RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 14068/2021
CNR: RJHC020803382021 | URN: CW / 30929U / 2021

Rajasthan High Court
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Konasth Infrastructure Pvt. Ltd., 602, 6Th Floor, Apex Tower, Lal Kothi, Tonk Road, Jaipur, Rajasthan-302015 Through Its Authorised Signatory Shri Hari Singh Chaudhary S/o Shri Gaja Nand Choudhary.

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner, Central Goods And Services Tax, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur, Rajasthan-302001.
2. Joint Commissioner, Anti Evasion, Central Goods And Services Tax And Central Excise Commissionerate, Ncr Building, Statue Circle, C-Scheme, Jaipur, Rajasthan-302005.
3. Deputy Commissioner, Anti Evasion, Central Goods And Services Tax And Central Excise Commissionerate, Ncr Building, Statue Circle, C-Scheme, Jaipur, Rajasthan-302005.
4. Superintendent, Anti Evasion, Central Goods And Services Tax And Central Excise, Commissionerate, Ncr Building, Statue Circle, C-Scheme, Jaipur, Rajasthan-302005.
5. Dedicated Freight Corridor Corporation Of India Ltd., 5Th Floor, Pragati Maidan, Metro Station Building Complex, New Delhi- 110001.
6. Larsen And Toubro Ltd., Western Dedicated Freight Corridor, Civil Track Package- 1 And 2, 4Th Floor, Sdc Monarch, Plot No. D-236, Amrapali Marg, Jaipur- 303021 (Raj.)

----Respondents

For Petitioner(s)	:	Mr. Ranjan Mehta Mr. Jaideep Malik Mr. Gaurav Jangid Mr. Keshav Khandelwal
For Respondent(s)	:	Mr. Kinshuk Jain

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Mr. Nikhil Simlot with
Mr. Manish Bhodiwal

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

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Reportable

Pronounced on : 04/11/2026

Per: Arun Monga, J.

1. The petitioner company seeks to quash the summons dated 27.09.2021 issued by the respondent CGST authorities under Section 70 of the Central Goods and Services Tax Act, 2017 (for short, "the CGST Act"). It also seeks to quash the proceedings that followed, including the show cause notice dated 22.10.2021. Impugned notice proposes a service tax demand against the petitioner company for the financial year 2016-17 and the first quarter of 2017-18. The demand relates to construction work done by the petitioner on the Western Dedicated Freight Corridor.

1.1 Yet again, the petition in hand raises the same old familiar question. Can a taxpayer bypass adjudication and come straight to this Court against a show cause notice? The answer turns on whether the notice is without jurisdiction or whether the challenge is, in truth, a defence on merits. We shall address that question after setting out the facts and the rival cases.

FACTS

2. The petitioner is a company incorporated under the Companies Act, 2013. It does construction work and also runs a stone crusher.

2.1 Respondent No.5, Dedicated Freight Corridor Corporation of India Limited (DFCCIL) awarded the construction of the Western Dedicated

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Freight Corridor to L&T. In turn, L&T then gave a part of that work to the petitioner. Each provides for regular labour with material. Under these orders the petitioner did earthwork, excavation, embankment filling, levelling and allied work. It also supplied sand and stones. The petitioner says that property in these materials passed to the awarders in the course of the work. Clause 8 of the L&T tender records that service tax is exempt because the work is construction of railway tracks.

2.2 The petitioner treated the work as exempt under CGST Act. It says it claimed exemption under Entry No. 14(a) read with Entry No. 29(h) of the Mega Exemption Notification No. 25/2012-Service Tax dated 20.06.2012. It says it disclosed these transactions in its service tax returns and VAT returns for 2015-16 to 2017-18.

2.3 On 10.09.2021, 11.09.2021 and 12.09.2021, the CGST Anti Evasion authorities carried out a search. The search was authorised under the CGST Act. During the search, the officers also made inquiries about the petitioner's service tax affairs under the Finance Act, 1994. The petitioner says the search authorisation did not extend that far.

2.4 Be that as it may, a summons dated 14.09.2021 was then issued under Section 70 of the CGST Act to Shri Hari Singh Choudhary, Director of the petitioner company. He appeared on 21.09.2021 and gave a statement. He was questioned about the petitioner's work during the service tax period as well. A further summons dated 27.09.2021 was issued to the petitioner. It called for documents relating to service tax.

2.5 The Deputy Commissioner, Anti Evasion, Central Tax, then wrote to the petitioner on 06.10.2021. The petitioner replied on 20.10.2021. With that reply it gave details of sales, invoices, VAT returns, Form 26AS, balance sheets and contracts.

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2.6 Two days later, the respondents issued the impugned show cause notice dated 22.10.2021, alleging non payment of service tax and it proposes a demand of Rs. 1,24,39,722/-. It invokes the extended period of limitation.

2.7 Aggrieved, the petitioner has come to this Court.

STAND OF THE RESPONDENTS IN THE REPLY

3. The respondents say that during searches made on 10.09.2021, 11.09.2021 and 12.09.2021, records of 18 leased mines allotted to various persons were examined. The premises of M/s Konasth Infrastructure Pvt. Ltd. and M/s Adapt Infra Pvt. Ltd. were also searched. Incriminating documents were recovered and seized.

3.1 According to the respondents, M/s Konasth Infrastructure Pvt. Ltd. did infrastructure work and stone crushing, but it also worked as an Excess Royalty Collection Contractor (ERCC). M/s Adapt Infra Pvt. Ltd. bought stone boulders from mine lease holders and processed them.

3.2 The statement of Shri Hari Singh Choudhary was recorded on 21.09.2021 under Section 70 of the CGST Act. He disclosed that M/s Konasth Infrastructure Pvt. Ltd. had done soil levelling, grubbing and similar work in railway projects before GST. He also disclosed that exemption from service tax was claimed under Serial No. 13(a) of Notification No. 25/2012-ST. GST on royalty and an alleged undervalued purchase of boulders from a related entity were also under investigation.

3.3 Stand of the respondents in law is that from 01.07.2012 every service is taxable unless it falls in the negative list under Section 66D of the Finance Act, 1994 or is exempted by notification. Serial Nos. 13 and 14 of Notification No. 25/2012-ST cover only specified services. Relying

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on Section 65B(54), they say that a works contract needs a transfer of property in goods leviable to tax as a sale.

3.4 The respondents allege that the petitioner only did earthwork formation at railway sites. This meant clearing, levelling, grubbing, excavation, earthmoving, disposal of material and removal of obstructions. It also arranged borrowed earth. No document or invoice showed a transfer of goods leviable to tax as a sale. So, they say, these were not works contract services. Nor did Serial No. 13(a) apply, because the work did not concern a road, bridge, tunnel or road transport terminal for public use. They allege that the exemption was claimed by misrepresenting facts. The petitioner was therefore liable on the gross value of its services, whatever exemption the main contractor may enjoy.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Mr. Ranjan Mehta, learned counsel for the petitioner submitted that the whole proceeding is without jurisdiction. This covers the summons dated 14.09.2021, 27.09.2021 and 14.10.2021 and the show cause notice dated 22.10.2021. The summons was issued under Section 70 of the CGST Act. Yet it called for service tax documents under the Finance Act, 1994. The notice also relies on Section 65(97a) of the Finance Act, 1994. That clause defined site formation and clearance services. It was omitted with effect from 01.07.2012 by Notification No. 20/2012-ST dated 05.06.2012. The period in issue is 2016-17 and 2017-18. So the notice, it was urged, rests on a provision that no longer existed.

4.1 It was next submitted that the petitioner rendered works contract services for construction of the Western Dedicated Freight Corridor. These were exempt under the Mega Exemption Notification. The work

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orders provided for labour with material. Clause 8 of the L&T tender said the work was exempt as construction of railway tracks.

4.2 Learned counsel urged that the notice contradicts itself. Paragraph 7 accepts that the work orders were for labour with material. He argues that no material was used. This, it was urged, shows non application of mind. The notice ignores Appendix 2 to the tender, the work orders and the invoices. These show that materials were supplied along with services.

4.3 It was argued that the Western Dedicated Freight Corridor is a broad gauge freight line built by DFCCIL under the Ministry of Railways. The Finance Act, 1994 does not define "railway". Reliance was placed on Section 2(31) of the Railways Act, 1989. On that basis, the work is railway construction and is exempt under Entry No. 14(a), as substituted by Notification No. 9/2016-Service Tax with effect from 01.03.2016.

4.4 Learned counsel submitted that the contracts meet the definition of works contract in Section 65B(54). The petitioner supplied earth, stones, sand, gitti and other materials. Property in them passed to the awarders. The definition needs only that the transfer be leviable to tax as a sale. It does not need VAT to be actually paid. These goods were exempt under the Rajasthan VAT Act, 2003. Non payment of VAT, it was urged, does not change the nature of the contract.

4.5 It was further argued that after Section 65(97a) was omitted, these activities could not be cut out of a composite works contract and taxed as site formation. Reliance was placed on Circular No. B1/6/2005-TRU dated 27.07.2005 and Circular No. 123/5/2010-TRU dated 24.05.2010. Clearing, excavation, levelling, grubbing and earth moving are

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incidental to laying railway track. They attract tax only when done on their own.

4.6 Learned counsel submitted that the charge of suppression has no basis. The services were shown in the service tax returns, the VAT returns and the books. The petitioner had claimed exemption under Entry No. 29(h). It gave every document asked for. It was urged that where items are shown in the books, suppression cannot be alleged just because the authority later takes a different view.

4.7 It was also argued that the extended period under the proviso to Section 73(1) of the Finance Act, 1994 cannot be invoked. There was no fraud, collusion, wilful misstatement, suppression or intent to evade. The normal period was thirty months. The notice is therefore time barred. The petitioner honestly believed the services to be exempt, particularly in view of Clause 8 of the L&T tender. The petitioner also disputes the computation of value. It says the difference between Form 26AS and its books for 2016-17 arose from an invoice of 2015-16. It says the figure taken for May 2016 is wrong.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

5. Learned counsel for the respondents submitted that the investigation began on specific information. It related to non payment of GST under reverse charge on royalty and to service tax on services rendered by the petitioner. The searches threw up incriminating documents. The Director's statement disclosed soil levelling, grubbing and similar work in railway projects. These transactions, it was urged, needed examination under the law governing service tax and GST.

5.1 It was submitted that summonses were issued to obtain information and statements. The persons concerned did not appear. Whether the exemption claimed applies depends on the nature of the

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services, the contract terms and the conditions of the entry. The mere fact that the work was part of a railway project, or that the main contractor claims exemption, does not by itself entitle the petitioner to it.

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5.2 Learned counsel submitted that the petitioner did earthwork formation at railway sites. These activities do not fall under Serial No. 13(a). The petitioner also failed to produce any document showing transfer of property in goods leviable to tax as a sale. So the claim of works contract under Section 65B(54) is not made out.

5.3 It was submitted that respondent No. 6 was awarded the Rewari to Iqbalgarh stretch of the Western Dedicated Freight Corridor. The petitioner got only a limited part of it. Respondent No. 6 claims exemption under Entry 14(a). But the petitioner's liability under its own subcontract is a separate matter. It depends on its contract, the work actually done and the law. No controversy is raised about the contract of respondent No. 6.

5.4 It was submitted that the exemption claim was not substantiated on the material collected. Hence the notice dated 22.10.2021 proposing a demand of Rs. 1,24,39,722/- was issued. The claim must be decided on the statute and the facts.

5.5 Lastly, it was submitted that no relief is sought against respondent No. 6. It is neither a necessary nor a proper party. The respondents prayed that the petition be dismissed and the name of respondent No. 6 be struck off._

6. We have heard learned counsel for the parties at length. We have gone through the material on record.

7. At the outset, we may observe that the petition is directed against a summons and a show cause notice. No adjudication order has been

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passed. The threshold question is whether this Court should entertain the petition at this stage at all.

7.1 The petitioner's pleas fall under six heads. These are want of jurisdiction, classification and exemption, absence of suppression, limitation, absence of pre show cause consultation and predetermination.

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DISCUSSION & ANALYSIS

8. A show cause notice does not ordinarily give rise to a cause of action. It decides nothing. It only asks the notice to answer the allegations. In ***The Special Director v. Mohd. Ghulam Ghouse,***[1] the Supreme Court deprecated the practice of entertaining writ petitions against show cause notices as a matter of course. A writ should be entertained only when the notice is wholly non est for absolute want of jurisdiction of the authority even to investigate the facts. In all other cases, the notice should reply and raise all its pleas before the authority.

8.1 ***In Union of India v. Kunisetty Satyanarayana,***[2] the Supreme Court explained that a mere notice does not infringe any right. The person may well be exonerated after reply. A writ at that stage is premature. There is also a practical reason. At the notice stage, facts are still untested. The department has not yet heard the notice. The notice has not yet placed its evidence. If this Court were to step in, it would decide facts on affidavits. It would also pre empt the authority which the statute has chosen to decide them.

8.2 The petitioner herein does not challenge the vires of any statute. No fundamental right is said to be violated. What remains is want of jurisdiction, natural justice built on the absence of pre show cause

1(2004) 3 SCC 440.
2(2006) 12 SCC 28.

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consultation, and predetermination. The pleas on classification, suppression, limitation and valuation are pleas on merits. We examine each to see whether it is truly jurisdictional or only presented that way.

9. The petitioner's case is that the search and the summons were under the CGST Act, while the demand is under the Finance Act, 1994. It is said that officers could not use powers under one law to inquire into liability under another. This plea overlooks the scheme of the CGST Act itself.

9.1 Section 173 of the CGST Act omitted Chapter V of the Finance Act, 1994, which dealt with service tax. But Section 174(2) saves pending and future proceedings relating to the old law. Clause (e) of Section 174(2) reads as follows.

> *"174. (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—*
>
> *. . .*
>
> *(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;"*

9.2 The language is wide. It does not stop at proceedings pending on 01.07.2017. It expressly permits an investigation or adjudication to be "instituted" afresh. Such proceedings go on as if the Finance Act, 1994 had not been amended. The words "any investigation, inquiry" are not limited by the statute under which the officer first came across the material. So the power to inquire into service tax for 2016-17 and the first quarter of 2017-18 is traceable to law. Section 83 of the Finance

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Act, 1994 applies Section 14 of the Central Excise Act, 1944 to service tax. Section 14 is the power to summon. That power, too, survives under Section 174(2)(e).

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9.3 The summons dated 27.09.2021 cites Section 70 of the CGST Act. That may be the wrong label. But a wrong label does not destroy a power that exists. In ***N. Mani v. Sangeetha Theatres,***[3] the Supreme Court held that if an authority has the power, a failure to cite its source or a reference to the wrong provision does not by itself vitiate the action. The power must only exist and be traceable to a valid source. To the same effect is Collector of Central Excise, ***Calcutta v. Pradyumna Steel Ltd.***[4] There, it was held that mention of a wrong provision in a show cause notice does not invalidate it when the power is available elsewhere.

9.4 It must also be noticed what the petitioner is not saying. It does not say that these officers have no power at all over service tax. It does not say that the period in question is beyond any limit known to law, whatever the facts. Its grievance is about the route taken and the label used. That is not absence of jurisdiction. At most, it is an irregularity in the exercise of a jurisdiction that exists.

9.5 The search took place at premises of related persons and entities. Documents bearing on the petitioner's affairs came to light. Officers are not expected to shut their eyes to material disclosing evasion of another tax which they are also empowered to administer. Whether that material is admissible, and what weight it carries, is for the adjudicating authority to decide.

9.6 The reliance on Section 65(97a) stands on a similar footing. It is true that this definition was omitted from 01.07.2012. But that change

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3(2004) 12 SCC 278.
4(1996) 9 SCC 234.

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cuts both ways. From that date, the Finance Act, 1994 moved to the negative list regime. Section 66B levies tax on all services, other than those in the negative list under Section 66D. Exemptions are then granted by notification. Under this scheme, taxability does not depend on a service fitting a named category. So a reference to an omitted definition does not by itself mean that no tax is leviable. At best, it is a flaw in the reasoning of the notice. The petitioner may point it out in reply. It does not oust jurisdiction.

9.7 We therefore find that the authority had jurisdiction to investigate and to issue the notice. This is not a case of absolute want of jurisdiction. The plea, in substance, is a plea on merits dressed in jurisdictional clothing.

10. The core of the petitioner's case is that its work was an exempt works contract. This needs a closer look, because it shows why the dispute is factual. Section 65B(54) of the Finance Act, 1994 defines works contract as follows:

> *"(54) "works contract" means a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any movable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property;"*

10.1 The definition has two limbs. First, the contract must involve a transfer of property in goods that is leviable to tax as a sale. Second, the contract must be for construction or a similar activity. The respondents dispute the first limb. They say the petitioner only moved and levelled earth. The petitioner says it supplied earth, sand, stone and gitti, and that property in them passed.

10.2 Both sides have a certain moot point by them that needs testing. The petitioner is right that the definition uses the word "leviable" and

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not "levied". Actual payment of VAT is not the test. But it does not follow that every contract involving some material is a works contract. The authority will have to see what material was supplied, in what quantity, whether property in it actually passed, and how it was treated under the State law. It will also have to see whether earth dug from one part of the site and spread on another is a supply of goods at all. These are questions of fact. They turn on the work orders, Appendix 2 to the tender, the measurement records and the invoices. This Court is not equipped to decide them on affidavits.

10.3 The exemption claim adds a second layer. Entry 29(h) of Notification No. 25/2012-ST exempts a subcontractor who provides works contract services to a main contractor whose own works contract services are exempt. So the petitioner must show two things. Its own contract must be a works contract. The main contract must itself be exempt, here under Entry 14(a) as a railway work. The second question in turn raises the meaning of "railways" in Entry 14(a) and whether the Western Dedicated Freight Corridor falls within it. The petitioner relies on Section 2(31) of the Railways Act, 1989. The respondents have not yet dealt with this point in any order. It should be decided first by the authority, with full reasons, so that the appellate forums have a record to examine.

10.4 The petitioner also relies on Circular No. B1/6/2005-TRU and Circular No. 123/5/2010-TRU to say that site formation cannot be split from a composite contract. Whether the petitioner's contract was composite, or a set of separate earthwork jobs, again depends on the documents. In Coastal Container Transporters Association, the Supreme Court held that a classification dispute of this kind belongs before the authority. We see no reason to take a different view here.

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11. The petitioner's main thrust is that there was no suppression. It says all transactions were in its returns and books. The respondents say the true nature of the work came to light only during the search and the investigation that followed. This is the heart of the dispute. It also decides whether the extended period is available.

11.1 We must first identify the governing provision. The demand is for service tax for a period before 01.07.2017. That tax is not levied under the CGST Act. It is levied under Chapter V of the Finance Act, 1994, kept alive by Section 174(2)(e). The adjudication will therefore be governed by Section 73 of the Finance Act, 1994. The proviso to Section 73(1), as it stood at the relevant time, reads as follows.

> *"Provided that 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 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."*

11.2 Section 74 of the CGST Act is the matching provision under the GST regime. Explanation 2 to that section reads as follows.

> *"Explanation 2.—*
>
> *For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer."*

11.3 Explanation, *ibid,* is expressly "for the purposes of this Act", that is, the CGST Act. It does not by its own force govern a pre GST service tax demand. The test for this case remains the proviso to Section 73(1), as explained by the Supreme Court. But the Explanation shows how Parliament understands suppression in indirect tax law. It is consistent with the settled meaning under the old law. We refer to it only as an aid in reading the record at the prima facie stage.

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11.4 The meaning of suppression under the proviso was explained in ***Continental Foundation Joint Venture v. Commissioner of Central Excise.***[5] Suppression means a failure to disclose full information with intent to evade duty. A mere omission is not enough. It must be deliberate. When facts are known to both sides, an omission by one side is not suppression. The Court also made clear that whether there was suppression is a question of fact. In ***Uniworth Textiles Ltd. v. Commissioner of Central Excise,***[6] the Supreme Court added that mere non payment of tax is not suppression. There must be a conscious and deliberate act. The burden of showing this lies on the department.

11.5 These authorities protect the taxpayer. They do not, however, help the petitioner at this stage. They lay down the test. Whether the test is met is a matter of evidence. With this in mind, we look at what the record shows *prima facie.* We do so only to see whether the respondents' case is a mere pretext or has some foundation. Our observations are tentative. They shall not bind the adjudicating authority.

11.6 **First**, the petitioner's affairs did not come to the department's notice through any disclosure by the petitioner. They surfaced during the searches on 10.09.2021, 11.09.2021 and 12.09.2021. According to the respondents, documents relating to the petitioner's business were recovered and seized in those searches.

11.7 **Second**, the petitioner's own Director, Shri Hari Singh Choudhary, gave a statement on 21.09.2021. He described the work as soil levelling, grubbing and similar work in railway projects. He said exemption was claimed under Serial No. 13(a) of Notification No. 25/2012-ST. That entry covers roads, bridges, tunnels and road

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5[2007] 9 SCR 554 = 2007 INSC 877.
6(2013) 9 SCC 753.

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transport terminals for public use. It does not cover railways. In its returns, according to the petitioner, the entry claimed was 29(h). In this petition, it relies on Entry 14(a) read with Entry 29(h). So three different footings have been put forward at three different points. This does not prove suppression. But it raises a fair question whether the true nature of the activity was ever declared in the returns.

11.8 **Third**, the claim under Entry 29(h) rests on two facts. One is that the petitioner's contract involved a transfer of property in goods leviable to tax as a sale. The other is that the main contract was exempt. The respondents say that no document or invoice showing such transfer was produced during the investigation. The petitioner admits that no VAT was paid on the materials, and explains that they were exempt under the Rajasthan VAT Act, 2003. The facts behind the exemption claim were known only to the petitioner. A self assessed return that merely names an exemption entry does not, by itself, disclose those facts. Whether it was enough in this case is for the authority to say.

11.9 **Fourth**, the petitioner admits a difference between Form 26AS and its books for 2016-17. It offers an explanation. That explanation may well be accepted. But the difference is a fact that needs to be examined.

11.10 **Fifth**, the respondents state that summonses issued during the investigation were not complied with. The petitioner says it furnished documents on 20.10.2021. This is a disputed fact. The parties are not even agreed on which summonses were issued and on what dates. That itself shows why the matter cannot be decided here.

11.1 Taken together, these circumstances show that the allegation of suppression is not a bald assertion. There is material which, if accepted, may attract the proviso to Section 73(1). There is also material which, if

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accepted, may defeat it. Whether the petitioner disclosed all it was bound to disclose, whether it acted under a bona fide belief, and whether there was an intent to evade, are questions of fact. They turn on evidence. They cannot be decided on affidavits in writ jurisdiction. The petitioner's reliance on Sree Krishna Electricals and on its returns and books is a matter of defence. It must be placed before the adjudicating authority.

12. Adverting now to the plea of limitation, the same is tied to the plea on suppression. The normal period under Section 73(1), as it then stood, was thirty months. The extended period was five years. The notice was issued in October 2021. That is well beyond thirty months for any part of the period in question. So the demand survives only if the extended period is validly invoked. That, in turn, depends on a finding of suppression with intent to evade.

12.1 Limitation would be a jurisdictional bar if the notice were out of time on any view of the facts. That is not this case. The notice was issued within five years. Its validity depends on how the facts are found. The plea of limitation therefore cannot be decided in isolation. It remains open to the petitioner before the adjudicating authority. If the authority finds no suppression, the demand for the extended period will fall with it.

13. Qua the pre-show cause consultation, the petitioner relies on paragraph 5.0 of Master Circular No. 1053/02/2017-CX dated 10.03.2017 asserting that pre show cause consultation by the Principal Commissioner or Commissioner is mandatory where the demand exceeds Rs. 50,00,000/-. Pertinently, the same circular excludes "preventive/offence related SCN's" from its scope.

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13.1 The reason for this exclusion is plain. Consultation before notice is meant for cases arising from scrutiny or audit, where the department and the taxpayer can often resolve a difference of view across the table. A case built on a search and the seizure of documents stands on a different footing. Prior consultation there may defeat the investigation itself. The present notice did not arise from scrutiny of returns or routine audit. It arose from an investigation by the Anti Evasion Wing after a search and seizure. Prima facie, it falls within the excluded class.

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14. The Finance Act, 1994 provides a complete mechanism for this dispute. The petitioner can reply to the notice and seek a personal hearing. The adjudicating authority must pass a reasoned order. Against that order, an appeal lies to the Commissioner (Appeals) under Section 85 or to the Customs, Excise and Service Tax Appellate Tribunal under Section 86, as the case may be. These remedies are preserved by Section 174(2) of the CGST Act. The remedies under Sections 107 and 112 of the CGST Act do not govern this pre GST demand.

14.1 These remedies are efficacious. The authority and the Tribunal can examine contracts, invoices, measurement records and witnesses. They can decide classification and valuation with the benefit of a full record. This Court, under Article 226, cannot do that exercise. If it tried, it would decide disputed facts without evidence and would deny the parties the benefit of the appeals which the statute provides.

CONCLUSION

15. For the reasons recorded above, no case is made out at this stage for interference in our extraordinary jurisdiction. The authority has jurisdiction over the subject matter and the period. The wrong label on the summons and the reference to an omitted definition do not take that jurisdiction away. The pleas on classification, exemption,

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suppression and limitation all turn on disputed facts. The plea on pre show cause consultation fails at the threshold because the circular excludes offence related cases.

16. The pleas, as raised, do not show that the notice is non est as has been alleged. They are, in truth, an attempt to bypass adjudication. That process is provided by the Finance Act, 1994, as saved by Section 174 of the CGST Act. It is a self contained scheme with adjudication followed by appeals. We see no reason to cut it short by expressing our opinion on the merits of the rival contentions.

17. Accordingly, the writ petition is dismissed.

18. The petitioner is at liberty to file its reply to the show cause notice dated 22.10.2021 and to place on record all material on which it relies. The competent authority shall grant the petitioner a personal hearing. It shall then pass a reasoned order in accordance with law. It shall deal with each plea raised in the reply, including those noticed in this judgment. It shall proceed without being influenced by the dismissal of this petition or by any observation made here. All issues raised in this petition are left open. They are *prima facie* and shall not be treated as an expression of opinion on the merits.

20. Pending applications, if any, stand disposed of. There shall be no order as to costs.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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