

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 5519/2022

Zawar Mines, Distt. Udaipur, Rajasthan Through Authorised Signatory Mr. Mukul Agarwal, Associate Vice-President (Finance), Age 44, S/o Shri Suresh Prakash Agarwal.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001.
2. Additional Director General, Directorate General Of Gst Intelligence, Jaipur Zonal Unit, C-62, Sarojini Marg, C Scheme, Jaipur - 302001.
3. Additional Director General (Adjudication), Directorate General Of Gst Intelligence Hqrs., West Block-Viii, Wing No. 6, 2Nd Flor, R.k. Puram, New Delhi - 110066.
4. Central Board Of Indirect Taxes And Customs, Through The Chairman, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 11000.
5. Commissioner, Cgst And Central Excise, Udaipur 142-B, Hiran Magri, Sector-11, Udaipur (Raj.).

----Respondents

For Petitioner(s)	:	Mr. Vinay Kumar Jain
For Respondent(s)	:	Mr. Rishabh Dadhich and Mr. Jitesh Kumar Suthar for Mr. Rajvendra Saraswat

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Order(Oral)

Reportable

27/04/2026

Per: Arun Monga, J.

1. The present Civil Writ Petition has been filed assailing the show-cause notice dated 22.10.2021 issued by Additional Director General, Directorate General Of Goods & Services Tax Intelligence, Jaipur Zonal Unit (Respondent no. 2), whereby it was informed that during the period from April, 2016 to June, 2017,

petitioner- assessee short paid Service tax amounting to Rs. 5,56,60,637/-.

2. Brief facts of the case as stated in the petition are that the petitioner is India's largest and the world's second-largest zinc-lead miner, operating lead-zinc mines, smelters, sulphuric acid plants, and captive power plants. The run-of-the-mine ore is crushed and processed to produce zinc and lead concentrates, along with tailings. The Petitioner undertakes mining and manufacture of such concentrates under Chapter 26 of the Central Excise Tariff Act, 1985, from mines at Mochia, Balaria, Baroi, and Zawarmala.

2.1 The concentrates contain impurities, which are removed during smelting outside the mining lease area. The Petitioner holds the requisite Central Excise and Service Tax registrations and has regularly filed returns as per law. It has been paying Service Tax on mining royalty to the State of Rajasthan under Section 68(2) of the Act, read with the Service Tax Rules and relevant notifications, under the reverse charge mechanism.

2.2 Respondent No. 2 issued an impugned show cause notice dated 22.10.2021 proposing a Service Tax demand of Rs. 5,56,60,637/- for April 2016 to June 2017, alleging violation of Sections 67, 68, and 70 of the Act read with Rules 6 and 7 of the Service Tax Rules, on the ground of suppression of the value of mining royalty on zinc, lead, and silver.

2.3 Hence, the present writ petition.

3. Learned counsel for the petitioner submits that the impugned Show Cause Notice has not been issued in accordance with the procedure prescribed under law and is therefore liable to be

quashed. It is contended that vide Departmental Instructions dated 21.12.2015, pre-show cause notice consultation was made mandatory in cases involving tax demands of ₹50 lakhs and above, with the object of promoting voluntary compliance and avoiding unnecessary litigation. The said requirement was subsequently reiterated through Circular dated 10.03.2017 and further clarified vide Circular dated 11.11.2021.

3.1 It is further argued that despite the mandatory nature of the aforesaid circulars, no pre-SCN consultation was afforded to the petitioner prior to issuance of the impugned notice. Learned counsel submits that it is well settled that departmental circulars are binding upon the authorities, and reliance in this regard is placed upon the judgment of the Gujarat High Court in ***L & T Hydrocarbons Engineering Ltd. v. Union of India***¹, wherein it was held that pre-show cause notice consultation is mandatory even in cases involving DGGI officers, particularly in light of the clarification issued vide Circular dated 11.11.2021.

3.2 Learned counsel for the petitioner contends that the demand raised in the Show Cause Notice is founded on hypothetical and unascertained figures of alleged short-paid royalty, which has not been determined by the competent authority. It is thus argued that Respondent No. 2 lacks jurisdiction to determine royalty and, in the absence of such determination, could not have validly issued the impugned notice.

4. *Per contra*, learned counsel for the respondent argues that the impugned Show Cause Notice is not liable to be quashed merely on the ground of alleged non-compliance with Circular No. 1053/03/2017-CX dated 10.03.2017. It is contended that the

¹ C/SCA/11308/2019 (decided on 03.02.2022)

requirement of pre-show cause notice consultation is only an executive instruction issued for departmental guidance and is directory in nature, and not mandatory. Consequently, any alleged non-adherence thereto does not invalidate a Show Cause Notice issued in exercise of substantive statutory powers under Section 73 of the Act.

4.1 It is further argued by the learned counsel for the respondent that the requirement of pre-consultation is generally inapplicable in cases where the extended period of limitation has been invoked on allegations of suppression of facts, misstatement, or fraud, particularly in matters arising out of investigation by the intelligence wing. Therefore, the challenge raised by the petitioner on the ground of absence of pre-SCN consultation is misconceived and unsustainable in law.

4.2 Learned counsel for the respondent submits, that the petitioner has prematurely invoked the writ jurisdiction of this Hon'ble Court without exhausting the statutory remedy available under law. It is contended that a Show Cause Notice is merely a proposal and does not determine any rights or liabilities, and the petitioner is bound to submit its reply and participate in adjudication before the competent authority, i.e., respondent No.3. It is further urged that interference under Article 226 is unwarranted at this stage, particularly when the notice is not without jurisdiction.

4.3 It is further argued by the learned counsel for the respondent that the petitioner has an efficacious alternative statutory remedy, and on this ground alone, the writ petition deserves to be dismissed. Reliance is placed on the judgment of

the Hon'ble Supreme Court in **Commissioner of Income Tax vs. Chhabil Dass Agrawal²** and **Union of India & Ors. vs. Major General Shri Kant Sharma³**, to contend that where a statutory forum exists for redressal of grievances, writ jurisdiction ought not to be exercised except in exceptional circumstances.

5. In the aforesaid backdrop, we have heard learned counsel for both parties and perused the record including the rival pleadings.
6. At the outset, we are conscious that there is an alternative remedy but instant is a case where in view of candid stand qua non issuance of mandatory pre show-cause notice, the impugned show cause notice appears to be *ex facie* not maintainable in law, as is borne out from the reply filed in response to the petition.
7. Speaking of the pleadings, relevant of the respective rival stands taken in ground C of the writ petition and the corresponding response in reply thereto are reproduced herein below in a tabular form:

Petitioner's Submissions	Respondent's Reply
C. MANDATORY PRE-SCN CONSULTATION WAS NOT AFFORDED TO THE PETITIONER. C.1 It is submitted that the Impugned SCN has not been issued in accordance with procedure laid down in law and is therefore illegal. Through Department's instructions in F. No. 1080/09/DLA/MISC/15 dated 21.12.2015, pre-SCN consultation was made mandatory for disputes involving tax demand of fifty lakhs and above, with a view to promote voluntary compliance and reduce the necessity of issuing SCNs. Further, the same was reiterated vide Circular No. 1053/2/2017-CX dated 10.03.2017. Further clarification was made vide Circular No. 1079/03/2021-CX, dated 11.11.2021.	B. That the grounds raised by the Petitioner in Para (C) of the Writ Petition are not admitted in the manner as stated and it is vehemently submitted that the SCN is not liable to be quashed for alleged non-compliance with the Circular (Circular No. 1053/03/2017-CX) dated 10.03.2017 because the requirement of pre-consultation is an executive instruction issued for departmental guidance and is directory, not mandatory. Non-adherence to a directory circular does not vitiate the SCN which is issued under the substantive provisions of Section 73 of the Act. Furthermore, the requirement of pre-consultation is generally held not to apply in cases where the SCN invokes the extended period of limitation by alleging suppression of facts or fraud, as is typically done in matters investigated by the intelligence wing.

² (2014) 1 SCC 603
³ AIR 2015 SC 2465

8. From the aforesaid, it is abundantly clear that a candid stand has been taken by the respondent that not only was the service of pre-show cause notice dispensed with, but an attempt has also been made to justify such recourse on the ground that the Circular dated 10.03.2017, issued by the competent authority of the Ministry to all Principal Chief Commissioners, is not mandatory but merely directory in nature.

9. A perusal of the circular dated 10.03.2017 issued by Department of Revenue, however, reflects otherwise. Relevant clause 5 of the circular is reproduced herein below:

"5.0 Consultation with the noticee before issue of Show Cause Notice:

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

(emphasis is ours)

10. The use of the word "mandatory" leaves no manner of doubt that the Department cannot wriggle out of its obligation by characterizing the same as merely directory. The intent is not far to seek. The idea is that pre-show cause notice consultation entails an adjudicating authority, invariably at the level of Principal Commissioner or Commissioner, to consult with the assessee before formally issuing a Show Cause Notice. This consultation serves as an important bridge between detection and adjudication, giving the assessee an opportunity to present their position, voluntarily pay short-paid duty, or correct errors before the adversarial process formally begins, thereby reducing unnecessary litigation and its attendant costs on both sides.

11. Pertinently, vide a subsequent clarificatory circular dated 11.11.2021, the CBIC not only reiterated that earlier circular dated 10.03.2017, clause 5 thereof, is mandatory but abundantly clarified that only cases falling under the exemptions are exempted from Pre- SCN. Clause 5 of clarificatory circular reads as under:-

"5. It is, therefore, reiterated that pre-show cause notice consultation shall not be mandatory for those cases booked under the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 for recovery of duties or taxes not levied or paid or 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 provision of the Central Excise Act, 1944 or Chapter V of the Finance Act, 1994 or the rules made there under with the intent to evade payment of duties or taxes."

12. No doubt, the CBIC circulars/instructions, *ibid*, carve out preventive and offence-related SCNs from this requirement, so that in cases involving suspected fraud, suppression, or enforcement action, prior intimation could compromise the investigation itself. On a court query, it transpires that instant is not a case falling under any of the said category.

13. Thus, on the question of not following the mandatory procedural requirement of issuing pre-show cause notice, we reject the argument that in the present case, the revenue was exempt from the pre SCN by directly issuing SCN.

14. In fact, in similar circumstances, the Gujarat High Court, in a Division Bench judgment, ***L & T Hydrocarbons Engineering Ltd. v. Union of India, (supra)*** has held as under:

"83. In view of the Circular No. 1053/2/2017-CX., dated 10th March 2017, it is clear that the Board had made the 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 lakh. Such consultation is required to be done by

the adjudicating authority with the assessee as an important step towards reducing the necessity of issuing show cause notice.

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127. *Our final conclusions may be summarized as under:*

[a] The Revenue is not correct in its stance that in the case on hand, the pre show cause notice consultation was not necessary as the impugned show cause notice is for preventive/related to an offence. Just because, the origin of the show cause notice is the intelligence gathered from the Additional Director General, the same by itself would not bring the show cause notice within the ambit of preventive/offence.

[b] The extended period of limitation under Section 11A(4) of the Act, 1944 is not applicable in the case on hand as it is the case of the Revenue that the goods were removed illicitly without a statutory invoice. The failure to follow any procedure may be an error or omission on the part of the assessee, but the same by itself would not amount to suppression. The question of suppression would arise only when an assessee makes an attempt to obtain a benefit not available to him under the law.

[c] The amalgamation has its origin in the statute and is statutory in character, the transfer and vesting is by operation of law and not an act of a transferor - company nor an assignment by it, but is the result of a statutory instrument. A scheme of amalgamation when sanctioned by the company court under the relevant provisions of the Companies Act is distinct and different from a mere agreement signed by the necessary parties. When an agreement takes place, the transfer of assets takes place by the force of the company's court order and/or by operation of law; it ceases to be a contractual or a consensual transfer. The respondents are bound by the order dated 20th December 2013 passed by the Bombay High Court approving the scheme of demerger.

[d] The writ application challenging the legality and validity of the show cause notice is maintainable as no disputed questions of fact are involved and the legal issues have been decided on the basis of the facts as admitted by the parties. The impugned show cause notice could be said to be lacking inherent jurisdiction and therefore, asking the writ applicant to avail of an alternative remedy, therefore, could not arise."

15. We are in respectful agreement with the aforesaid view. Similar views have been expressed by various High Courts across the country. However, for the sake of brevity, those judgments are not being discussed herein, though citation of those cases is as below:

(i) *Rochem Separation Systems (India) Pvt. Ltd. v. Union of India*⁴, Bombay High Court; (ii) *Omaxe New Chandigarh Developers Pvt. Ltd. v. Union of India*⁵, Delhi High Court; (iii) *Tube Investments of India Limited v. Union of India*⁶, Madras High Court; (iv) *Amadeus India Pvt Ltd v. PCCEST*⁷, Delhi High Court

16. Being in agreement with the legal position enunciated by the various High Courts, we set aside the impugned show cause notice dated 22.10.2021, however, with liberty to the respondents to proceed afresh in accordance with law, including by issuing a pre-show cause notice.

17. Needless to observe, that the Petitioner shall be at liberty to respond thereto in accordance with law and all issues raised herein are kept open for adjudication by the Competent Authority.

18. Accordingly, the present writ petition stands disposed of with the aforesaid observation.

19. Pending application(s) stands disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

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⁴ W.P. No. 822/2021 (decided on 23.09.2025)

⁵ W.P.(C) 12653/2019 (decided on 05.04.2021)

⁶ W.P.No.18721 of 2019 (decided on 07.11.2019)

⁷ 2019 SCC OnLine Del 8437