b>Name of Petitioner / Company</b>	<b>Prayers</b>
18	24680/2021	M/s.G.K.Shipping Services Pvt. Ltd	For issuance of a Writ of Certiorari, to call for the records pertaining to the impugned Order – in - Original No.11 / JC / ST / 2021 dated 25.08.2021 passed by the third respondent Joint Commissioner in F.No.R-114 / 2010 -CBS, pursuant to the Demand cum Show Cause Notice dated 30.12.2020 issued by the second respondent Additional Director.
19	17938/2021	Qualities Medical Group Private Limited	For issuance of a Writ of Certiorari, to call for the records relating to the impugned Order-in-Original No.21/ 2021 - JC dated 23.06.2021 issued by the fourth respondent Joint Commissioner confirming the demands proposed in Show Cause Notice No.64/2019-ST dated 13.11.2019 issued by the first respondent Joint Director and quash the same.

7. Challenges to the impugned Show Cause Notices and Orders-in-Original in Category Nos.2 & 3 are primordially on the ground that the Additional Director General, Directorate of GST Intelligence (Formerly Additional Director General of Central Excise Intelligence) in the



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respective Zonal Units and the Principal Additional Director General, Directorate of GST Intelligence, Chennai Zonal Unit (Formerly Principal Additional Director General of Central Excise Intelligence) and the Additional Director General, Directorate of GST Intelligence (Hqrs.), New Delhi (Formerly the Additional Director General of Central Excise Intelligence), were incompetent to issue the impugned Show Cause Notices to recover the tax allegedly evaded by these petitioners under the provisions of the Finance Act, 1994. Consequently, it is submitted that the impugned Order in Original confirming the demand are also without jurisdiction.

8. Several arguments have been advanced on merits as well as an alternative plea to quash the impugned Show Cause Notices (in **Category No.2**) and the impugned Orders-in-Original (in **Category No.3**).

9. Some of the petitioners in **Category No.1** are the petitioners in Writ Petitions in **Category No.2** while some of the petitioners in **Category No.1** are also the petitioners in **Category No.3**.



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10. However, the challenge as mentioned above is on the ground of jurisdiction and on merits. Whether the impugned Show Cause Notices and the Orders-in-Original in **Category Nos.2 &3** have to be quashed or not will depend on the ultimate result of the challenge to the impugned Notification No.22/2014-ST dated 16.09.2014 in **Category No.1**.

11. The impugned Notification No.22/2014-ST dated 16.09.2014 has been issued by the Central Board of Excise & Customs under Section 2(b) of the Central Excise Act, 1944, read with Section 65B(55) of the Finance Act, 1994, Rule 3 of the Central Excise Rules, 2002 and Rule 3 of the Service Tax Rules, 1994.

12. If the challenge to the impugned Notification No.22/2014-ST dated 16.09.2014 issued by the Central Board of Excise & Customs (Now Central Board of Indirect and Customs) in Writ Petitions in **Category No.1** is answered in the affirmative, the Writ Petitions in **Category No.2 & 3** may have to be allowed.

13. On the other hand, if the challenge to the impugned



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Notification No.22/2014, dated 16.09.2014 issued by the Central Board of Excise & Customs in Writ Petitions in **Category No.1** fails, the challenge to the impugned Show Cause Notices and impugned Orders-in-Original in **Category No.2 & 3** will have to fail.

14. If the Writ Petitions challenging the impugned Notification No.22/2014, dated 16.09.2014 issued by the Central Board of Excise & Customs in **Category No.1** fails, it is for the respective petitioners in **Category No.2** to submit of the jurisdiction of the jurisdictional adjudicating authority by filing their reply. The petitioners in **Category No.3** will have to file appeal before the next appellate authority in the hierarchy of the appellate authorities prescribed under the Finance Act, 1994 read with Central Excise Act, 1944.

15. Therefore, I shall first deal with the challenge to the impugned Notification No.22/2014, dated 16.09.2014 issued by the Central Board of Excise & Customs.

## **PART - II**



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16. The text of the impugned No.22/2014-ST dated 16.09.2014 of

WEB COPY the Central Board of Excise & Customs is reproduced below:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA,  
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE DEPARTMENT OF REVENUE  
CENTRAL BOARD OF EXCISE AND CUSTOMS  
**NOTIFICATION No. 22/2014-SERVICE TAX**

New Delhi, the 16th September, 2014

25 Bhadrapada 1936 Saka

**G.S.R 650 (E).**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 65B 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 supersession 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**



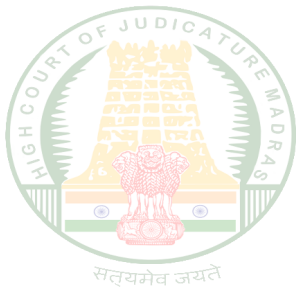


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<b>Sl. No (1)</b>	<b>Officers (2)</b>	<b>Officers whose powers are to be exercised (3)</b>
1.	Principal Director General, Central Excise Intelligence or Principal Director General, Service Tax	Principal Chief Commissioner
2.	Director General, Audit	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 Intelligence, Additional Director, Service Tax or Additional Director, Audit	Additional 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,	Superintendent



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<b>Sl. No (1)</b>	<b>Officers (2)</b>	<b>Officers whose powers are to be exercised (3)</b>
	Central Excise Intelligence, Superintendent, Service Tax or Superintendent, Audit	
9.	Intelligence Officer, Central Excise Intelligence, Inspector, Service Tax or Inspector, Audit	Inspector

17. By the impugned Notification No.22/2014-ST dated 16.09.2014, the Central Board of Excise & Customs has appointed the officers from the Directorate General of Audit, Directorate General of Central Excise Intelligence and Directorate General of Service Tax as “Central Excise Officers” and has invested with them with all the powers under Chapter V of the Finance Act, 1994 and Rules made thereunder, throughout the territory of India, as are exercisable by a Central Excise Officer of the corresponding rank as specified in column 3 to the said Notification.

### **PART III – CATEGORY 1**

18. I shall briefly narrate facts and other submissions made on



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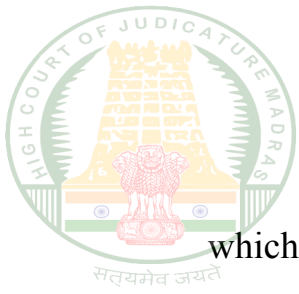
jurisdiction to issue Show Cause Notices by the officers from the Directorate General of Central Excise Intelligence (presently Directorate General of Central Tax Intelligence) in the light of Circular No.1076/02/2020-Cx, dated 19.11.2020.

19. It is submitted that the impugned Notification No.22/2014-S.T. dated 16.09.2014 issued by the Central Board of Indirect Taxes & Customs, is inter alia ultra vires Rule 3 of Service Tax Rules, 1994.

20. It is submitted that the impugned Notification No.22/2014-S.T. dated 16.09.2014 is the only source of authority which empowers officers belonging to the Director General of Goods and Service Tax Intelligence(DGGI) to issue show-cause notices (SCNs) and adjudicate service tax demands under Section 73 of the Finance Act, 1994.

21. It is submitted that there are no other Notification under Rule 3 of Service Tax Rules, 1994 that seeks to confer powers on these officers.

22. It is submitted that the power to issue the impugned Notification, as well as the power to appoint jurisdictional 'Central Excise Officers' emanate from Rule 3 of the Service Tax Rules, 1994,



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which empowers Central Board of Indirect Taxes & Customs to appoint such 'Central Excise Officers' as it thinks fit for exercising the powers under the Act within such 'local limits' as it may assign to them and also in respect of 'specified taxable services'.

23. Therefore, only on satisfaction of these two conditions, the power conferred on Central Board of Indirect Taxes & Customs ought to have been exercised.

24. It is further submitted that Rule 3 of Service Tax Rules, 1994 is distinct from like-provisions under Central Excise and GST. It is submitted that these two laws do not stipulate that the power conferred should be within such '*local limits*'. Thus, it submitted that appointment can be only for local area and not for whole of territory of India.

25. It is also submitted that the Central Board of Indirect Taxes & Customs itself has clearly specified the 'local limits', within which, jurisdictional 'Central Excise Officers' can exercise jurisdiction by virtue of Notification No. 12/2017-C.E. (N.T) dated 09.06.2017 r/w. Notification No. 13/2017-C.E. (N.T) dated 09.06.2017.



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26. This Notification relating to jurisdictional 'Central Excise Officers' has not been challenged by the Petitioner. It is submitted Rule 3 of the Service Tax Rules, 1994 makes it incumbent upon Central Board of Indirect Taxes & Customs to stipulate 'local limits' within which the respective officers can exercise jurisdiction.

27. It is submitted that the impugned Notification No.22/2014-S.T. dated 16.09.2014 states that officers from the Directorate of Goods and Service Tax Intelligence can exercise jurisdiction throughout India. It is submitted that such dilution of 'local limits' violates the principle of comity.

28. It is submitted that the term 'Local limits' must be understood as a territory confined to a part of a State and the dictionary meanings of 'local' reflects the understanding that 'local' refers to a particular place.

29. The very reason for the requirement to stipulate 'local limits' for an officer to wield jurisdiction is to avoid any undue hardship and inconvenience that may be caused to an assessee in adjudication process.



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30. In this connection, the learned counsel for the petitioner

referred to the decision of the Kerala High Court in **P. Sivaramakrishnan Vs. State of Kerala**, 1994 (5) TMI 24, wherein, the Hon'ble Kerala High Court undertook a detailed discussion of the expression 'local limits' in paragraphs 26-35 and noted in paragraph 33 that when a legislation applicable to the entire State speaks of a locality or local limit, it clearly signifies that it does not refer to the entire State, but to a defined part thereof.

31. It was therefore submitted that in paragraph 41 that Notifications it was concluded power assigned to the Intelligence officer, Kottayam was with jurisdiction throughout the State and *ultra vires* Section 3(2) of the Kerala General Sales Tax Act, 1963.

32. Learned Counsel referred to the decision of the Andhra Pradesh High Court in **Balaji Rice Company Vs. CTO**, 1983 (4) TMI 243, wherein, the Andhra Pradesh High Court dealt with the expression 'local limits'. Through Paragraphs 31 to 41, it was held that 'local limits' as stipulated in Section 4 of the APGST Act could comprise an area or territory which is part of the state of Andhra Pradesh, but something less



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than the whole of the territory of the State of Andhra Pradesh.

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33. It was held in paragraphs 32 and 41 that extending territorial jurisdiction of an officer to the whole of the State was *ultra vires* the powers conferred by the Statute. A statutory amendment was then executed for delimiting jurisdiction.

34. It was further submitted that in **P.Sivaramakrishan**'s cited *supra*, the Kerala High Court were moved to hold that 'local limits' conferred jurisdiction for a particularly defined area by considering that if plurality of officers are invested with powers to assess the same dealer, it will result in great hardship and inconvenience to the dealers and will greatly handicap the dealers in making their representations and it will also lead to contradictory orders of assessment.

35. It is submitted that the impugned Notification No.22/2014-S.T. dated 16.09.2014 is being arbitrary because it does not provide any guidelines as to who should exercise jurisdiction and under what circumstances.



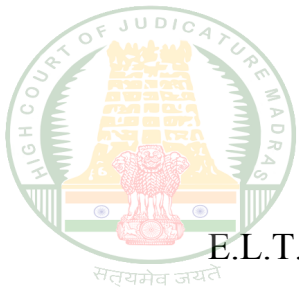
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36. It is submitted that the petitioners in the instant cases are facing

difficulties which were experienced by the petitioners before the High Courts in **P.Sivaramakrishnan** referred to *supra*, i.e., the petitioner would be subjected to the jurisdiction of multiple assessing officers of the same status exercising co-extensive powers over the same area. It is submitted that such an unguided operation of a statute is clearly violative of Article 14 of the Constitution of India.

37. It is submitted that the doctrine of comity of jurisdiction requires that there should no overlapping of exercise of powers and functions, for the proper administration of justice. It is submitted that where the statute confers the same power to perform an act on different officers belonging to different departments, the officers cannot exercise their powers in the same case and where one officer has exercised his powers of assessment, the power to order re-assessment must also be exercised by the same officer or his successor and not by another officer of another department though he is designated to be an officer of the same rank. This argument appears to be inspired from the decision of the Hon'ble Supreme Court in **Commissioner v. Sayed Ali** 2011 (265)





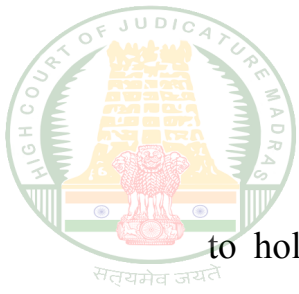
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E.L.T. 17 (S.C.) and in **Canon India Pvt. Ltd. Vs. Commissioner** —

2021 (376) E.L.T. 3 (S.C.).

38. It is further submitted that this doctrine of ‘comity’ was enunciated by the Hon’ble Supreme Court in **Commissioner of Customs Vs. Sayed Ali**, 2011 (265) E.L.T. 17 (S.C.) with respect to Section 28 of the Customs Act, 1962 and Section 28 of the Customs Act, 1962 is similarly phrased to Section 73 of the Finance Act, 1994. The Hon’ble Supreme Court held in paragraph 21 that only those customs officers who are assigned the functions of assessment working under the jurisdictional Collectorate within whose jurisdiction the bills of entry or baggage declarations had been filed and consignments cleared for home consumption, will have the jurisdiction to issue notice under Section 28 of the Customs Act, 1962.

39. It is also submitted that this doctrine was reiterated in **Canon India Pvt. Ltd. Vs. Commissioner of Customs**, 2021 (376) E.L.T. 3 (S.C.). wherein, in paragraph 12, the Hon’ble Supreme Court adverted to the use of the specific article ‘THE’ prefacing the words ‘proper officer’



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to hold in paragraph 14 that when the statute directs that “the proper officer” can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone.

40. It is submitted that this principle of comity is enshrined in Section 73 of the Finance Act, 1994 which empowers “the” Central Excise Officer to issue a show cause notice. It is further submitted that furthermore, Section 73(2) contemplates that the adjudication of the show cause notice shall be done by “the” same Central Excise Officer who has issued the show cause notice under Section 73(1) and thus, the Act contemplates not “any” Central Excise Officer but a specific and particular Central Excise Officer who can issue and adjudicate a show cause notice under Section 73 of the Finance Act, 1994.

41. Applying the ratio of the decisions in **Canon** referred to *supra* and **Sayed Ali** referred to *supra* in the context of Finance Act, 1994, it is submitted that “the” Central Excise Officer is the officer within whose jurisdiction the Appellant obtains registration, pays taxes, files returns and complies with the all other formalities and compliances under the Act.



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WEB COPY 42. It is submitted that as a consequence, it is submitted that the proceedings suffer from patent lack of jurisdiction. It is submitted that the doctrine of comity will be violated if the impugned Notification No. 22/2014-S.T. dated 16.09.2014 were allowed to survive.

43. The decisions cited by the Respondents - Revenue are distinguished. It is submitted that they are not applicable to the instant challenge at all, for the reasons demonstrated below:

Sl	Decisions cited in Respondent's Compilation dated 24.08.2021	Petitioner's reasons to distinguish decisions
1	Duncan Agro Industries Ltd. vs. UoI1989(39) E.L.T. 211 (Del.) [Pages 1-21 of the Respondent's Compilation dated 24.08.2021]	?The decision in Duncan Agro was rendered under the Central Excise Regime, where the statutory scheme under which 'Central Excise officers' were vested with jurisdiction did not mandate that only one Collector could wield jurisdiction over an assessee. [Paras 19-24]  ?Here, the instant challenge to NN 22/2014 arises under the service tax regime, where Section 73 of the Finance Act, 1994 categorically states that



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Sl	Decisions cited in Respondent's Compilation dated 24.08.2021	Petitioner's reasons to distinguish decisions
		<p>'the Central Excise Officer' may issue a show cause notice.</p> <p>?The language of Section 73 of the Finance Act, 1994 attracts the ratio in Sayed Ali (<i>supra</i>) &amp; Canon India (<i>supra</i>) and only 'the central excise officer' can issue notices.</p> <p>?Hence, the decision in Duncan Agro is not relevant.</p>
2.	<p>Raghunath International Ltd. vs UoI2012 (280) E.L.T. 321 (All.)</p> <p>[Pages 22-33 of the Respondent's Compilation dated 24.08.2021]</p>	<p>?This decision was also rendered in the Central Excise regime, which permits multiple central excise officers to exercise jurisdiction over the same assessee. [Paras 27-28]. Further, this case relied on Duncan Agro (<i>supra</i>), which has already been distinguished above.</p> <p>?Hence, this decision is not even applicable to resolve the question of whether DGGI officers are 'the proper officers' for issuance of show cause notices under Section 73 of the Finance Act, 1994.</p>
3.	<p>National Building Construction Co vs UoI2019 (20) GSTL 515 (Del)</p> <p>[Pages 34-49 of the Respondent's Compilation dated 24.08.2021]</p>	<p>?While the decision in National Building Construction Co. was under the service tax regime, the Petition laid a limited challenge to a Show Cause notice but did not raise any challenge to the NN 22/2014. It was in this specific context that the Hon'ble Delhi High Court</p>



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Sl	Decisions cited in Respondent's Compilation dated 24.08.2021	Petitioner's reasons to distinguish decisions
		<p>held that there was no bar on the Board from conferring pan-India jurisdiction. [Para 43]</p> <p>?The Hon'ble High Court did not consider the gamut of arguments placed on the NN 22/2014 being <i>ultra vires</i> Rule 3 of the STR.</p> <p>?The decision in NBCC had occasion to consider the <i>ratio</i> in Balaji Rice Mills and refrained from applying it for the sole reason that the decision in Balaji Rice Mills was rendered under a different enactment [Para 46].</p> <p>?In CCE vs Jawahar Mills Ltd. -2001 (132) E.L.T. 3 (S.C.), the Hon'ble Supreme Court dismissed the revenue's plea that sales tax decisions and income tax decisions should not apply to central excise disputes by holding that the real question is that of the principle laid down by the decision.</p> <p>?For the above reasons, the decision in NBCC is wholly distinguishable.</p>
4.	Yasho Industries vs UoI 2021-VIL-483-GUJ  [Pages 50-58 of the Respondent's Compilation	Yasho Industriesvs UoI 2021-VIL-483-GUJ  [Pages 50-58 of the Respondent's Compilation



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Sl	Decisions cited in Respondent's Compilation dated 24.08.2021	Petitioner's reasons to distinguish decisions dated 24.08.2021]
5.	Order dated 24.02.2021 in Thangamayil Jewelry Ltd. vs. ADDGI WP (MD) 16271 of 2020  [Pages 59-71 of the Respondent's Compilation dated 24.08.2021]	?Paragraph 10 of the Hon'ble High Court's Order held that the Additional Director General (Adjudication) had territorial jurisdiction to go into the issue raised in the Show cause notice.  ?The said decision was also rendered under the GST regime, where the statutory scheme (insofar as jurisdiction is concerned) is admittedly different from the Service tax regime.  ?The decision is not applicable to the instant challenge, because Section 73 of the Finance Act, 1994 requires 'the central excise officer' to issue a notice and Rule 3 of the STR mandates that central excise officers may exercise powers within such local limits as may be prescribed.

44. It is therefore submitted that none of the decisions sought to be relied on by the Department are relevant to the challenge laid to NN 22/2014 in the instant case. It is prayed for allowing these Writ Petitions.



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**PART IV – CATEGORY - 2**

**W.P.No.24960 of 2021 [Sun Tv Network Ltd. Vs. Additional Director General, Directorate of GST Intelligence (Hqrs.) and others]**

45. The petitioner has challenged the impugned Show Cause Notice dated 23.10.2020 issued to the petitioner by the second respondent Additional Director General, Directorate General of Goods and Service Tax Intelligence on the ground that the impugned Show Cause Notice has been issued without any jurisdiction.

46. That apart, it is submitted that the impugned Show Cause Notice is contrary to the Closure Report of the Audit Department and therefore on this score also the Show Cause Notice is bad. That apart, the learned senior counsel for the petitioner submits that the report of the comptroller of Auditor General of India examined the issue arising out the business franchise under the IPL matches conducted by the Board of Control for Cricket in India (BCCI) and that in the case of other franchise namely M/s.Royal Challengers Sports Private Limited, M/s.Entertainment Network India private limited (Mumbai ST-III), M/s.Knight Riders Sports Private Limited (Mumbai ST-IV) and



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M/s.Wizcraft International Entertainment Limited (Mumbai ST-VI), the proposal was dropped.

47. It is submitted that once the Jurisdictional Officer has attached/adjudicated, it is not open for the second respondent to sit in appeal over the same by issuing the impugned Show Cause Notice and therefore on this score also, the impugned proposal in the Show Cause Notice is liable to be dropped. The learned senior counsel also submitted that on the same ground, there is no case made out for invoking extended period of limitation. A reference was made to the following written submissions:-

"1. The petitioner operates an Indian Premier League (IPL) franchise by the name Sunrises Hyderabad "SRH". The petitioner receives sponsorship income from various business in relation to his franchise on which the recipient of the service has paid Service Tax under reverse charge mechanism.

2. Respondent No.2 has issued the impugned Show Cause Notice alleging that the petitioner has not reversed CENVAT credit under the service tax regime to the proportion of sponsorship income earned by it. The objections have been raised presumably on the basis of Comptroller and Auditor General of India





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(C&AG) objections which were raised in the content of entertainment sector.

3. The perusal of the said C&AG report issued for the year ended March 2017, in relation to the 'Entertainment Sector' which was tabled on the Parliament in the month of August 2017, it would reveal that the Ministry has conceded to that there is an ambiguity where it has held that sponsorship service cannot be equated to 'exempted services' on which reversal under rule 6 of the CENVAT Credit Rules, 2004 is warranted. Copy of the summary extract is enclosed as Annexure-A.

4. Subsequent to the tabling of the above report in the Parliament, an audit was conducted by the Jurisdiction Service Tax Officer (proper office) in the month of May 2019, where petitioner's availment of CENVAT and other Service Tax compliances were duly verified and audited by the proper officer of Service Tax, who raised certain objections in relation IPL business, but nothing in the context of CENVAT Credit reversal pertaining to sponsorship income. The said observations by the proper officer were duly acknowledged and consequently were paid/settled by the petitioner. Copy of Audit Closure Report issued in the month of June 2019 is enclosed as Annexure-B.

5. In light of the above factual matrix, an audit by the proper officer of service tax has already concluded with no objections from the present issue and the C&AG report admitting the Government's position on non-requirement of reversal during the service tax period, it is incorrect on part of the Respondent No.2 to allege fraud and suppression. Consequently, it is prayed that invocation of larger period of limitation be set aside and the SCN be quashed. Further, it is held in various Supreme Court decisions that the larger period cannot be invoked where the issue involved



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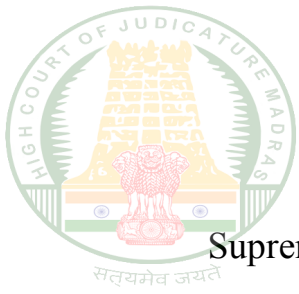
interpretation of law and where audit by proper officer is concluded."

48. On merits, the learned senior counsel submitted that the petitioner had treated the service as a “sponsorship service” and since the recipient of service have paid tax on reverse charge basis the petitioner cannot be fastened the liability under Rule 6(3) of the CENVAT Rules, 2004.

49. The learned senior counsel has referred to the decision of the Hon'ble Supreme Court in the following cases:-

- i. **Siemens Limited Vs. State of Maharashtra**, 2007 (1) CTC 844.
- ii. **Oryx Fisheries Limited Vs. Union of India**, 2010 (13) SCC 427.”

50. Mrs.R.Hemalatha, learned Senior Standing Counsel for the fifth respondent drew attention to the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax, Gujarat Vs Vijaybhia N.Chandrani**, 2013 (35) Taxmann.com 580 (SC) wherein the Hon'ble



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Supreme Court set aside the order of the High Court and remitted the case back to the respondents, by directing the assessee to participate in the Show Cause Proceedings.

51. Mr.V.Sundareswaran, learned Senior Panel Counsel for the first to fourth respondents on the other hand relied on the following decisions:-

“ i. **Commissioner of Central Excise, Bangalore Vs Brindavan Beverages (P) Limited**, 2007 (213) E.L.T. 487 (S.C.)

ii. **R.R.Financial Consultants Limited Vs Union of India**, 2014 (33) S.T.R. 12 (Del.)

iii. **Abhishek Mundhra Vs Additional Director General, Directorate General of Revenue Intelligence, Chennai**, 2015 (318) E.L.T. 245 (Mad.)

iv. **Additional Director, Directorate of Revenue Intelligence, Chennai Vs M.Rathakrishnan**, 2017 (354) E.L.T. 483 (Mad.)

v. **Karnataka Power Transmission Corporation Limited Vs Principal Commissioner of Central Excise, LTU, Bengaluru**, 2019 (366) E.L.T. 716 (Kar.)”

52. The learned Senior Panel Counsel further submits that all the



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decisions were considered by this Court and distinguished.

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53. It is submitted that the petitioner has challenged the impugned Order-in-Original No.11/JC/ST/2021 dated 25.08.2021 passed by the third respondent pursuant to the Show Cause Notice dated 30.12.2020 issued by the second respondent.

54. The learned counsel for the petitioner submits that the connected W.P.No.24677 of 2021 was dismissed. Therefore, the petitioner may be given liberty to work out the alternate remedy before the Appellate Commissioner.

**W.P.No.17941 of 2020 [Chennai Super Kings Cricket Limited Vs. Additional Director General, Directorate General of GST Intelligence.]**

55. The petitioner has challenged the impugned show cause notice dated 23.10.2020 bearing reference No.F.No.IV(6)LdZU/ST/05/2020-2021/1961.



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56. Appearing on behalf of the petitioner, the learned senior counsel submits that before issuing the impugned show cause notice, an Audit Intimation Notice dated 16.02.2016. The petitioner also replied on 02.03.2016 and also visited the petitioner on 20.09.2016. Pursuant to which, an Audit Report dated 17.10.2016 was generated, the petitioner was providing services two of its names namely Pepsi and Gulf Oils.

57. During the verification of the records, it was submitted that the petitioner was providing taxable services of promotion of brand services and paying service tax. From their ledger, it was also noticed that they received gate receipt income towards admission to sporting event during the month of April 2015 and May 2015 in the IPL matches. It is submitted no service tax was collected on such income.

58. It is submitted that definition of service in Section 65B(44) of the Finance Act, 1994 makes it clear that there was no provision of service. It is therefore submitted that the impugned Show Cause Notice is liable to be quashed.



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59. The learned senior counsel submits that the respondents have filed two counters in this writ petition dated 05.01.2020 and on 08.03.2021. After there was exchange of further pleadings, it is submitted that a regular audit was conducted by the Jurisdictional Officer in terms of Rule 5(A) of the Service Tax Rules, 1994 and under the scheme of the Finance Act, 1994, there is only the scope for a special audit under Section 72(A) of the Finance Act, 1994.

60. It is therefore submitted that it is not open for the Department to re-look on the issue once the issue had attained finality. It is further submitted that there is no allegation of suppression of facts in the impugned Show Cause Notice though in Paragraph (16) of the impugned Show Cause Notice, the reasons for invoking extended period of limitation has been given.

61. It is submitted that there should be a positive act for invoking extended period of limitation and a notice should spell out clearly the reasons as to how there was a case made out suppression of facts. In this connection, the learned senior counsel referred to the following decision of the Hon'ble Supreme Court :-



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- “ i. **Siemens Limited Vs State of Maharashtra**,  
2007 (1) CTC 844.  
ii. **Oryx Fisheries Limited Vs Union of India**,  
2010 (13) SCC 427.”

62. The learned senior counsel further submitted that in the second counter for the first time, the respondents have alluded to the alleged failure on the part of the petitioner to furnish a copy of the contract entered with gulf oil for the year 2015. It is submitted that the petitioner has only entered in to a proforma agreement with each of the persons who avail services of the petitioner and therefore it cannot be said that there was any suppression of facts.

63. Mr.V.Sundareswaran, learned Senior Panel Counsel for the respondents has drawn attention to the following decisions:-

- “ i. **Commissioner of Central Excise, Bangalore Vs Brindavan Beverages (P) Limited**, 2007 (213) E.L.T. 487 (S.C.)  
ii. **R.R.Financial Consultants Limited Vs Union of India**, 2014 (33) S.T.R. 12 (Del.)  
iii. **Abhishek Mundhra Vs Additional Director General, Directorate General of Revenue Intelligence, Chennai**, 2015 (318) E.L.T. 245 (Mad.)  
iv. **Additional Director, Directorate of Revenue**



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**Intelligence, Chennai Vs M.Rathakrishnan,**  
2017 (354) E.L.T. 483 (Mad.)  
**v. Karnataka Power Transmission Corporation**  
**Limited Vs Principal Commissioner of Central**  
**Excise, LTU, Bengaluru, 2019 (366) E.L.T. 716**  
**(Kar.)”**

64. The learned Senior Panel Counsel further submits that all the decisions were considered by this Court and distinguished.

**W.P.No.12853 of 2020 [M/s.Redigton (India) Limited Vs. Principal Additional Director General, Directorate General of GST.]**

65. The Petitioner has challenged the impugned show cause notice No. F.No INV/DGGI/CZU/ST/98/2019/5769 dated 30.07.2020 issued by the respondent seeking to demand service tax from the petitioner and also for failing to file periodical returns with correct details.

66. The Petitioner’s company is engaged in the business of trading of goods and is a leading distributor of IT and Non It & Network related products. The petitioner has entered into a distributorship agreement with Lenovo, Acer, Apple etc and other suppliers and is involved in purchase and sale of goods.





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WEB COPY 67. Petitioner in order to promote sales announces discount/rebate, these offers are part of the trading activities. The rebate/discount are paid either by way of credit notes or through bank transfers. Petitioner for sake of convenience had accounted rebates/discounts under separate accounting head as 'Other Income'.

68. The Service Tax Department had audited the books of accounts of the petitioner from 2013- June 2017 for trading of products from the vendors.

69. The petitioner received a Show Cause Notice dated 30.07.2020 from the respondent alleging that the petitioner company has violated certain provisions of Chapter V of the Finance Act. The Reason stated by the respondent was the service provided by the petitioner is taxable under the finance Act 1994.

70. The Learned Counsel for the Petitioner submits that the concept of service tax was introduced in the year 1994 on various



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specified services where each service was defined under the finance act

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1994. However the concept of levy of service tax was changed with effect from 01.07.2012, from taxing the individual service to negative list of service where all services, except the services listed under the negative list were levied to service tax

71. The term Service and taxable Service have been defined under Section 2 (44) and Section 2(51) of the finance Act 1994. The Sections reads as under;-

**Section 2(44)** : "Service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include (a) an activity which constitutes merely -

- (1) A Transfer of title in goods or immovable property by way of sale, gift or in any other manner; or
- (ii) Such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution: (111) A transaction in money or actionable claim:



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- (b) A provision of service by an employee to the employer in the course of or in relation to his employment
- (c) fees taken in any Court or Tribunal established under any law for the time being in force.

**Section 2(51)** : "Taxable service" means any service tax is leviable under section 66B.

72. The learned Counsel for the petitioner further submits that the term 'Service' has been defined to mean any activity carried out by a person for another for certain consideration, the taxable service are defined under section 66B. The Sections reads as under;-

**Section 66B** - There shall be levied a Tax ( hereinafter, of Goods referred to as the service tax) at the rate of fourteen percent on the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as may be prescribed.

**Section 66D-** Negative List of Services - The negative list shall comprise of the following services, namely:

- (a) services by Government or local



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authority excluding the following services to the extent that they are not covered elsewhere.....

(e) Trading of goods;

73. The learned counsel for the petitioner further submits that, Petitioner being the distributor is carrying out the activity of buying the goods from the vendors and selling it to the customers. The activity of sale is not a service and is clearly excluded from the service tax levy. It is pertinent to state that the activity of trading does not form part of service under the service tax law.

74. It is submitted that the relationship the petitioner had with vendor is mere seller-purchaser of the products, there is no service carried out for the vendor.

75. Opposing the prayer the learned counsel for the respondent submits that the respondent while scrutinising the documents of the petitioner at the time of the investigation noticed that the petitioner has agreed to do an activity in the form of promoting the sales of the product of their vendors in general and specific products of their supply in



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particular against consideration in name of rebates thereby has rendered

‘service’ to their vendors.

76. Hence the amount received by it in the name of rebate is extra incentive received for the efforts put forth by it for additional purchase/sales which is also evident from the fact that the services related to sales promotion are provided against consideration in the form of such rebates.

77. The learned counsel for the petitioner further submits that the rebate income earned by the petitioner has no relation with the sale and purchase prices in as much as there is no direct and indirect effect shown in the account of purchase/sale in the books of accounts of the petitioner towards these income. Hence, it appears that such amounts earned in the name of rebates are towards sales promotion of the products of the petitioner.

78. Further the learned counsel for the respondent states that the petitioner has failed to discharge their service tax liability on “ocean freight” involved on the imports made by them during the period 23.04.2017 to 30.06.2017. The issue was raised by the officers of



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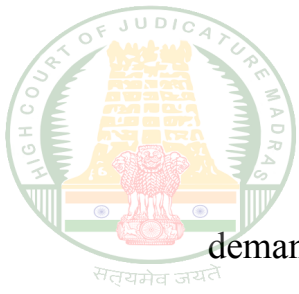
DGGI,CZU. Though they have paid the service tax on Ocean Freight along with the interest but have not paid the mandatory penalty of 15%.

79. The learned counsel for the respondent further states that the allegations made by the petitioner with regard to the periodical audit for the period April 2013 - June 2017 was conducted and certified that there are no discrepancies noticed by the service tax department after verification of returns and financial statements.

80. But the petitioner is aware that the audit and intelligence are two different wings of the department, there were certain issues that were not brought to the notice of the audit which was unearthed during the course of investigation by DGGI officers which has resulted in the issuance of the Show Cause Notice.

**W.P.No.14039 of 2021 [IL & FS Tamil Nadu Power Corporation Ltd. Vs. Additional Director General, Directorate of GST Intelligence.]**

81. The petitioner has challenged the impugned show cause notice No.02/2021-ST dated 01.03.2021 issued by the 1<sup>st</sup> respondent seeking to



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demand service tax from the petitioner from the period between 01.10.2015 to 30.06.2017 there is period covering from the implementation of GST.

82. It is the specific case of the petitioner that the petitioner has entered into a power purchase agreement with TANGEDCO for supplying electricity generated by the petitioner.

83. The learned counsel for the petitioner submits that as far as supply of electricity is concerned, the issue is not in dispute as the petitioner was paying VAT under the provisions of the TNVAT Act. It is submitted that as per the agreement the petitioner is entitled for compensation and wherever there is a short fall/deficit and supply on account of demand from TANGEDCO, the petitioner is liable for penal charges.

84. Similarly, the petitioner is also entitled for amount towards late payment of charges. It is submitted apart from the fact, the show cause notice is without jurisdiction which the issued has been issued the



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petitioner by an officer without jurisdiction and that the respondent has wrongly proceeded to invoke the extended period of limitation under proviso to Section 73 of the Finance Act, 1994.

85. The learned counsel for the petitioner submits that the demand proposed and the impugned show cause notice is above 50 lakhs for a sum of Rs.92,55,56,798/-. It is therefore submitted that the impugned show cause notice is contrary to circular bearing reference No.1053/2/2017-CX dated 10.03.2017 and 19.11.2020 and therefore is liable to be quashed.

86. In this connection, a reference was made the following two decision of this Court in **Tube Investment of India Limited Vs. Union of India** 2018 (16) GSTL 376 (Mad) and **Hitachi Power Europe Europe Vs. Income Tax Settlement** 2019 SCC Online 4005 (Mad) and **Amadeus India Pvt.Ltd Vs. Principal Commissioner** 2019 (25) GSTL 486 (Del) 8437.

87. The learned counsel for the petitioner submitted that the





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amount which was received by the petitioner towards capacity charges under the power purchase agreement is in the nature of the liquidated damages which is a compensation for breach of contract and therefore cannot come within the purview of declared services under Section 66E(e) of the Finance Act, 1994.

88. The learned counsel for the petitioner submits that the issue also was recently considered by the larger bench of the Tribunal in view of the conflicting views on the same point and the larger bench in its order in the case of **Commissioner of Excise Vs. Repco Home Finance** 2020 SCC online CESTAT 114.

89. The learned counsel for the petitioner submits that the power purchase agreement is single contract under which the payments have been made and the payments towards capacity charges i.e, towards damages for not taking agreed quantity of units is also towards sale of electricity and since the activity is exempt under TNVAT Act, 2006. The petitioner is not paid VAT.

90. The learned counsel for the petitioner submits that there is no



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case made out for invoking the extended period of limitation as there is no positive suppressions by the petitioner. That apart, it is submitted that the fact that the Tribunal had to constitute a larger bench to resolve the issue in any event stands answered in favour of the petitioner in the said decisions of the Tribunal in Repco case also shows that the petitioner cannot be accused of suppression of facts to justify invoking the extended period of limitation.

91. He therefore submits that the impugned show cause notice about from the without jurisdiction has having been issued by a person which is not obtained to issue show cause notice in terms of Notification No.22/14-ST dated 16.09.2014 has to go.

92. Opposing the prayer, the learned counsel for the respondent submits that with effect from 01.07.2012, the definition of services has been incorporated in the Finance Act, 1944. It is submitted that the definition includes “declared services” within the meaning of Section 65B(22) of the Finance Act, 1944.



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93. It is submitted that the amount of consideration received by the petitioner from the capacity charges and made payment charges are liable to tax in view of the definition of service in Section 66B(44) of the Finance Act, 1994.

94. The learned counsel for the respondent further submits that even otherwise the issue relating classification cannot be decided even by the High Court in its Appellate Jurisdiction and Hon'ble Supreme Court has thrown upon the provisions of the High Court interfering in the classification issue.

95. It is therefore submitted that the petitioner has an alternate remedy and therefore the writ petition is liable to be dismissed.

96. Finally, the learned counsel for the respondent has drawn attention to the impugned show cause notice to justify the invocation for extended period of limitation. He also relied upon the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Postal Container Transporters Association** 2019 22 GSTL 481. The Hon'ble Supreme Court held that unless the show cause notice was without



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jurisdiction the Court cannot interfered at the show cause proceedings.

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**W.P.No.17385 of 2021 [M/s.NLC India Limited Vs. Additional Director General, Directorate of GST Intelligence]**

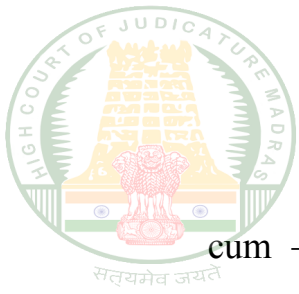
97. The petitioner has challenged the impugned show cause notice dated 30.12.2020 bearing reference Show Cause-cum-demand notice No.63/2020-ST dated 30.12.2020 demand has been proposed for the period between 01.10.2014 to 31.06.2017.

98. The demand in the present show cause notice pertains to alleged provisions of declared service within the meaning of Section 66E(e) read with Section 65B(22) of the Finance Act, 1944.

99. The learned counsel for the petitioner submits that the petitioner is a 'Navratna Company' and therefore as per the decision of this Court, invocation of the extended period of limitation against a Navratna Company cannot be countenanced and therefore the impugned show cause notice has to go.

**W.P.No.17498 of 2021 [M/s.NLC Tamil Nadu Power Limited Vs. Additional Director General, Directorate of GST Intelligence]**

100. The petitioner has challenged the impugned Show Cause –



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cum – Demand Notice No.01/2021-ST, dated 18.02.2021 demanding service tax for alleged in demand for service tax after referring for service within the meaning of 66E(e) and 65B(22) of the Finance Act.

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**W.P.Nos.18490, 18492 & 18496 of 2021 [M/s.Sify Technologies Limited Vs. Additional Director General, Directorate of GST Intelligence (Hqrs.)] & [V.Ramanujan Vs. Additional Director General, Directorate of GST Intelligence (Hqrs.)] & [M.P.Vijay Kumar Vs. Additional Director General, Directorate of GST Intelligence (Hqrs.)]**

101. The petitioners have challenged the impugned Show Cause Notice dated 23.10.2019 issued by the first respondent bearing Ref.F.No.51/INT/DGGI/HQ/2019/6757. The demand in the impugned Show Cause Notice pertains to the period between April 2014 to November 2016.

102. It is the specific case of the petitioners that the petitioners are providing end to end information and communication network service of various clients who were stayed in abroad and therefore the petitioners had treated the aforesaid service as export of service within the meaning of Rule 6A of the Service Tax Rules, 1944.



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WEB COPY 103. The learned counsel for the petitioners submits that the impugned Show Cause Notice precedes the pre-consultation notice dated 22.10.2019, wherein, the petitioners were called for a personal hearing on 23.10.2019, it is the date on which the impugned Show Cause Notice has been issued. It is therefore submitted that the impugned Show Cause Notice has been issued immediately after a hearing held on the same date was nothing but a captioned formality.

104. It is therefore submitted that the impugned Show Cause Notice is liable to be quashed in the light of the decision of the Gujarat High Court in **Dharamshil Agencies Vs Union of India**, 2021 (7) TMI 1064, wherein, a reference was made to Paragraph 8 from the said order, which reads as under:-

*"8. In view of the afore-stated Circular, it is clear that the Board had made issuance of Pre-Show Cause Notice consultation mandatory for the Principal Commissioner/Commissioner prior to the issuance of Show-Cause Notice in cases involving the demands of duty above Rs.50,00,00,000/- and that such consultation was to be done by the adjudicating authority with the assessee as an important step towards the trade facilitation and*



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*for promoting necessary compliance, as also to reduce the necessity of issuing Show Cause Notice. Despite such mandatory requirement of the Pre-Show Cause Notice consultation at the instance of the respondent authority, in utter disregard of the said mandate, and without considering the laudable object behind issuing such circular, the respondents issued the impugned Pre-Show Cause Notice consultation dated 12.04.2019 delivering the same to the petitioner assessee at 13.55 hours and calling upon them to remain present before the respondent No.2 at 16.00 hours. The petitioners having requested for reasonable time for the effective consultation, without considering the said request, the respondent No.2 issued the Pre-Show Cause Notice on the same day i.e., on 12.04.2019. Such a high-handed action on the part of the respondent No.2, not only deserves to be deprecated but to be seriously viewed."*

105. The learned counsel for the petitioners has reiterated the same submission in **Pahwa Chemicals Private Limited Vs Commissioner of Central Excise, Delhi**, 2005 (181) E.L.T. 339 (S.C). It is therefore submitted that the impugned Show Cause Notice has to go.

106. That apart, the learned counsel for the petitioners submits that the impugned Show Cause Notice is contrary to the Notification No.22/2014-ST dated 16.09.2014 and therefore on this score also the impugned Show Cause Notice has to be quashed as it has been issued



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without jurisdiction and also not issued by the competent officer contemplated under the provisions of the Finance Act, 1994.

107. On merits, the learned counsel for the petitioners submits that the classification adjudicated by the petitioners treated the aforesaid service as export of service is contrary to the contracts entered between the petitioners and its customers. It is submitted that the place of provision of service by the petitioners in terms of place of provision of Service Rules, 2012, the location of the recipient of service in terms of Rule (3) of the aforesaid rules reads as under:-

"3. The place of provision of a service shall be the location of the recipient of service: Provided that in case "of services other than online information and database access or retrieval services"(Inserted vide Notification 46/2012- Service Tax) where the location of the service receiver is not available in the ordinary course of business, the place of provision shall be the location of the provider of service."

108. The learned counsel for the petitioners further submitted that it is not open for the respondents to treat the service that of a Online Information Database Access and Retrieval Service, as defined in Rule 2(1) of the Place of provision of Service Rules, 2012 read with Rule





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2(1)(ccd) of the Service Tax Rules, 1944. The learned counsel for the petitioners further submitted that the petitioner has satisfied all the requirements of Rule 6A of the Service Tax Rules, 1944, though according to the respondents, the petitioners have not satisfied with the requirements of Rule 6A(1)(d) of the Service Tax Rules, 1944, by invoking Rule 9 of Place of provision of Service Rules, 2012, it is therefore submitted that the proposal in the impugned Show Cause Notice is liable to be quashed and prays for allowing the writ petitions.

109. The learned counsel for the petitioners further submitted that even otherwise there is no case made out for invoking extended period of limitation under proviso to Section 73 of the Finance Act, 1994.

110. The learned counsel for the petitioners has also relied on the decision of the Hon'ble Division Bench of this Court in W.A.No.493 of 2021 dated 18.02.2021, wherein in Paragraph 7, this Court held as follows:-

*"7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :*



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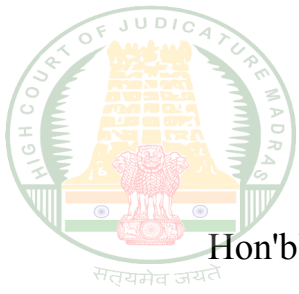


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- (i) *if there is unfairness in the action of the Statutory Authority;*
- (ii) *if there is unreasonableness in the action of the Statutory Authority;*
- (iii) *if perversity writs large in the action taken by the Authority;*
- (iv) *if the Authority lacks jurisdiction to decide the issue and*
- (v) *if there has been violation of the principles of natural justice, the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India."*

111. Opposing the prayer in these writ petitions, the learned Senior Panel Counsel for the first to fourth respondents submits that the issue pertains to classification of service as to whether the service provided by the petitioners is Income Tax Service or Online Information Database Access and Retrieval Service as defined in Rule 2(l) of the Place of provision of Service Rules, 2012 read with Rule 2(1)(ccd) of the Service Tax Rules, 1994.

112. In this connection, the learned senior panel counsel for the first to fourth respondents has placed reliance on the decision of the



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Hon'ble Supreme Court in **Union of India and others Vs Coastal Container Transporters Association and others**, (2019) 20 SCC 446.

113. The learned senior panel counsel for first to fourth respondents further submits that when the statements/submissions were recorded under Section 14 of the Central Excise Act, 1944 as made applicable to the Finance Act, 1994, employees of the petitioner's company have accepted that the services provided by the petitioners was that of the Online recipient service and therefore even on this count also it is not open for the petitioners to challenge the impugned Show Cause Notice on merits.

114. It is further submitted that whether there was a suppression of facts or not is to be adjudicated and therefore the petitioners should be relegated to work out the remedy before the respondents by filing suitable reply to the impugned Show Cause Notice. It is therefore submitted that the writ petitions filed by the petitioners may be dismissed.

115. Supplementing the arguments advanced by the learned senior panel counsel for the first to fourth respondents, Mrs.R.Hemalatha,



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learned Senior Standing Counsel for the fifth respondent submits that the impugned order in the present writ petition is premature inasmuch as the petitioners have to work out the remedy, the Court have to circumspect in entertaining the writ petition. She therefore prays that these writ petitions may be dismissed and the petitioners may be directed to work out the remedy before the adjudicating authority.

**W.P.No.1571 of 2022 [M/s.NLC India Limited Vs. Principal Additional Director General, Directorate of GST Intelligence]**

116. The petitioner has challenged the impugned Show Cause – cum – Demand Notice No.32/2021-ST, dated 11.10.2021 demanding service tax for alleged in demand for service tax after referring for service within the meaning of 66 E(e) and 65B(22) of the Finance Act.

### **PART V – CATEGORY- 3**

**W.P.No.24680 of 2021 [M/s.G.K.Shipping Services Pvt. Ltd. Vs. Union of India]**

117. The learned counsel for the petitioner submits that if the connected W.P.No.24677 of 2021 is dismissed, the petitioner may be given liberty to work out the alternate remedy before the Appellate



Commissioner.

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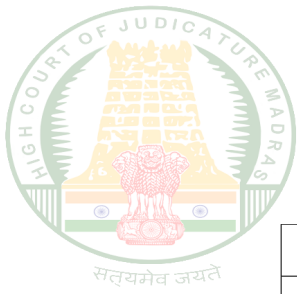
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**W.P.No.17938 of 2021 [Qualitas Medical Group Private Limited Vs. Joint Director, Directorate of GST Intelligence.]**

118. The petitioner has challenged the impugned Order-in-Original No.21/2021-JC dated 23.06.2021 passed by the fourth respondent pursuant to the Show Cause Notice dated 13.11.2019 bearing Ref.No.64/2019-ST issued by the first respondent.

119. The impugned Order-in-Original which confirms the demand proposed in the Show Cause Notice dated 13.11.2019 of the first respondent. It covers the period between 01.04.2015 and 30.06.2017. The details of the demand proposed in the Show Cause Notice is as follows:-

<i>Sl.</i>	<i>Particulars of demand</i>	<i>Period</i>	<i>Service Tax (INR)</i>
1.	Differential Service tax liability consequent to denial of exemption availed for health-care services under Notification	01.04.2015 - 30.06.2017	80,49,959



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<i>Sl.</i>	<i>Particulars of demand</i>	<i>Period</i>	<i>Service Tax (INR)</i>
	No.25/2012-S.T dated 20.06.2012.		
2.	Service tax liable to be paid under reverse charge for FWCMS remote systems received from Bestinet, Malaysia.	01.04.2015-30.06.2017	21,20,573
	Total Service Tax Demanded (INR)	01.04.2015-30.06.2017	1,01,70,532

120. The learned counsel for the petitioner submits that the impugned order is unsustainable as the Show Cause Notice has been issued by an Officer without jurisdiction. In this connection, already a writ petition has been filed and therefore reiterates that the demand has to go. The learned counsel for the petitioner states that the decision of this Court taking a different view in W.P.No.20969 of 2021 dated 28.01.2022 can be distinguished .

121. It is submitted that when an order was passed in the above cases, attention of the Court was not brought to amendment to Section 37B of the Central Excise Act, 1944 which provision has been made



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applicable to the provisions of the Finance Act, 1994.

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122. The learned counsel further submits that vide Section 144 of the Finance Act, 2016 with effect from 14.05.2016, there was a addition to Section 37B of the Central Excise Act, 1944. It is submitted that as a consequence of the above amendment, the Central Board of Direct Taxes issued circular dated 10.03.2017 which enjoins the respondents to issue a pre-consultation notice.

123. The learned counsel for the petitioner further submitted that prior to 27.02.1997, Section 37B of the Central Excise Act, 1944 reads as under:-

"37B. Instructions to Central Excise Officers.—  
The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:



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Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the 2[Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions."

124. The circular issued by the Central Board of Direct Taxes fell for consideration before the Hon'ble Supreme Court in **Pahwa Chemicals Private Limited Vs Commissioner of Central Excise, Delhi**, 2005 (181) E.L.T. 339 (S.C). The learned counsel for the petitioner submits that during the material period which fell for consideration in **Pahwa Chemicals Private Limited** case (referred to supra), Section 11A of the Central Excise Act had been amended, as a result of which, only the Central Excise Officer should issue Show Cause Notice. It is submitted that the Hon'ble Supreme Court has concluded the circular issued by the Central Board of Indirect Taxes in 1997 holding that only the Commissioner should issue Show Cause Notice without limitation of period, was contrary to the provisions of the Act.





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125. In this connection, a reference was made in Paragraph 13

from the said order which reads as under:-

*"13. In order to consider the powers of the Board one needs to see certain provisions of the Act. [Section 2\(b\)](#) defines the "Central Excise Officer" and it is mentioned therein that any Officer of the Central Excise Department or any person who has been invested by the Board with any of the powers of the Central Excise Officer would be a Central Excise Officer. Thus, the Board has power to invest any Central Excise Officer or any other Officer with powers of Central Excise Officer. By virtue of [Section 37B](#) the Board can issue orders, instructions or directions to the Central Excise Officers and such Officers must follow such orders, instructions or directions of the Board. However, these directions can only be for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods. It is thus clear that the Board has no power to issue instructions or orders contrary to the provisions of the Act or in derogation of the provisions of the Act. The Board can only issue such direction as is necessary for the purpose of and in furtherance of the provisions of the Act. The instructions issued by the Board have to be within the four corners of the Act. If, therefore, the Act vests in the Central Excise Officers jurisdiction to issue show-cause-notices and to adjudicate, the Board has no power to cut down that jurisdiction. However, for the purposes of better administration of levy and collection of duty and for purpose of classification of goods the Board may issue directions allocating certain types of works to certain Officers or classes of Officers. The Circulars relied upon are, therefore, nothing*



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*more than administrative directions allocating various types of works to various classes of Officers. These administrative directions cannot take away jurisdiction vested in a Central Excise Officer under the Act. At the highest all that can be said is Central Excise Officers, as a matter of propriety, must follow the directions and only deal with the work which has been allotted to them by virtue of these Circulars. But if an Officer still issues a notice or adjudicates contrary to the Circulars it would not be a ground for holding that he had no jurisdiction to issue the show cause notice or to set aside the adjudication."*

126. It is submitted that the circular dated 10.03.2017 which enjoins the respondents to do a pre-consultation wherever the demand is more than 50 lakhs is in consonance amended Section 37B with effect from 14.05.2017, Section 144 of the Finance Act, 2016 and therefore the decision of the Hon'ble Supreme Court in **Pahwa Chemicals Private Limited** case (referred to supra) which was later followed in **Aeon's Construction Products Limited Vs Commissioner of Central Excise, Chennai, 2005 (184) E.L.T.120 (S.C.)** is to be distinguished.

127. The learned Senior Standing Counsel for the fifth respondent has referred to the following decisions:-



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i. **The Assistant Commissioner of State Tax and others Vs M/s.Commercial Steel Limited**, 2021 SCC Online SC 884.

ii. **Magadh Sugar & Energy Limited Vs State of Bihar and others**, 2021 SCC Online SC 801.

128. A reference was made to Paragraph 11 in **Commercial Steel**

**Limited** case (referred to supra), which reads as under:-

*"11. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation."*

129. A reference was made to Paragraph 25 in **Magadh Sugar &**

**Energy Limited** case (referred to supra), which reads as under:-

*"25. While a High Court would normally not exercise its writ jurisdiction under [Article 226](#) of the Constitution if an effective and efficacious alternate remedy is available, the existence of an*



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*alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in Whirpool Corporation v. Registrar of Trademarks, Mumbai 19 and HarbanslalSahni v. Indian Oil Corporation Ltd 20. Recently, in Radha Krishan Industries v. State of Himachal Pradesh & Ors 21 a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:*

*“28. The principles of law which emerge are that:*

*(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*

*(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*

*(iii) Exceptions to the rule of alternate remedy arise where*

*(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;*

*(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;*

*(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though*



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*ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*

*(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under [Article 226](#) of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and (1998) 8 SCC 1 (2003) 2 SCC 107 2021 SCC OnLine SC 334.*

*(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."*

## **PART VI – DISCUSSION**

130. Chapter V of the Finance Act, 1994, (hereinafter referred to as "Finance Act, 1994) contains the provisions relating to levy and collection of service tax. Chapter V of the Finance Act, 1994 (hereinafter referred to as "Finance Act, 1994) was amended during the successive Finance Acts till the Finance Act, 2017.

131. Steadily the number of services increased and were brought



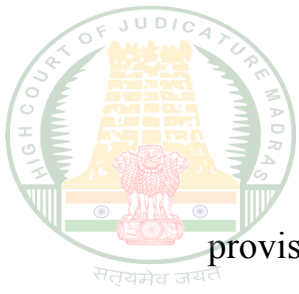
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within the purview of service tax net in the successive Finance Acts till the Finance Act, 2017.

132. An important change was brought to the Finance Act, 1994 in Finance Act, 2012. It not only defined in the expression “service” in Section 65 B (44) for the first time but also brought in a concept of “Negative List” and “Declared Services” etc.

133. Practically, any activity by one persons to another for consideration was a services. It included “Declared Services”. The definition provided for few exceptions. Those activity were outside the service tax net in view of the definition of the “service” in Section 65(44) of the Act. The services in the negative list were not liable to service tax. Similarly, those services specified under notifications issued under sub-section (1) of section 93 of the Finance Act, 1994 were exempted from payment of service tax.

134. From 2004, the central exercise duties/additional duty of excise payable under the Central Excise Act, 1944/ Customs Tariff Act, 1975 on “inputs ” and on tax paid on “input services” under the



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provisions of the Finance Act, 1994 and utilized either for providing taxable service and/or “manufacturing dutiable” “excisable goods” were allowed as Cenvat Credit for discharging either the service tax and/or central excise duty liability or both as long as they were utilized either for providing such taxable service or for manufacturing excisable goods.

135. Though various services were brought within the purview of the service tax net over a period of time, there was no standalone enactment for levy and collect service tax all along.

136. Since there was no standalone enactment for levying service tax, several provisions of the Central Excise Act, 1944 were made applicable to Chapter V of the Finance Act, 1994 as amended from time to time.

137. For this purpose Section 83 of the Finance Act, 1994 was devised whereby the provision of the Central Excise Act, 1944 were made applicable to Chapter V of the Finance Act, 1994. It reads as under:-





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**Section 83:Application of certain provisions of Act 1 of 1944.—**

“The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.”

138. That apart, by virtue of Section 65(121) of the Finance Act, 1994 till 30.06.2012 (later by virtue of Section 65B(55) of the Finance Act, 1994 in view of amendment brought to Chapter V of the Finance Act, 1994 w.e.f 1.7.2012), the words and expression not defined in Chapter V of the Finance Act, 1994 but defined in the Central Excise Act, 1944 or the Rules made thereunder were made to applicable in relation to the service tax as they applied in relation to a duty of excise under the said Act. Both the provisions read identically. They read as under:-

Section 65(121) of the Act	Section 65B(55) of the Act
Words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.	





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WEB COPY 139. Section 73 of the Finance Act, 1994 provides a machinery for recovery of Service Tax not levied or paid or short-levied or short-paid or erroneously refunded. During the period in dispute in these writ petitions

Section 73 of the Finance Act, 1994 reads as under:-

Section 73:Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —

73.(1)Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, **Central Excise Officer** may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person



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chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “thirty months”, the words “five years” had been substituted.

**Explanation.**—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of thirty months or five years, as the case may be.

(1A) Notwithstanding anything contained in sub-section (1) except the period of thirty months of serving the notice for recovery of service tax), the **Central Excise Officer** may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.

(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1).

(2) The **Central Excise Officer** shall, after considering the representation, if any, made by the



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person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined :

[\*\*\*\*]

(2A)Where any appellate authority or tribunal or court concludes that the notice issued under the proviso to sub-section (1) is not sustainable for the reason that the charge of,—

- (a) fraud; or
- (b) collusion; or
- (c) wilful misstatement; or
- (d) suppression of facts; or
- (e)contravention of any of the provisions of this Chapter or the rules made thereunder with intent to evade payment of service tax, has not been established against the person chargeable with the service tax, to whom the notice was issued, the **Central Excise Officer** shall determine the service tax payable by such person for the period of thirty months, as if the notice was issued for the offences for which limitation of thirty months applies under sub-section (1).

[ \* \* \* ]

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own



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ascertainment thereof, or on the basis of tax ascertained by a **Central Excise Officer** before service of notice on him under sub-section (1) in respect of such service tax, and inform the [**Central Excise Officer**] of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid :

Provided that the **Central Excise Officer** may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the **Central Excise Officer** shall proceed to recover such amount in the manner specified in this section, and the period of “thirty months” referred to in sub- section (1) shall be counted from the date of receipt of such information of payment.

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

4(A) [\* \* \* \*]

(4B) The **Central Excise Officer** shall determine the amount of service tax due under sub-section (2)—

- (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);
- (b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under



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the proviso to sub-section (1) or the proviso to sub-section (4A)].

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

(6) For the purposes of this section, “relevant date” means, —

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid —

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed,

the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made there under, the date of adjustment of the service tax after the final assessment thereof; (iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.]

140. The “Central Excise Officers” were given the task to perform the functions under Chapter V of the Finance Act, 1994. It is the “Central Excise Officers” who can issue Show Cause Notice under



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Section 73 of the Finance Act, 1994 to an assessee where any service tax was not been levied or paid or was short-levied or short-paid or erroneously refunded. It is also the “Central Excise Officer” who can adjudicate such Show Cause Notice.

141. In fact, initially, when service tax was introduced, the power to issue Show Cause Notice under Section 73 of the Chapter V of the Finance Act, 1994 was vested only with the Assistant Commissioner of Central Excise / Deputy Commissioner of Central Excise. Later Section 73 was amended and the expression Assistant Commissioner of Central Excise/Deputy Commissioner of Central Excise were substituted with “Central Excise Officers”.

142. Reason why Officers form the Central Excise Department were given the task for implementing the provision relating to levy of service tax by the Parliament is because the Board did contemplate creation of a separate cadre of officers employees for implementing the provision of Chapter V of the Finance Act, 1994.

143. It should be also kept in mind, that only three services were



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introduced in 1994. No Service Commissionerate was also contemplated

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in 1994 at the time when the Service Tax was first introduced. Various

Service were later brought within the service tax net in the successive

amendment to the Chapter V of the Finance Act, 1994 as they immensely

contributed to the Gross Domestic Product(GDP) of the country.

144. Therefore, the officer from the Central Excise Department were considered best suited to implement the provisions of the Finance Act, 1994. Only in 2002, Service Tax Commissionerate were created and thus separate Commissionerates were formed in various Metropolitan cities.

145. The expression “Central Excise Officer” is neither defined in the Finance Act, 1994 nor in the Service Tax Rules, 1994 framed under Section 94(1) read with 94(2) of the Finance Act, 1994. Therefore, the definition of “Central Excise Officer” in Section 2(b) of the Central Excise Act, 1944 was made applicable for the purpose of Chapter V of the Finance Act, 1994.

146. The expression ‘Central Excise Officers’ has been defined in



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Section 2(b) of the Central Excise Act, 1944 as follows:

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**2.Definition:-** In this Act unless there is any thing repugnant in the subject or context:-

(a).....

(b)“Central Excise Officer” **means** the Chief Commissioner of Central Excise, Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional Commissioner of Central Excise, Joint Commissioner of Central Excise,] Deputy Commissioner of Central Excise, Assistant Commissioner of Central Excise or any other officer of the Central Excise Department, or any person (including an officer of the State Government) invested by the **Central Board of Excise and Customs** constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act;

(a) .....

(b) .....

(c) [ now the Central Board Indirect Tax and Customs (CBIC)] (for brevity “Board”)

147. Under Section 2(b) of the Central Excise Act, 1944, the expression “Central Excise Officer” means the [Principal Chief Commissioner of Central Excise, Chief Commissioner of Central Excise, Principal Commissioner of Central Excise], Commissioner of Central Excise, Commissioner of Central Excise (Appeals), Additional





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Commissioner of Central Excise, [Joint Commissioner of Central Excise]

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[Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] or any other officer of the Central Excise Department, or **any person (including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963 with any of the powers of a Central Excise Officer this Act.**

148. The expression and phrase employed in Section 2(b) of Central Excise Act, 1944 is “means” and “**any person (including an officer.....)**”.

149. The definition of “Central Excise Officer” in Section 2(b) of Central Excise Act, 1944 is expansive. It is clear that apart from officers specified therein from the Central Excise Department, **any other officer including an officer of the State Government) invested with any of the powers of a Central Excise Officer this Act** by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).



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**WEB COPY** 150. Thus, by default all the officer of Central Excise Department are “Central Excise Officers”. Apart from them such other officers including an officers of the State Government invested by the Board constituted under the Central Boards of Revenue Act, 1963 with any of the power of a Central Excise Officer under the Act are “Central Excise Officers”.

151. It is under Rule 3 of the Central Excise Rules, 2002 the Board appoint ssuch person as it thinks fit as “Central Excise officers” to exercise all or any of the powers conferred by or under the Act and Rules.

152. Under Rule 3 of the Central Excise Rules, 2002, the Board may, by notification, specify the jurisdiction of officers and such officer may exercise the power and discharge duties conferred or imposed by or under the Act or the Rules on any other Central Excise Officer who is subordinate to him. Rule 3 of the Central Excise Rules, 2002 reads as under:-

***Rule 3. Appointment and jurisdiction of Central Excise Officers. -***

***(1) The Board may, by notification, appoint such***



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*person as it thinks fit to be **Central Excise Officer** to exercise all or any of the powers conferred by or under the Act and these rules.*

*(2) The Board may, by notification, specify the jurisdiction of a Chief Commissioner of Central Excise, Commissioner of Central Excise or Commissioner of Central Excise (Appeals) for the purposes of the Act and the rules made thereunder.*

*(3) Any Central Excise Officer may exercise the powers and discharge the duties conferred or imposed by or under the Act or these rules on any other Central Excise Officer who is subordinate to him.*

153. Thus, it is clear that any person(including an officer of the State Government) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) with any of the powers of a Central Excise Officer under this Act are “Central Excise Officers”. It is the Board which can delineate the Jurisdiction under Rule 3 of the Central Excise Rules, 2002.

154. Such officers may exercise the powers and discharge the duties conferred or imposed by or under the Act or these rules on any other Central Excise Officer who is subordinate to him

155. By virtue of Notification No.38/2001-C.E. (N.T), dated



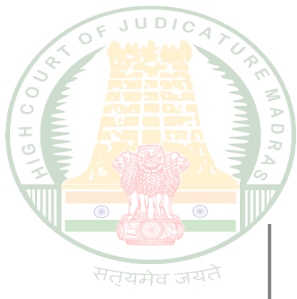
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26.06.2001 issued under Section 2(b) of the Central Excise Act, 1944

read with Rule 3(1) of the Central Excise (No.2) Rules, 2001, the Board appointed several persons as “Central Excise Officers” and invested them with all powers of an officer of “Central Excise” of the rank specified in the corresponding entry in column (3) of the Table to the Notification and that such powers being the powers of a Central Excise Officer conferred under the Act, to be exercised by them throughout the territory of India.

156. Sl.No.1 to Notification No.38/2001-C.E. (N.T), dated 26.06.2001 specifically dealt with the officers of Director General of Central Excise Intelligence. Sl.No.1 of the Table to Notification No.38/2001-C.E. (N.T), dated 26.06.2001 reads as under:-

Sl. No.	Officers	Rank of officer of Central Excise
(1)	(2)	(3)
1.	<b>Officers of the Director General of Central Excise Intelligence, namely:-</b>	
	1. Director General	1. Chief Commissioner
	2. Additional Director General	2. Commissioner
	3. Additional Director	3. Additional Commissioner
	4. Joint Director	4. Joint Commissioner



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5.Deputy Director or Assistant Director	5.Deputy Commissioner or Assistant Commissioner
6.Senior Intelligence	6.Superintendent
7.Intelligence Officer	7.Inspector

157. It is the “Central Excise Officer” as defined in Section 2(b) of the central Excise Act, 1944 who can be appointed as the “Central Excise Officers” for the purpose of Rule 3 of the Service Tax Rules, 1944.

158. Under Notification No.38/2001-C.E. (N.T), dated 26.06.2001, the Board, invested the officers mentioned therein with all the powers to be exercised by them throughout the territory of India as an officer of Central Excise of the rank specified in the corresponding entry in column (3) of the said Table, such powers being the powers of a Central Excise Officers conferred under the said Act and rules made thereunder with effect from 1st July, 2001.

159. Therefore, without doubt, the officers from the Directorate are “Central Excise Officers” as they have been vested with the powers of central exercise officers. The officers of the Directorate of Central



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Excise Intelligence are empowered to act as “Central Excise Officer”.

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160. As per Rule 3 of the Service Tax Rules, 1944, the Board can appoint “Central Excise Officers” for exercising powers under Chapter V of the Finance Act, 1994 to act within “such local limits” as it may assign to them. The expression such “local limit” has not been specified.

161. There is a long history before the issue of the impugned Notification No.22/2015-ST dated 16.9.2014. Earlier, Notification No.46/98-S.T., dated 28.01.1998 was issued under Section 2(b) of the Central Excise Act, 1944 read with Rule 3 of the Service Tax Rules, 1994 read with Section 65(4) of the Finance Act, 1994.

162. By virtue of Notification No.46/98-S.T., dated 28.01.1998, the Director General (Service Tax) was appointed as “Central Excise Officer” and the Board invested with such officer with all the powers to be exercised by him **throughout the territory of India** as are exercisable by the Chief Commissioner of Central Excise.

163. By virtue of Notification No.38/2001-C.E. (N.T), dated

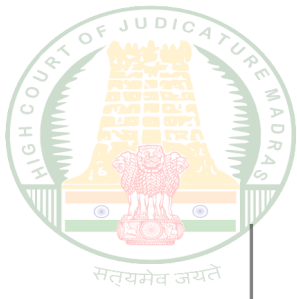


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26.06.2001 issued under Section 2(b) of the Central Excise Act, 1944 read with Rule 3(1) of the Central Excise (No.2) Rules, 2001, the Board appointed several persons as “Central Excise Officers” and invested them with all powers of an officer of “Central Excise” of the rank specified in the corresponding entry in column (3) of the Table to the Notification and that such powers being the powers of a Central Excise Officer conferred under the Act, to be exercised by them throughout the territory of India.

164. Sl.No.1 to Notification No.38/2001-C.E. (N.T), dated 26.06.2001 specifically dealt with the officers of Director General of Central Excise Intelligence. Sl.No.1 of the Table to Notification No.38/2001-C.E. (N.T), dated 26.06.2001 reads as under:-

Sl. No.	Officers	Rank of officer of Central Excise
(1)	(2)	(3)
1.	<b>Officers of the Director General of Central Excise Intelligence, namely:-</b>	
	1. Director General	1. Chief Commissioner
	2. Additional Director General	2. Commissioner
	3. Additional Director	3. Additional Commissioner



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4.Joint Director	4.Joint Commissioner
5.Deputy Director Assistant Director	5.Deputy Commissioner or Assistant Commissioner
6.Senior Intelligence	6.Superintendent
7.Intelligence Officer	7.Inspector

165. It is the “Central Excise Officer” as defined in Section 2(b) of the central Excise Act, 1944 who can be appointed as the “Central Excise Officers” for the purpose of Rule 3 of the Service Tax Rules, 1944.

166. Under Notification No.38/2001-C.E. (N.T), dated 26.06.2001 , the Board, invested the officers mentioned therein with all the powers to be exercised by them throughout the territory of India as an officer of Central Excise of the rank specified in the corresponding entry in column (3) of the said Table, such powers being the powers of a Central Excise Officers conferred under the said Act and rules made thereunder with effect from 1st July, 2001.

167. Therefore, without doubt, the officers from the Directorate are “Central Excise Officers” for the purpose of Rule 3 of the Service Tax Rules, 1994 as they have been vested with the powers of “Central





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Exercise Officers”. The Officers of the Directorate of Central Excise Intelligence are empowered to act as “ Central Excise Officers” Pan India.

168. As per the Rule 3 of the Service Tax Rules, 1994, the Central Board of Excise and Customs (CBEC) constituted under the Central Board of Revenue Act, 1963 may appoint **such** “Central Excise Officers” as it thinks fit for exercising the power under Chapter V of the Finance Act, 1994 “**within such local limits**” as it may assign to them. Rule 3 of the Service Tax Rules, 1994 reads as under:-

**Appointment of Officers.**

**Rule 3.** *The Central Board of Excise and Customs\* may appoint such “Central Excise Officers” as it thinks fit for exercising the powers under Chapter V of the Act within such local limits as it may assign to them as also specify the taxable service in relation to which any such Central Excise Officers shall exercise his powers.*

(\*Central Board of Indirect Taxes and Customs

after 2017)

169. The Board which is the apex body discharges its tasks by assigned to it with help of its field organizations namely:

- a. Zones of Customs;
- b. Zones of Central Excise;
- c. Commissionerates of Customs



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- d. Commissionerates of Central Excise,
- e. the Directorates**
- f. Opium and Alkaloid factories under the Central Bureau of Narcotics

170. The Board has several Directorates under it. The Board has constituted following **Directorates** to help it to achieve its goals in the administration of Union Indirect Taxes:-

- a. Directorate of Central Excise Intelligence\***
- b. Directorate of Revenue Intelligence
- c. Directorate of Inspection (Customs and Central Excise)
- d. Directorate of Housing and Welfare
- e. Directorate of Vigilance
- f. Directorate of Systems
- g. Directorate of Audit
- h. Directorate of Safeguards
- i. Directorate of Export Promotion
- j. Directorate of Service Tax
- k. Directorate of Valuation
- l. Directorate of Publicity and Publicity Relations
- m. Directorate of Organisation and Personnel Management
- n. Directorate of Logistics
- o. Directorate of Legal Affairs
- p. Directorate of Data Management

(\*Now **Directorate of GST Intelligence** after the enactment of GST laws w.e.f 1.7.2017)

171. The **Directorate General of Central Excise Intelligence (DGCEI)** has now been renamed as the **Directorate General of Goods and Service Tax Intelligence (DGGSTI)** with the implementation of



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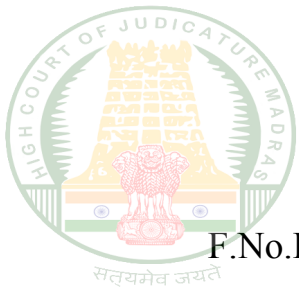
Goods and Service Tax Act, 2017 with effect from 01.07.2017, vide Office Order No.07/Ad(IV)2017 (F.No.A-11013/18/2017-Ad.IV), dated 12.06.2017.

172. The **Directorate of Central Excise Intelligence** (presently **The Directorate of GST Intelligence**) is one of the **Directorate** of the Board.

173. Since the Board can invests the powers of a Central Excise Officer on “any persons” including “an officer of the State Government” the officers of the **Directorate of Central Excise Intelligence** (presently **The Directorate of GST Intelligence**) are “Central Taxes Officers’ for the purpose of Finance Act, 1994.

174. Senior officers from the Central Excise Department are grafted in to the Directorate General of Goods and Service Tax Intelligence (DGGSTI) [formerly the Directorate General of Central Excise intelligence (DGCEI)].

175. Vide Circular dated 14.01.2022 bearing reference



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F.No.DGGI/A-12026/8/2019-Estt./Esst./7334 issued by the Central

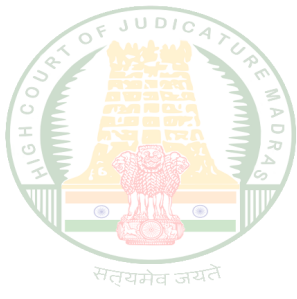
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Board of Excise and Customs to the Director General (All) and the Pr.Chief Commissioner / Chief Commissioner of CGST & Central Excise of respective Zonal Units. Text of Circular dated 14.01.2022 bearing reference F.No.DGGI/A-12026/8/2019-Estt./Esst./7334 is reproduced below:-

*Sub:- Preparation of panel for appointment of Senior Intelligence Officer in the Director General of GST Intelligence, Zonal Unit, Mumbai in the Level-8 in pay matrix-reg.*

*The Director General of GST Intelligence, Zonal Unit, Mumbai is in the process of drawing a panel of suitable candidates for filling up the vacancies in the grade of Senior Intelligence Officer at the DGGI, Zonal Unit, Mumbai. It is proposed to fill up these vacancies by appointment suitable officers on deputation basis from the grade of Superintendent of Central Excise for the post of Senior Intelligence Officer in the Level-8 in pay matrix. Officers who have been granted financial up-gradation under MACP Scheme, are also eligible for the said posts.*

*The selected officers, while working in the Director General in the grade of Senior Intelligence Officer, will be entitled for special allowance as admissible in terms of Government of India's instructions issued from time. Normally, the deputation is for a period of five years, which is extendable by another two years, subject to willingness of the officer, her/her performance,*



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*concurrence of his parent Commissionerate and approval of Competent authority*

*Selected candidate will have to make their own arrangements for residential accommodation at the station of posting.*

*It may be pertinent to mention that the option for deputation in DGGI once exercised cannot be withdrawn under any circumstances.*

*It is requested that the circular may please be brought to the notice of all the formation under your jurisdiction and the application of willing officers be forwarded to this office. While forwarding the names of the willing officer, the following information in respect of them may also be sent for evaluation by this Directorate General:-*

- 1. Complete Bio-Data and willingness of the officer along with history of previous postings;*
- 2. List of cases booked on his own Information/Intelligence along with duty involved and recovered;*
- 3. APAR grading for the last 5 years including the year 2020-21(Duly verified and attested by the Addl./Joint Commissioner (P&V));*
- 4. Vigilance Clearance; and*
- 5. No-objection form Cadre Controlling Authority to relieve the officer in the event of his selection.*

The above information/details may kindly be arranged to be furnished to this Directorate General at the earliest.

The last date for receipt of application is 15.02.2022



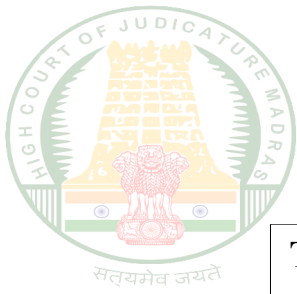
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The issues with the approval of Pr.ADG.

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176. The powers and functions of the officers and employees deputed in the Board have been explained in Office Order No.07/Ad(IV)2017 (F.No.A-11013/18/2017-Ad.IV), dated 12.06.2017 and in its website. The functions and powers in the aforesaid Office Order dated 12.06.2017 and in the website are captured under:-

<b>The functions and powers in the website of the Department of Revenue (DOR)</b>	<b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b>
<p>The officers of DGGSTI are empowered to discharge the functions of Central Taxes Officers as well as Central Excise and Customs officers. Their functions and duties are as under:-</p> <p>(a) Collection, collation and dissemination of intelligence relating to evasion of Goods &amp; Service Tax and Central Excise Duties and Service Tax on an all India basis.</p> <p>(b) Studying the modus operandi of evasion relating to Goods &amp; Service Tax, Central</p>	<p><b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b></p> <p>Directorate of Central Excise Intelligence</p> <p>(a) To collect, collate and disseminate intelligence relating to evasion of central excise duties.</p> <p>(b) To study the price structure, marketing patterns and</p>

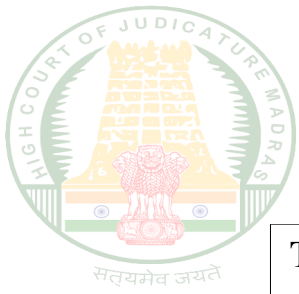


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<b>The functions and powers in the website of the Department of Revenue (DOR)</b>	<b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b>
<p>Excise and Service Tax and to alert the concerned field formations about it.</p> <p>(c) Studying the price structure, marketing patterns and classification of goods and services in respect of which possibilities of evasion are likely with a view to advising the field formations for plugging the loopholes and to suggest policy measures to the CBIC.</p> <p>(d) <u>Supplementing and coordinating the efforts of the field formations in investigations in cases of duty / tax evasion wherever necessary.</u></p> <p>(e) Coordinating action with enforcement agencies like Central Economic Intelligence Bureau (CEIB), Income Tax, State GST Departments, Enforcement Directorate etc., in respect of cases in which GST including IGST, Central Excise and Service Tax evasion has come to notice.</p>	<p>clarification of commodities vulnerable to evasion of Central Excise duty .</p> <p>(c) To coordinate action with other departments like income tax etc. in cases involving evasion of central excise duties;</p> <p>(d) <u>To investigate cases of evasion of central excise having inter-Commissionerates ramification; and</u></p> <p>(e) To advise the Board and the Commissionerates on the modus operandi of evasion of central excise duties and suggest appropriate remedial measures, procedure and practices in order to plug any loopholes.</p>



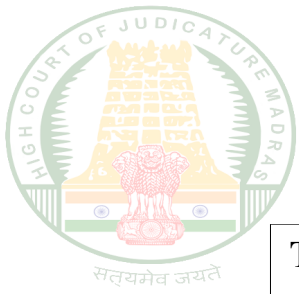
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<b>The functions and powers in the website of the Department of Revenue (DOR)</b>	<b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b>
<p>(f) <u>Investigating offences involving evasion of Goods &amp; Service Tax, Central Excise duty and Service Tax having ramifications in one or more than one Commissionerates/ States including investigation of complicated cases selected by the Directorate or entrusted to it by the Ministry.</u></p> <p>(g) <u>Having at all time, a complete detailed &amp; up-to-date study of the Taxation Laws and implementation machinery and to have proper appreciation and assessment of possibilities of evasion.</u></p> <p>(h) Examining and studying the effect and implementation of various tax concessions, exemptions and relaxations in controls and to make recommendations to the Government from time to time, to ensure that they do not become a source of evasion.</p> <p>(i) Maintaining liaison with</p>	



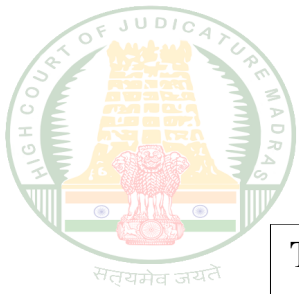


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<b>The functions and powers in the website of the Department of Revenue (DOR)</b>	<b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b>
<p>other Central &amp; State agencies in all matters pertaining to tax evasion.</p> <p>(j) To function as “Regulator” for Gems and Jewellery sector under the framework of Prevention of Money Laundering Act, 2002.</p> <p>Directorate of Central Excise Intelligence</p> <p>(a) To collect, collate and disseminate intelligence relating to evasion of central excise duties.</p> <p>(b) To study the price structure, marketing patterns and clarification of commodities vulnerable to evasion of Central Excise duty;</p> <p>(c) To coordinate action with other departments like income tax etc. in cases involving evasion of central excise duties;</p> <p>(d) <u>To investigate cases of evasion of central excise having inter-Commissionerates</u></p>	



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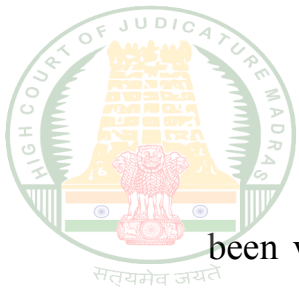


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<b>The functions and powers in the website of the Department of Revenue (DOR)</b>	<b>The functions and powers in the aforesaid Office Order dated 12.06.2017</b>
<p><u>ramification; and</u></p> <p>(e) To advise the Board and the Commissionerates on the modus operandi of evasion of central excise duties and suggest appropriate remedial measures, procedure and practices in order to plug any loopholes.</p>	

177. Thus, officers of Directorate General of Central Excise Intelligence are “Central Excise Officers” for the purpose of Section 2(b) of the Central Excise Act, 1994. They are empowered to exercise power pan India under Notification No.38/2001-C.E. (N.T), dated 26.06.2001.

178. Therefore, the other ground of challenge to the impugned Notification No.22/2015-ST dated 16.9.2014 that pan India powers have



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been vested with the officers from the ”**Directorate of Central Excise**

**Intelligence (DGCEI) [presently The Directorate of GST Intelligence]”**

and contrary to the restriction under Rule 3 of the Service Tax Rules, 1944 also fails.

179. The power of the Board under Notification 22/2014-ST dated 6.09.2014 cannot be read in a restricted manner. There is no impediment in appointing the officers of Directorate General of Central Excise Intelligence as “Central Excise Officers” to exercise the power pan India.

180. When the CENVAT Credit Rules, 2004 replaced the CENVAT Credit Rules, 2002, Notification No.7/2004-C.E. (N.T.), dated 11.03.2004 was issued by the Board under Section 2(b) of the Central Excise Act, 1944 and Rule 3 of the Service Rules, 1994 read with Section 65(4) of the Finance Act, 1994 as it stood during the relevant period.

181. By virtue of the Notification No.7/2004-C.E. (N.T.), dated 11.03.2004, the officers specified in Column (2) of the Table to the said Notification were appointed as the “Central Excise Officers” and were invested with the powers to be exercised by them “throughout the



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territory of India” as are exercisable by the Central Excise Officer of the

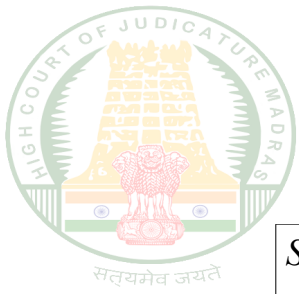
corresponding rank as specified in the Column (3) of the said Table, such

powers being the powers of a Central Excise Officer conferred under

Chapter V of the Finance Act, 1994. The Table to the said Notification

reads as under:-

<i>S.No</i>	<i>Designation</i>	<i>Jurisdiction</i>
1.	<i>Director General, Central Excise Intelligence</i>	<i>Chief Commissioner of Central Excise for of India</i>
2.	Additional Director, Central Excise Intelligence	Commissioner of Central Excise or whole of India
3.	Additional Director, Central Excise Intelligence	Additional Commissioner of Central Excise for whole of India
4.	Joint Director, Central Excise Intelligence	Joint Commissioner of Central Excise for whole of India
5.	Deputy Director, Central Excise Intelligence	Deputy Commissioner of Central Excise for whole of India
6.	Assistant Director, Central Excise Intelligence	Assistant Commissioner of Central Excise for whole of India
7.	Superintendent, Central Excise Intelligence	Superintendent of Central Excise for whole of India



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<i>S.No</i>	<i>Designation</i>	<i>Jurisdiction</i>
8.	Inspector, Central Excise Intelligence	Inspector of Central Excise

182. Later in exercise of the powers conferred by Section 37A of the Central Excise Act, 1944, the Central Government, by virtue of Notification No.11/2007-C.E. (N.T.), dated 01.03.2007, directed that the powers exercisable by the Central Board of Excise and Customs under the provisions of Rule 3(2) of the Central Excise Rules, 2002, shall also be exercised by the Chief Commissioner of Central Excise for the purpose of adjudication of notices issued under the provisions of the Act or the Rules made thereunder within his jurisdiction.

183. By virtue of Notification No.16/2007-S.T., dated 19.04.2007, in exercise conferred by Section 83A of the Finance Act, 1994 read with Rule 3 of the Service Tax Rules, 1994, the Central Board of Excise and Customs appointed the “Officers of the Central Excise” specified in Column (2) of the Table therein and invested with them all the powers of “Central Excise Officer” specified in Column (3) of the Table to be exercised within such jurisdiction and for such purposes specified in



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Columns (4) & (5) of the Table attached to the Notification. The said

Table is reproduced below:-

S. No	Central Excise Officer	Central Excise Officer whose power are to be exercised	Jurisdiction	Purposes
(1)	(2)	(3)	(4)	(5)
1	All the Commissioners of Central Excise	The Commissioner of Central Excise	<b>Throughout the territory of India</b>	Investigation and adjudication of such cases, as may be assigned by the Board
2	The Commissioners of Central Excise (Adjudication)	The Commissioner of Central Excise	<b>Through out territory of India</b>	Investigation and adjudication of such cases, as may be assigned by the Board

184. By virtue of Notification No.6/2009-S.T. dated 30.01.2009 issued under powers conferred by Section 37A of the Central Excise Act, 1944 as made applicable to service tax by Section 83 of the Finance Act, the Central Government directed that the powers exercisable by the Central Excise and Customs under the provisions of Section 83A read with the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No.16/2007-S.T., dated 19.04.2007 [G.S.R.No.303(E) dated 19.04.2007, shall be exercised by the Chief



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Commissioner of Central Excise for the purpose of assigning the adjudication of cases, under the provisions of the said Finance Act or Rules made thereunder, within his jurisdiction.

185. Similarly, similar powers were vested with the officers of Directorate General of Audit, Customs and Central Excise vide Notification No.28/2008-C.E. (N.T.) dated 05.06.2008 by the Board in exercise of the powers conferred by Section 2(b) of the Central Excise Act, 1944 read with Rule 3(1) and (2) of the Central Excise Rules, 2002.

186. Similar Notifications have been issued, specifically, by Notification No.14/2017 – C.E. (N.T.), dated 09.06.2017 issued in exercise of powers conferred by Section 37A of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994 and in supersession of the Notifications of the Government of India in the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide Notification No.11/2007-Central Excise (N.T.) dated 01.03.2009, No.16/2007-Service Tax dated 19.04.2007 and No.6/2009 - Service Tax dated 30.01.2009.



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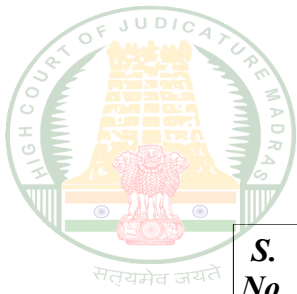
**WEB COPY** 187. The Central Government directed that the powers exercisable by the Central Board of Excise and Customs under Rule 3 of the Central Excise Rules, 2002 and Rule 3 of the Service Tax Rules, 1994, may be exercised by the following officers for the purpose of assignment of adjudication of notices to show cause issued under the provisions of the Central Excise Act, 1944 or the Finance Act, 1994, to the Central Officers subordinate to them:-

- a. The Principal Chief Commissioner of Central Excise and Service Tax; or
- b. The Chief Commissioner of Central Excise and Service Tax”.

188. Several other Notifications were also issued before and after the impugned Notification was issued are detailed as under:-

<b>S. No.</b>	<b>Date</b>	<b>Notification</b>	<b>CEA 1944</b>	<b>CER 2002</b>	<b>F.A. 1994</b>	<b>STR, 1994</b>	<b>Remarks</b>
1	16/09/14	28/2014-C.T.(N.T.)	Sec.2(b)	Rule 3(1)			Amended Not. No.38/2001 and 28/08
2	16/09/14	20/2014-S.T.	- do		Sec.65B(55)	Rule	Appoints Central Excise Officer) for local limits. Central Government the power of the Board to Principal Chief Commissioner/C





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<b>S. No.</b>	<b>Date</b>	<b>Notificati on</b>	<b>CEA 1944</b>	<b>CER 2002</b>	<b>F.A. 1994</b>	<b>STR, 1994</b>	<b>Remarks</b>
							CCE/CCST Jurisdiction of various Officer.
3	16/09/14	21/2014-S.T.	Sec.37A		Sec.83	Rule 3	Notification conferring pan India Jurisdiction to Officers of DGGI
4	16/09/14	22/2014-ST	Sec.2(b)	Rule 3	Sec.65B (55)	Rule 3	Notification setting out local limits for assessing officers (in supersession of 20/2014 and 21/2014 supra)
5	09/06/17	12/2017-C.E.(N.T.)	Sec.2(b)	Rule 3	65(B)55	Rule 3	
6	09/06/17	13/2017-C.E.(N.T.)	37A	Rule 3		83	
7	09/06/17	14/2017-C.E.(N.T.)					

189. Therefore, the reasoning of the Hon'ble Supreme Court in

**Commissioner v. Sayed Ali** 2011 (265) E.L.T. 17 (S.C.) and in **Canon India Pvt Ltd Vs Commissioner**, 2021 (376) E.L.T. 3 (S.C.) cannot be imported in the context of the Central Excise Act, 1944 and/or The Finance Act, 1944.

190. Therefore, without doubt, the officers from the Directorate are “Central Excise Officers” as they have been vested with the powers of



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central exercise officers.

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191. Thus, the definition of “Central Excise Officer” in Section 2(b) of the Central Excise Act, 1944 was made applicable for Section 73 of Chapter V of the Finance Act, 1994 which prescribes a machinery for recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.

192. As mentioned above, under Rule 3 of the Service Tax Rules, 1994, the Board can appoint any other officer to exercise power within the “local limits”. However, that would not mean that the officers of “**Directorate of Central Excise Intelligence (DGCEI)** [presently The **Directorate of GST Intelligence]**” who are already “Central Excise Officers” under Notification No.38/2001-C.E. (N.T), dated 26.06.2001 for whole of India cannot exercise power pan India. Notification No.22/2014-ST dated 6.09.2014 is to be read in conjunction with Notification No.38/2001- C.E. (N.T), dated 26.06.2001.

193. Therefore, the 2<sup>nd</sup> argument advanced on behalf of the



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petitioners as far as jurisdiction to issue Show Cause Notice cannot be accepted.

194. Therefore, the argument of some of the counsel for the petitioners that the officer of **Directorate of Central Excise Intelligence** (DGCEI) [presently The **Directorate of GST Intelligence**] are not “Central Excise Officer” and cannot exercise function Pan India cannot be accepted.

195. No restriction can be inferred on the powers of the Board while appointing the officers of the **Directorate of Central Excise Intelligence** (DGCEI) [presently The **Directorate of GST Intelligence**] to act as “Central Excise Officers”.

196. Thus, it cannot be said that the officers who has been vested with the powers under the impugned Notification No.22/2014-S.T., dated 06.09.2014, are not the “Central Excise Officers”.

197. As far as challenge to impugned show cause notices on the



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ground that they have been issued contrary to the C.B.E. & C. Master

Circular No. 1053/2/2017-CX, dated 10-3-2017, I am of the view that merely because there was no pre-consultation as per the said circular, it cannot be said that the proceedings are bad. These circulars neither binding on the Court nor are contemplated under the provisions of the Finance Act, 1994.

198. The aforementioned Master Circular is intended to only facilitate the defaulting assessee to come forward to pay the amount so that the department is not burdened with show cause proceedings.

199. However, mere failure to call for a pre-consultation before the show cause notice was issued by that itself would not mean that impugned show cause proceedings initiated against the petitioner(s) are either illegal or without jurisdiction. Therefore, show cause proceedings initiated under Section 73 of the Finance Act, 1994 seeking to demand tax which was allegedly not paid cannot be allowed to be scuttled in the light of the above circular.



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**WEB COPY 200.** In any event circulars are not binding on the Courts as per the decision of the Hon'ble Supreme Court in **COMMISSIONER OF CENTRAL EXCISE Vs. RATTAN MELTING AND WIRE INDUSTRIES** (2008) 231 ELT 22 SC. Therefore, I do not find any merits in the challenged to the as the impugned show cause notice/Order in Original.

201. In W.P.No.20969 of 2021 in the case of **Brilliant Corporate Services Private Limited, (Now known as M/s. Brivas Private Limited) vs. The Commissioner, Office of the Commissioner of GST and Central Excise, Chennai Outer Commissionerate**, vide order dated 28.01.2022, it was ordered as follows:-

“8. The petitioner has challenged the notice primarily on the ground that there was no pre-consultation as per the above mentioned circular. These circulars neither binding on the Court nor are contemplated under the provisions of the Finance Act, 1994.

9. The aforementioned Master Circular is intended to only facilitate the parties to come forward to pay the amount so that the department is not burdened with show cause proceedings. However, that by itself would not mean impugned show cause proceedings initiated against the petitioner would be either illegal or without



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jurisdiction. The show cause proceedings initiated under Section 73 of the Finance Act, 1994 seeking to demand tax which was allegedly not paid, cannot be allowed to be scuttled in the light of the above circular. In any event circulars are not binding on the Courts as per the decision of the Hon'ble Supreme Court in COMMISSIONER OF CENTRAL EXCISE Vs. RATTAN MELTING AND WIRE INDUSTRIES (2008) 231 ELT 22 SC. Therefore, I do not find any merits in the present writ petition as the impugned show cause notice has been issued a competent authority namely The Commissioner, Office of the Commissioner of GST and Central Excise, Chennai Outer Commissionerate under the Finance Act, 1994. The respective noticees can file their reply to the impugned show cause notice and meet out the allegations on merits.

10. I am therefore not inclined to interfere with the impugned show cause proceedings. The noticees are directed to file their separate reply to the show cause notices.

11. This writ petition stands dismissed with the above observations. There shall be no order as to costs. 28.01.2022”

### **PART VII – CONCLUSION**

202. The challenge to the proceedings which have been impugned in W.P.No.24960 of 2021 and W.P.No.17941 of 2020 (**Category-2**) on the ground of limitation etc, involves disputed questions of fact. Therefore these issues are best left to be adjudicated by the namely



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Central Excise Officer such a Central Excise Officer could be a different person from the person issued show cause notice as a Central Excise Officer under Section 73 of the Finance Act, 1994.

203. As long as the show cause notices have been issued a competent officer under the Finance Act, 1994 read with relevant notification, challenge to the proceeding based on the alleged failure to follow the circular cannot be countenanced. Therefore, the petitioners who have been issued with show cause notices and those who have been suffered Orders in Original have to be meet out the allegations on merits before the adjudicating authority or the appellate authority as the case may be Therefore, there is no merits in these present writ petitions.

204. Issues touching on the merits are best left to be decided by the adjudicating authorities and appellate authorities in the hierarchy of the authorities under the Act.

205. In the result, the challenge to impugned Notification No.22/2014-ST dated 16.09.2014 in **Category-1** (W.P.Nos.14036,17383, 17496, 17937, 18485, 24677 of 2021 and 1570 of 2022) fail and



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therefore these writ petitions are dismissed. Consequently, these writ petitions challenging the Show cause notices and Orders-in Category 2 and 3 Original in Category- 2 and Category-3 also fail.

206. However, the petitioners in **Category-2** (W.P.Nos.17941,12853 of 2020, 24960, 14039, 17385, 17498, 18490, 18492, 18496 of 2021 and 1571 of 2022) who have been issued with show cause notices are permitted to file their reply within a period of 30 days from the date of receipt of this Order, failing which the designated adjudicating officer shall pass order on merits based on the available records. The adjudicating officer shall endeavour to conclude the proceedings preferably, within a period of 90 days from the date of expiry of the above period. Needless to state that the petitioner shall be given an opportunity of hearing.

207. The petitioners in **Category-3** (W.P.Nos.24680 and 17938 of 2021) who have suffered impugned Orders-in Original therein are also permitted to file statutory appeal within a period of 30 days from the date of receipt of this Order without fail. If such appeals are filed within such time, the appellate authority shall take up the case and dispose the appeal





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on its turn. Needless to state that respective petitioners who have suffered such orders shall make mandatory pre-deposit under Section 35F of the Central Excise Act, 1944 along with such appeal.

208. Consequently, the writ petitions in **Category-1** are dismissed and the writ petitions in **Category-2** and **Category-3** are disposed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

17.06.2022

Index : Yes/No  
Internet : Yes/No  
kkd



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To

The Principal Additional Director General,  
Directorate General of Goods and Services Tax,  
Intelligence, Chennai Zonal Unit,  
Tower – II, BSNL Building, 8<sup>th</sup> Floor,  
No.16, Greams Road, Thousand Lights,  
Chennai – 600 006.



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W.P.Nos.12853 of 2020 and etc. batch

**C.SARAVANAN,J.**

rgm/jen/kkd

W.P.Nos.12853 of 2020 and etc. batch

17.06.2022