MAJESTY LEGAL
Advocates & Solicitors

DELHI HIGH COURT INVALIDATES TAX NOTICE FOR BREACH OF TIME LIMITS

"MS L. R. SHARMA AND CO V. UNION OF INDIA & ORS."

Hon'ble Delhi High Court in case of ***MS L. R. Sharma And Co v. Union Of India & Ors.***[1] held that the usage of expression "where it is possible to do so" doesn't make the timeline stipulated under Section 73(4B) of the Finance Act, 1994 to determine service tax dues 'suggestive' in nature. It quashed a hearing notice issued to the petitioner, nearly nine years after the issuance of a Show Cause Notice (SCN) in 2015 for service tax demands under the Finance Act, 1994. Hon'ble Court identified that the adjudication proceedings had become time-barred under Section 73(4B) of the Finance Act, which prescribes a six-month or one-year limit (where feasible) for resolving SCNs. Despite the Revenue's contention that the timeline was suggestive and delays were justified by appeals in related cases, the court held that the prolonged inaction violated principles of timely adjudication and reasonable administrative conduct.

Hon'ble Court emphasized that Section 73(4B) and related jurisprudence, mandate adherence to statutory timeframes to prevent arbitrary delays. The failure to transfer the case to the call book further underscored procedural lapses. The judgment reiterated that administrative convenience or pending appeals in similar cases cannot justify inordinate delays. While quashing the hearing notice, the court declined to address jurisdictional challenges, given the dispositive finding on limitation grounds.

TEAM MAJESTY LEGAL[2]

OFFICE : B-87, Alaknanda Apartment, G-1, Ganesh Marg/Moti Marg, Bapu Nagar, Jaipur,Rajasthan-302015.
https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g_st=iw
CHAMBER : 204, E-Block, Rajasthan High Court, Jaipur.
MOBILE No. : 9785461395
E-MAIL : mahi@majestylegal.in
WEBSITE : www.majestylegal.in

[1] W.P.(C) 13689/2024
[2] Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

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

% *Judgment delivered on: 20.12.2024*

\+ **W.P.(C) 13689/2024, CM APPL. 57334/2024 (Stay) & CM APPL. 57336/2024 (for production of records)**

MS L. R. SHARMA AND CO .....Petitioner

versus

UNION OF INDIA & ORS. .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Akshay Amritanshu, Senior Standing Counsel with Mr Samyak Jain, Ms Drishti Safar and Ms Pragya Upadhyay, Advocates

For the Respondents : Mr. Shekhar Kumar, SPC for R-1. Mr. Atul Tripathi, SSC CBIC with Mr. VK Attri, Advocate

CORAM
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India, *inter alia*, praying as under:

> "A) issue a Writ of certiorari/mandamus or any other appropriate Writ/ order/ direction against the Respondents by declaring that the reinitiating adjudication proceeding after a gap of 9 years is vitiated in law as settled in catena

of decision and in any case the adjudication proceeding has become time barred in terms of section 73(4B)(b) of the Finance Act in respect of impugned impugned Show Cause Notice No. 22/2015 dated 21.04.2015 issued by the Respondent No.2;

B) issue a Writ of certiorari/ mandamus or any other appropriate Writ/ order/ direction against the Respondents by quashing of the impugned hearing Notice dated 18.09.2024 (at Annexure P-2) issued by the Respondent No. 5 to reinitiating adjudication proceeding after gap of almost 9 years and also quash the impugned Show Cause Notice No. 22/2015 dated 21.04.2015 (signed on 22.04.2015) issued by the Respondent No. 2 (at Annexure P-1) by declaring that it is without any jurisdiction, illegal and bad under the law;..."

BACKGROUND FACTS

2. The case set out by the petitioner is that the Revenue had issued a Show Cause Notice, bearing no. 22 of 2015, dated 21.04.2015 [hereafter '***the impugned show cause notice***'] demanding a total service tax of ₹6,90,07,865/- (including Education Cess and Secondary & Higher Education Cess) for the period 2012-13 and 2013-14, under proviso to Section 73(1) of the Finance Act, 1994 [hereafter '***the Finance Act***'] along with interest and penalties.

3. The petitioner, refuting the allegations made in the impugned show cause notice, had filed his reply dated 26.05.2015 which was duly received and acknowledged. A notice dated 30.09.2015 was then issued to the petitioner, requiring him to attend the hearing in respect of the impugned show cause notice, on 19.10.2015. The petitioner had appeared before the Commissioner Audit-1, New Delhi on 19.10.2015, where the said hearing had taken place and the same was

concluded on the same day. The copy of the records of personal hearing was also made available to the counsel of the petitioner. The petitioner however submits that despite the hearing being concluded on 19.10.2015 in respect of the impugned show cause notice, the order *qua* the same was not communicated to the petitioner.

4. However, after almost nine years from the date of issuance of the impugned show cause notice, the petitioner now received a fresh notice of hearing dated 18.09.2024 [hereafter '***the impugned hearing notice***'], intimating him that hearing in respect of the impugned show cause notice has been fixed for 29.09.2024.

5. The petitioner is principally aggrieved by the aforesaid action on part of Revenue in reinitiating the adjudication proceedings after a gap of almost nine years.

6. Conversely, the relevant facts and circumstances of the case, presented before us by the Revenue are that pursuant to receipt of some information, the Director General of Central Excise Intelligence was of the view that the petitioner was engaged in activities such as providing/ laying/ replacing water pipelines for entities like the Delhi Metro Rail Corporation (DMRC), Delhi Jal Board (DJB), and other similar organizations. However, it appeared that the petitioner was not paying taxes on such activities, whereas the same were covered under taxable services, classifiable under *'Erection, Commissioning, or Installation'* services, as defined in Section 65(39a) of the Finance Act. Concerns were also raised about the non-payment of tax on services related to *'Renting of Immovable Property'* and *'Machine*

Hiring Charges'. Considering these facts, two show cause notices were issued to the petitioner. The first notice dated 15.10.2010 demanded a service tax of ₹23,24,07,695/- for the period 2005-06 to 2009-10, and the second notice dated 14.10.2011 demanded an amount of ₹14,05,90,649/- for the period 2010-11. Thereafter, both the said notices were adjudicated by the then Commissioner of Service Tax, New Delhi, who passed an Order-in-Original No. 73-74/GB/2012 on 26.04.2012, and dropped the entire demand of service tax in respect of the said notices.

7. The said decision was assailed by the Revenue by way of an appeal i.e. Service Tax Appeal No. 2258 of 2012 before the learned Customs, Excise, and Service Tax Appellate Tribunal [hereafter '***the learned CESTAT***']. Eventually, the said appeal was dismissed by the learned CESTAT by way of judgment dated 15.09.2022, which has not been challenged by the Revenue.

8. In the meanwhile, on 21.04.2015, the impugned show cause notice was issued to the petitioner, raising demand of service tax in respect of 'Erection, Commissioning, or Installation services' provided by the petitioner to the DMRC for the period 2012-13 and 2013-14. However, since a similar matter was under consideration before the learned CESTAT (as noted in preceding paragraph), the adjudication proceedings *qua* the impugned show cause notice were deferred, in compliance with Circular No. 162/73/95-CX dated 14.12.1995 issued by the CBEC. It is contended that the deferment

was communicated to the petitioner by the Assistant Commissioner (Adj.), Service Tax, Audit-I, Delhi, by way of letter dated 29.01.2016.

9. Therefore, the Revenue has now issued the impugned hearing notice to the petitioner on 18.09.2024 to proceed with the pending proceedings.

SUBMISSIONS BEFORE THE COURT

Submissions on behalf of the Petitioner

10. The learned counsel appearing for the petitioner has argued that the impugned hearing notice dated 18.09.2024, issued in pursuance of the impugned show cause notice dated 21.04.2015, cannot be sustained in law. It was contended that since the Commissioner of Service Tax had already dropped the proceedings pertaining to the petitioner in respect of earlier year and thereafter, the learned CESTAT had also dismissed the Revenue's appeal, there was no justification in law to re-initiate the adjudicating proceedings after a gap of about nine years in respect of the impugned show cause notice dated 21.04.2015, whereon the hearing had already concluded on 19.10.2015, but no order had been passed. The learned counsel for the petitioner also stated that when the personal hearing was concluded on 19.10.2015, the Commissioner concerned did not transfer the matter to the callbook.

11. It was essentially argued that the adjudicating proceedings have become time-barred in terms of Section 73(4B)(a) & (b) of the Finance Act, as the officer concerned is required to determine the

amount of service tax within six months or one year from the date of notice as the case maybe, where it is possible to do so. It was stated that the amendment to this effect was made by Finance (No. 2) Act, 2014, applicable with effect from 06.08.2014. The attention of this Court was drawn to the decisions in ***Sunder System Pvt. Ltd. v. Union of India and Ors:*** *2020(33) G.S.T.L. 621 (Del.)* and ***Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India:*** *2017(352) E.L.T. 455 (Guj.)*, wherein show cause notices were quashed in similar circumstances, being time barred. It was also argued that as per the law settled, even if no time frame is prescribed to complete an action under similar circumstances, the proceedings have to be completed within the reasonable time.

12. It was also contended that the actions of the Revenue are in breach of its own circulars/instructions, including Instruction F. No. 275/17/2015-CX.8A, dated 11.03.2015, which provides the steps needed to be taken to improve the tax administration, wherein it is mentioned that there is "urgent requirement of passing the adjudication orders within the specified time". The said instructions were again repeated in Instruction F. No. 280/45/2015-CX.8A, dated 17.09.2015. It is stated that there is no justification for issuance of such notice after a period of nine years.

13. The learned counsel for the petitioner further contended that the impugned hearing notice has been issued by the Office of Commissioner, Central Goods & Services Tax (CGST), Delhi, and there are no reasons assigned as to how the said officer has assumed

the jurisdiction under the Finance Act, since the GST officers are appointed under the CGST Act, 2017 and they are only vested with the jurisdiction pertaining to the said Act. Therefore, the respondent no. 5, who is an officer under the CGST Act, had no jurisdiction to proceed in the matter which was covered under the Finance Act.

14. On these grounds, the petitioner seeks quashing of the impugned hearing notice and the impugned show cause notice.

Submissions on Behalf of the Revenue

15. The learned counsel appearing for the Revenue has argued that the impugned hearing notice dated 18.09.2024 does not suffer from any infirmity, since the proceedings pertaining to the present case had been kept in abeyance, till the decision of learned CESTAT in Service Tax Appeal No. 2258 of 2012, and after the disposal of the said appeal, the impugned hearing notice was issued to the petitioner to complete the proceedings.

16. It was contended on behalf of the Revenue that under Section 73(4B)(a) & (b) of the Finance Act, the officer has to determine the amount of service tax due within six months or one year from the date of notice (as the case may be), where it is 'possible to do so'. The learned counsel laid emphasis on the fact that by incorporating the words "where it is possible to do so", the legislature has clarified that the limit of one year is only suggestive in nature and is not mandatory. Therefore, it was stated that the impugned hearing notice cannot be held as time-barred.

17. It was further argued that consequent to implementation of GST, the officers appointed under the Central Excise Act, 1944 are deemed to be officers under the CGST Act, 2017 and are duly empowered to deal with matters under the Central Excise Act, 1944 and Chapter V of the Finance Act, pursuant to Section 3 of the CGST Act, read with clause (b) of Section 2 of the Central Excise Act, clause (55) of Section 65B of the Finance Act, and in accordance with rule 3 of the Central Excise Rules, 2002, and rule 3 of the Service Tax Rules, 1994. It was also emphasized that in terms of Section 174(2) of the CGST Act, read with notification no. 9/2007-Central Tax dated 28.06.2017, and further read with notification no.2/2007-Central Tax dated 19.06.2017 and Section 3 of the CGST Act, the present case was transferred to the office of respondent no. 5 i.e. Commissioner, Central Goods and Service Tax, Delhi South Commissionerate for conducting the proceedings in respect of the impugned show cause notice issued to the petitioner.

18. Thus, the learned counsel appearing for the Revenue contends that there is no infirmity with the impugned hearing notice or the impugned show cause notice issued to the petitioner, and the present petition be therefore dismissed.

ANALYSIS & FINDINGS

19. The issue falling for our consideration in the present petition is whether, in the facts and circumstances of the case, the adjudicating proceedings have become time-barred in terms of Section 73(4B) of

the Finance Act, in respect of the impugned show cause notice dated 21.04.2015, since the impugned hearing notice dated 18.09.2024 has been issued after a period of nine years.

20. A perusal of the record reveals the following undisputed facts:

(i) The impugned show cause notice was issued on 21.04.2015

(ii) In response to the same, the petitioner submitted his reply on 26.05.2015.

(iii) The notice of hearing dated 30.09.2015 was issued to the petitioner.

(iv) The said hearing took place, and was concluded, on 19.10.2015.

(v) In the past, two show cause notices were issued by the Revenue to the petitioner, on similar grounds, for the period 2005-06 to 2009-10, and for the period 2010-11; however, the proceedings were dropped *vide* Order-in-Original dated 26.04.2012.

21. The Order-in-Original dated 26.04.2012 was assailed by the Revenue by way of an appeal, which was dismissed by the learned CESTAT *vide* judgment dated 15.09.2022. The relevant observations of the learned CESTAT are extracted hereunder:

> "...20. Though we are not required to examine the fitment within the claimed enumeration of 'works contract service', we find that the respondent was involved in the shifting of the existing water pipelines belonging to Delhi Jal Board which, by implication, ultimately is rendering of services to that agency which the grounds of appeal admits to being eligible for exclusion from tax. In terms of the decision of the Hon'ble

> High Court of Madras in M/s Indian Hume Pipes Co Ltd, the laying of pipelines as an adjunct of civil structure would alone bring the activity within the ambit of section 65 (105) (zzd) of Finance Act, 1994 and from the nature of the work undertaken, it is apparent that the activity contracted out by the respondent does not relate to civil work for facilitating the network of Delhi Metro Rail Corporation.
>
> 21. The grounds of appeal are limited to the distinguishability of Delhi Metro Rail Corporation from Delhi Jal Board insofar as the organizational objectives are concerned. The exclusion of the alleged 'taxable service' sought to be fastened on them from any contract other than service simpliciter erases the distinction of commercial outcome suggested by the reviewing authority. In any case, even if Delhi Metro Rail Corporation were to be the final recipient of the service rendered by the respondent, the decision of the Hon'ble High Court of Calcutta in M/s Afcons 153 18 ST/2258 of 2012 Infrastructure Ltd. categorising them as 'railway' forecloses taxability even if the dispute pertains to laying of water pipelines.
>
> 22. In view of the overwhelming factual matrix precluding the taxability as proposed in the show cause notices, the grounds of appeal preferred by the appellant-Commissioner does not sustain and appeal is, accordingly, dismissed..."

22. At no point of time, it was disputed by the learned counsel for the Revenue that the dispute pertaining to the show cause notices dated 15.10.2010 and 14.10.2011, pertaining to period 2005-06 to 2009-10, and period 2010-11, was different from the dispute pertaining to the relevant period in the present case i.e. for the period 2012-13 and 2013-14.

23. It was not also disputed by the learned counsel appearing for the Revenue that the hearing in this case was concluded on 19.10.2015 before the Commissioner concerned, and upon a specific query put by this Court as to whether the case was transferred to the call book, it was conceded that the same was not done; however, it was reiterated

that a letter dated 29.01.2016 was sent to the petitioner regarding the hearing being kept in abeyance, pending appeal filed by the Revenue against before the learned CESTAT.

24. Further, there is a merit in the contention of the learned counsel for the petitioner that the Revenue / respondents were in knowledge about the proceedings being dropped against the petitioner in respect of the earlier two show cause notices, and also the fact that the appeal of the Revenue had already been dismissed by the learned CESTAT *vide* judgment dated 15.09.2022, i.e. about two years prior to issuance of impugned hearing notice dated 18.09.2024.

25. At this stage, it will be useful to refer to Section 73(4B)(b) of the Finance Act, which is set out below:

> "**Section 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded-**
>
> *******
>
> **(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 in 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 the proviso to sub-section (1) or the proviso to sub-section (4A)."

26. The learned counsel for the Revenue argued that the language used in the above-noted provision, governing the limitation in the cases as the present one, itself makes it clear that it is only suggestive rather than being mandatory. Though the Revenue contended that a

letter had already been issued to the petitioner stating that the proceedings are being kept in abeyance qua the impugned show cause notice and the same was disputed by the petitioner who stated that no such letter was received by him, the fact remains that the matter was not transferred to call book. Further, the argument of the learned counsel for the Revenue that the timeline given in the above-noted provision is only suggestive and not mandatory, has already been dealt with by the Coordinate Bench of this Court in ***Sunder System Pvt. Ltd. v. Union of India & Ors*** *(supra),* wherein it was observed as under:

> "9. A Coordinate Bench of this Court in the case of *National Building Construction Co. Ltd. Vs. Union of India; 2019 (20) G.S.T.L. 515 (Del.)* has held as under:-
>
> > "20. .....Sub-section 4B to Section 73 of the Fin Act fixes the time or limitation period within which the Central Excise Officer has to adjudicate and decide the show cause notice. The time period fixed under Clause A or B is six months and one year, respectively. Limitation period for passing of the adjudication order, described as Order-in-Original, starts from the date of notice under Sub-section 1 to Section 73 of the Fin Act."
>
> 10. **This Court is also of the view that, even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings.** [See: *State of Punjab Vs. Bhatinda District Coop. Milk P Union Ltd., (2007) 11 SCC 363; S.B. Gurbaksh Singh Vs. Union of India & Ors., 1976 (37) STC 425; Government of India Vs. The Citedal Fine Pharmaceuticals, Madras, AIR 1989 SC 1771; J.M. Baxi & Co. Vs. GOI, 2016 (336) E.L.T. 285 (Mad.)*]

> 11. **Keeping in view the aforesaid mandate of law as well as sub-section (4B) of Section 73 of the Finance Act, 1994, this Court is of the view that a statutory authority has to decide the show-cause notice within the time prescribed wherever it is possible to do so**.
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> 12. In the present case, from the respondents' list of dates, it is apparent that it was certainly possible for the adjudicating authority to adjudicate upon the show-cause notice issued to the petitioner within a period of one year at least from the conclusion of arguments on 03 rd February, 2015, if not earlier.
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> 13. Since that has not been done, the present writ petition is liable to be allowed on the short ground of limitation alone.
>
> 14. Consequently, the present writ petition is allowed and show-cause notice dated 25th November, 2011 is quashed. The respondents are directed to refund the aforesaid amount to the petitioner within four weeks."
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> (Emphasis added)

27. Similarly, the High Court of Gujarat in ***Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India*** *(supra)*, in respect of Section 11A of Central Excise Act, 1944, had observed as under:

> "**When the legislature has used the expression "where it is possible to do so", it means that if in the ordinary course it is possible to determine the amount of duty within the specified time frame, it should be so done.** The legislature has wisely not prescribed a time limit and has specified such time limit where it is possible to do so, for the reason that the adjudicating authority for several reasons may not be in a position to decide the matter within the specified time frame, namely, a large number of witnesses may have to be examined, the record of the case may be very bulky, huge workload, non-availability of an officer, etc. which are genuine reasons for not being able to determine the amount of duty within the stipulated time frame. **However, when a matter is consigned to the call**

> **book and kept in cold storage for years together, it is not on account of it not being possible for the authority to decide the case, but on grounds which are extraneous to the proceedings. In the opinion of this court, when the legislature in its wisdom has prescribed a particular time limit, the CBEC has no power or authority to extend such time limit for years on end merely to await a decision in another case. The adjudicatory authority is required to decide each case as it comes, unless restrained by an order of a higher forum.**"
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> (Emphasis added)

28. Therefore, what manifests from the above-noted decisions is that a statute or the language of a statute / provision cannot be read to go against its very intent. The intent of Section 73(4B) of the Finance Act was also made clear by the instructions dated 18-11-2021 (Instruction F. No. CBIC-90206/1/2021-CX-IV Section-CBEC) issued by the Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs, New Delhi, wherein the paragraph 4.2 provided as under:

> "4.2 Attention is invited to sub-section (11) of section 11A of Central Excise Act, 1944 read with sub-section (4B) of section 73 of the Finance Act, 1994 which stipulates that SCNs issued in normal cases should be adjudicated within six months in respect of Central Excise (CE) & Service Tax (ST), and SCNs issued involving extended period should be adjudicated within two years relating to CE and one year relating to ST where it is possible to do so. **Board desires that the time limits mentioned in relevant Acts must be adhered to**."

29. This Court is of the view that Section 73(4B) was framed and introduced in the Finance Act to ensure effective administration of

taxation. While there cannot be denying that the taxation forms the backbone of a nation's economy, any inordinate delay by the Revenue itself in prosecuting its own cases cannot be construed in their favour by stretching the period of limitation to nine years especially when the provision requires the proceedings to be concluded within six months / one year.

30. *De hors* the aforesaid findings, even if one accepts that the time period of six months/one year as mentioned in Section 73(4B) of the Finance Act is only suggestive, it would be unreasonable to hold that the same can be extended till a period of nine years in the given facts and circumstances of the case. The Revenue has failed to explain as to how such a delay in re-initiating the proceedings in respect of the impugned show cause notice issued in the year 2015 is justified, when under similar facts and circumstances, the proceedings initiated against the petitioner pursuant to two show causes notices dated 15.10.2010 and 14.10.2011 itself were dropped in the year 2012 *vide* Order-in-Original dated 26.04.2012 and even the appeal against the same, preferred by the Revenue, had been dismissed by the learned CESTAT in the year 2022 – about two years prior to the issuance of impugned hearing notice. Further, it is the case of Revenue itself that the proceedings in the present case had been kept in abeyance due to pendency of the appeal before the learned CESTAT. The decision of the learned CESTAT, concededly, has been accepted and not challenged by the Revenue.

31. The Revenue's contention that it was justified in keeping the proceedings in this case, in abeyance because an appeal pertaining to similar issue was pending before the learned CESTAT, is unmerited. The filing of an appeal in another case *qua* the petitioner, though on identical issue, and its pendency before the learned CESTAT cannot be held as a valid reason for not conducting the proceedings in the present case, after a show cause notice has already been issued, within the time frame as laid down in Section 73(4B) of the Finance Act. Even if the said appeal was pending, the proceedings in this case could have continued and order(s) could have been passed, and if aggrieved, the Revenue could have again approached the learned CESTAT by way of an appeal. However, strangely, the Revenue did not proceed with the case, awaiting the outcome in the appeal pending before the learned CESTAT, and in the meanwhile, the petitioner was left under the impression that since he had not received any adverse communication/order from the Revenue, the proceedings and show cause notice had been closed.

32. Therefore, in view of the foregoing discussion, we do not find any reason for the delay caused in the present case in not concluding the hearing *qua* the impugned show cause notice dated 21.04.2015 within the stipulated time period, and for issuing the impugned hearing notice dated 18.09.2024 after a period of nine years.

33. Accordingly, we find it apposite to quash and set aside the impugned hearing notice dated 18.09.2024 issued by respondent no. 5.

34. Since we have quashed the impugned hearing notice on the grounds of it being time-barred, we do not consider it essential to adjudicate the contentions raised before us regarding the jurisdiction of the officer concerned to issue the said notice.

35. In above terms, the present petition is disposed of. Pending applications are also disposed of.

SWARANA KANTA SHARMA, J

VIBHU BAKHRU, ACJ

DECEMBER 20, 2024/*at*