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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12653/2019 & CM APPL. 51654/2019**

M/S OMAXE NEW CHANDIGARH DEVELOPERS PVT. LTD.
(FORMERLY KNOWN AS M/S OMAXE CHANDIGARH
EXTENSION DEVELOPERS PVT. LTD.) & ANR. Petitioners

Through: Mr. Puneet Aggarwal, Mr. Deepak
Anand, Ms. Purvi Sinha and Ms.
Hemlata Rawat, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Aproov Kurup, CGSC with Mr.
Abhishek Khanna, GP.

Ms. Sonu Bhatnagar, Sr. Standing
Counsel with Ms. Venus Mehrotra,
Ms. Anushree Narain, Ms. Mallika
Joshi and Mr. Vaibhav Joshi, Advs.
For R-2.

Mr. Satish Aggarwala, Mr. Gagan
Vaswani and Mr. Jasneet Jolly,
Advocates for R-3 to R-5.

+ **W.P.(C) 7842/2020 & CM APPL. 25745/2020**

OMAXE LTD & ANR.

..... Petitioners

Through:

Mr. Puneet Aggarwal, Mr. Deepak
Anand, Ms. Purvi Sinha and Ms.
Hemlata Rawat, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through:

Mr. Aproov Kurup, CGSC with Mr.
Abhishek Khanna, GP.

Ms. Sonu Bhatnagar, Sr. Standing
Counsel with Ms. Venus Mehrotra,
Ms. Anushree Narain, Ms. Mallika
Joshi and Mr. Vaibhav Joshi, Advs.
For R-2.

Mr. Harpreet Singh, Senior Standing
Counsel with Ms. Suhani Mathur,
Advocate for R- 3 to 5

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **05.04.2021**

1. The limited issue which arises for consideration in the captioned writ petitions concerns the applicability of the instruction dated 21.12.2015 bearing F. No. 1080/09/DLA/MISC/15/757 [in short “2015 instruction”] and the Master Circular dated 10.03.2017 [in short “2017 Master Circular”], issued by Central Board of Excise & Customs, Department of Revenue, Ministry of Finance, Government of India [presently, known as “Central Board of Indirect Taxes & Customs”]. In this context, in particular, the petitioners rely upon paragraph 5 of the 2017 Master Circular.

2. It is the submission of the petitioners that as per paragraph 5 of the 2017 Master Circular, the contesting respondents, i.e., respondents nos. 2 to 5, who are represented by Mr. Satish Aggarwala in W.P.(C) 12653/2019 and Mr. Harpreet Singh in W.P.(C) 7842/2020, were mandatorily required to hold pre-show cause notice consultation with the petitioners prior to initiation of the proceedings under the Finance Act, 1994.

2.1. In support of this submission, Mr. Puneet Aggarwal, who appears for the petitioners in the captioned writ petitions, relies upon a judgment of the coordinate bench of this court rendered in *Amadeus India Pvt. Ltd. vs. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate, 2019 SCC Online Del 8437*.

2.2. In opposition, Messrs Satish Aggarwala and Harpreet Singh, say that, in the captioned matters, the consultative process took place and in support of this plea, they rely upon the voluntary statements given by the officials of the petitioners. In other words, the submission is that the mandatory requirement of a pre-show cause notice consultation is complied with in the captioned writ petitions.

3. We have heard learned counsel for the parties at some length.

3.1. The issue, which arises for consideration, insofar as the applicability of paragraph 5 of the 2017 Master Circular is concerned, also arose in W.P.(C) No. 5766/2019, which was listed on our board today.

3.2. Having heard the petitioners in that matter i.e. ***Back Office IT Solutions Pvt. Ltd.*** and the contesting respondents, who were represented by Mr. Satish Aggarwala, we have directed the parties to hold the pre-show cause notice consultation, in line with the mandate of paragraph 5 of the 2017 Master Circular. In that case, the contesting respondents via Mr. Satish Aggarwala had raised the defence that it was a case involving “prevention” (one of the exceptions, given in the 2017 Master Circular, where pre-show cause notice consultation is not required to be held). After having disagreed with the stand taken by the contesting respondents, we have issued certain directions; which are referred hereinbelow.

3.3. Insofar as the captioned writ petitions are concerned, as noted above, the defence taken by the contesting respondents is that pre-show cause notice consultation had occurred and, in that context, reliance is placed upon the statements made by the petitioners’ officials [pursuant to summons issued to them], before the Senior Intelligence Officer under Section 14 of

the Central Excise Act, 1944, as made applicable to Service Tax matters vide Section 83 of the Finance Act, 1994.

3.4. We are of the view that “voluntary statements” recorded before the Senior Intelligence Officer cannot constitute pre-show cause notice consultation as envisaged in the paragraph 5 of the 2017 Master Circular. Consultation entails discussion and deliberation. There is back and forth between parties concerned with the consultative process, leading to, metaphorically speaking, often, separation of wheat from the chaff.

3.5 A voluntary statement is at best a one-way dialogue made before an authority which does not take a decision as whether or not next steps in the matter are required to be taken. It is not in dispute that the show cause notices impugned in the captioned writ petitions dated 11.04.2018 (W.P.(C) 12653/2019) & 24.04.2018 (W.P.(C) 7842/2020) were issued by an officer of the rank of Additional Director General. Therefore, it cannot be said that voluntary statements made by the officials of the petitioners before the Senior Intelligence Officer would constitute a pre-show cause notice consultation, as stipulated under paragraph 5 of the 2017 Master Circular.

4. Given this position, we are inclined to dispose of the captioned writ petitions, by issuing the directions similar to the ones which were issued in W.P.(C) 5766/2019:

- (i) The contesting respondents will serve an appropriate communication on the petitioner indicating therein the date, time and venue at which they intend to convene a meeting for holding pre-show cause notice consultation.
- (ii) The concerned officer will accord a personal hearing to the authorized representative of the petitioner.

(iii) The concerned officer would allow the petitioner to make submissions with regard to the merits of the matter including the aspect pertaining to the jurisdiction. The concerned officer will, after hearing the authorized representative of the petitioner, pass an order as to whether or not it is a fit case for continuing with the proceedings in accordance with the mandate of the law including the Finance Act, 1994.

(iv) If the concerned officer concludes that it is a fit case in which proceedings should continue against the petitioner, then, he would take a decision with regard to whether or not the impugned show cause notice should be revived or a fresh show cause notice should be issued in consonance with the decision that would be rendered by the Supreme Court in SLP (Civil) Diary No. 35886/2019 [arising out of the judgment rendered in *Amadeus India Pvt. Ltd. (Supra)*].

5. The captioned writ petitions are disposed of in the aforesaid terms. Pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

APRIL 5, 2021

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