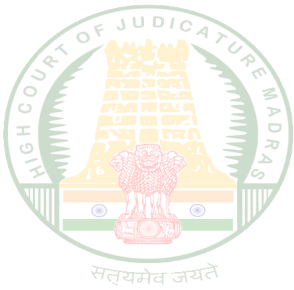




W.P.Nos.2489 & 2496 of 20__



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.01.2025
Pronounced On	09.05.2025

Coram:**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

W.P.Nos.2489 & 2496 of 2022
and W.M.P.Nos.2644, 2645, 2646 & 2647 of 2022

M/s.DXC Technology India Private Limited,
 (Formerly known as
 M/s.Covansys (India) Private Limited),
 Represented by its authorized signatory Mr.Raman Sethi
 9th Floor, Ramanujan IT City,
 Taramani, Rajiv Gandhi Salai,
 OMR, Chennai, Tamil Nadu – 600 113.

...Petitioner in both W.Ps

Versus

1.The Joint Commissioner of GST and Central Excise,
 Chennai – III, Commissionerate,
 135, Mahatma Gandhi Road,
 Chennai – 600 034.

...1st Respondent in W.P.No.2489 of 2022

2.The Assistant Commissioner of GST and Central Excise,
 Tambaram Division,
 130B, Mudichur Road, Tambaram,
 Chennai – 600 045.

...2nd Respondent in W.P.No.2489 of 2022 &
 1st Respondent in W.P.No.2496 of 2022

3.The Commissioner of GST and Central Excise,
 Chennai – III, Commissionerate,
 135, Mahatma Gandhi Road,
 Chennai – 600 034.

...3rd Respondent in W.P.No.2489 of 2022 &
 2nd Respondent in W.P.No.2496 of 2022



W.P.Nos.2489 & 2496 of 20__

**Prayer in W.P.No.2489 of 2022:**

WEB COPY Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to Impugned Show Cause Notice No.20/2008 dated 29.09.2008 of the 1st Respondent and quash the same.

Prayer in W.P.No.2496 of 2022:

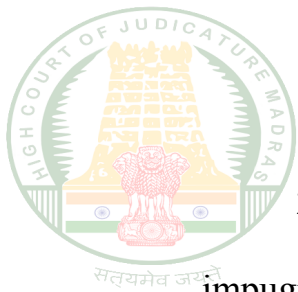
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to Impugned Show Cause Notice No.V/15/MRA/06/08 ST (Adj) dated 05.11.2008 issued by the 1st Respondent and quash the same.

For Petitioner in both W.Ps : Mr.Raghavan Ramabadran
for M/s.Lakshmi Kumaran and
Sridharan Attorneys
For Respondents in both W.Ps : Mr.A.P.Srinivas,
Senior Standing Counsel

COMMON ORDER

Details of the Show Cause Notices impugned in these writ petitions are as follows:

<i>S.No.</i>	<i>Writ Petition No.</i>	<i>Ref. No. of the impugned Show Cause Notice</i>	<i>Date of the impugned Show Cause Notice</i>
1	2489/2022	C.No.V/15/25/MRA/2008 STA III	29.09.2008
2	2496/2022	C.No.V/15/MRA/06/08 ST (Adj)	05.11.2008



2. Operative portion of the Show Cause Notice dated 29.09.2008

impugned in W.P.No.2489 of 2022 reads as under:

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“8. Hence, M/s. Covansys India P. Ltd (UNIT-I) is hereby directed to show cause to the Joint Commissioner of Central Excise, Chennai – III Commissionerate, 135, Mahatma Gandhi Road, Chennai – 600 034 as to why :-

(i) an amount of Rs.16,98,259/- (Rupees Sixteen lakhs ninety eight thousand two hundred and fifty nine only) being the service tax on the services rendered to their clients in DTA during the period from 2003-04 to 2005-06 should not be demanded from them under the extended proviso to Section 73 of the Finance Act, 1994:

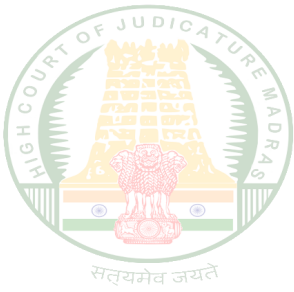
(ii) a penalty should not be imposed on them under Section 76, 77 and 78 for contravening the provisions of Section 66 and 68 of the Finance Act, 1994.

(iii) Appropriate interest on the amount shown against Clause (i) should not be demanded under Section 75 of the Finance Act, 1994

9. M/s. Covansys India P. Ltd (Unit-I) are further directed to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defence. They are also required to state in their reply as to whether they wish to be heard in person before the case is adjudicated. If no mention is made about this in their written reply, it would be presumed that they do not desire a personal hearing.

10. If no cause is shown against the action proposed to be taken as mentioned above within 30 (thirty) days from the date of receipt of this notice, or having shown cause, if they do not appear in person for personal hearing before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on record.

11. This notice is issued without prejudice to any other action or further action or proceedings which may be initiated against them under the provisions of Chapter V of the Finance Act, 1994 and/or the Rules made thereunder and/or the Central Excise Act, 1944, or under any other law for the time being in force in India.”



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2A. Operative portion of the Show Cause Notice dated 05.11.2008

impugned in W.P.No.2496 of 2022 reads as under:

“8. Hence, M/s Covansys India (P) Ltd., (Unit-II) is hereby directed to show cause to the Assistant Commissioner of Central Excise, Tambaram I Division, 130-B Mudichur Road, Tambaram, Chennai 600 045 as to why

i. An amount of Rs.2,47,950/- (Rupees Two Lakh Forty Seven Thousand and Fifty only) being the service tax on the services rendered to their clients in DTA during the financial year 2004-05 and 2005-2006 should not be demanded from them under the extended proviso to Section 73 of the Finance Act 1994.

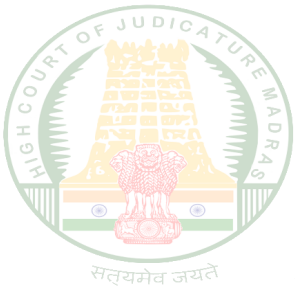
ii. Penalty should not be imposed on them under Section 76, 77 and 78 for contravening the provisions of Section 66 and 68 of the Finance Act, 1994.

iii. Appropriate interest on the amount shown against Clause (i) should not be demanded under Section 75 of the Finance Act. 1994.

9. M/s. Covansys India P. Ltd. (Unit-II) are further directed to produce at the time of showing cause all the evidences upon which they intend to rely in support of their defense. They are also required to state in their reply as to whether they wish to be heard in person before the case is adjudicated. If no mention is made about this in their written reply, it would be presumed that they do not desire a personal hearing.

10. If no cause shown against the action proposed to be taken as mentioned above within 30 (thirty) days from the date of receipt of this notice, or having shown cause, if they do not appear in person for personal hearing before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidences available on record.

11. This notice is issued without prejudice to any other action or further action or proceedings which may be initiated against them under the provisions of Chapter V of the Finance Act 1994, and/or the Service Tax Rules 1994 and/or the Central Excise Act, 1944, and the Rules made thereunder or under any other law for the time being in force in India.”

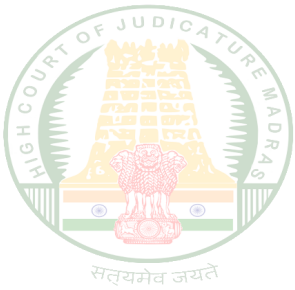


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3. The specific case of the petitioner is that the adjudication of these Show Cause Notices long after their issuance is arbitrary and in violation of the principles of natural justice and therefore, the show cause proceedings need not be proceeded further.

4. The learned counsel for the petitioner submitted that the petitioner was providing information technology services which become liable to service tax only with effect from **16.10.2023**, pursuant to amendment to Finance Act, 1994 vide Finance Act, 2008 and therefore, on this count also proposal in the impugned Show Cause Notices are liable to be withdrawn.

4.1. That apart, it is submitted that there is no proper explanation as to why the impugned Show Cause Notices were transferred to Call Book on **08.04.2011**. The respondents are directed to produce a file relating to above Show Cause Notices as to why the Show Cause Notices were transferred to Call Book as mentioned in Paragraph No.5 of the Counter Affidavit.



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4.2. The learned counsel for the petitioner further submitted that the petitioner has replied to the first show-cause notice on **29.09.2008** and the second show-cause notice immediately thereafter. It is submitted that for the first time, before this Court, the respondents have stated in their counter that the case had been transferred to the call-book on **08.04.2011**.

4.3. When these cases were taken up for further hearing on 23.01.2025, learned counsel for the petitioner drew the attention of this Court to the decision of the Gujarat High Court in the case of ***Siddhi Vinayak Syntex Pvt. Ltd. vs. Union of India*** (2017) 352 E.L.T. 455 (Guj.), the decision of the Delhi High Court in the case of ***M/s.VOS Technologies India Pvt. Ltd. & Ors. vs. The Principal Additional Director General & Anr.*** (2024) SCC Online Del 8756 , the decision of the Bombay High Court in the case of ***Conventry Estates Pvt. Ltd. vs. The Joint Commissioner CGST and Central Excise & Anr.*** (2023) 8 TMI 352 and the decision of this Court in the case of ***M/s.Steel Authority of India Ltd. & Ors. vs. The Office of the Assistant Commissioner of GST and Central Excise, Salem Division & Ors.*** (order dated 22.11.2023 in Writ Petition No.12074 of



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2023). Specifically, the learned counsel for the petitioner would submit that the law relating to the delay in adjudication of the show-cause notice has been held to be arbitrary and therefore, the proceedings have been dropped by various High Courts in the above mentioned decisions.

4.4. That apart, the learned counsel for the petitioner has drawn attention to **Report No.PA 6 of 2008** (Indirect Taxes), which has been referred to in the Counter Affidavit and **Letter dated 09.06.2021** of the Assistant Commissioner of CGST and Central Excise bearing **Reference C.No.IV/16/58/2018-TBM T-1**. It is submitted that in **Report No.PA 6 of 2008** (Indirect Taxes), Section 2 in Chapter III deals with the Service Tax. Though in the counter filed before this Court, a reference is made to **Chapter VI of Report No.PA 6 of 2008** (Indirect Taxes) referred to *supra*.

4.5. It is submitted that **Chapter III in Section 2 of Report No.PA 6 of 2008** (Indirect Taxes) deals only with Service Tax on rent-a-cab scheme operators' services, photography services and health club and fitness centre services. Whereas, the demand proposed in the impugned show-cause



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notices relates to levy of Service Tax on the petitioner on man-power recruitment/supply as defined under Section 65(68) of the Finance Act, 1994 which is taxable during the period under Section 65(105)(k) of the Finance Act, 1994.

4.6. It is the specific case of the petitioner that the predecessors of the petitioner Company were made liable to Service Tax only with effect from 16.05.2008 for Information Technology Software Service as defined in Section 65(105)(zzzze), which was inserted into Chapter V of the Finance Act, 1994, vide Finance Act, 2008 (18 of 2008) dated 10.05.2008 with effect from 16.05.2008. It is submitted that the petitioner's predecessors were liable to pay Service Tax only from the aforesaid date and for the services rendered prior to the aforesaid period, tax was not leviable.

4.7. That apart, it is submitted that the demand proposed to the petitioner's predecessors, namely, M/s.Covansys (India) Pvt. Ltd., which was later merged with M/s.Computer Sciences Corporation India Pvt. Ltd. in the year 2009, which in turn was later merged with M/s.CSC India Ltd.



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2016 which name was changed to its present name as M/s.DXC Technology India Pvt. Ltd. (the petitioner herein). It is submitted that there is no justification in keeping the show-cause proceedings pending for all these years and therefore, in light of the decisions cited *supra*, the writ petitions deserve to be allowed.

4.8. The learned counsel for the petitioner further submitted that similar issue for the petitioner Company in U.P.Region was the subject matter of dispute with the Department and that the Tribunal had ultimately dropped the proceedings against M/s.Computer Sciences Corporation India Ltd. (previous predecessor of the petitioner) vide order dated 18.02.2014, wherein, the Tribunal has dropped the proceedings and allowed the appeal against the adjudication order dated 30.10.2012 of the Commissioner of Customs and Central Excise, Noida, for a sum of Rs.3,78,49,044/-. It is submitted that the said demand also pertains to the period between 2006-07 to 2010-11, which is for the period after the demand covered by the impugned show-cause notice. It is also submitted that the view of the Tribunal was also accepted by the Allahabad High Court in its decision rendered on 16.10.2014 in the case of ***Commissioner of Central Excise vs.***



Computer Sciences Corporation India P. Ltd. (2014) SCC Online ALL

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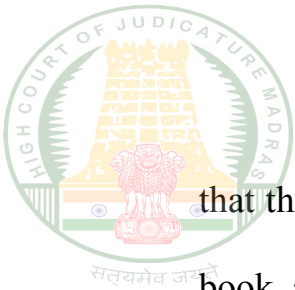
4.9. The learned counsel for the petitioner has placed reliance on the various decisions which are as follows:-

- (i) J.M.Baxi & Co. Vs. Government India (2016) 336 E.L.T. 285 (Mad.)***
- (ii) Transworld Shipping Services Pvt. Ltd. vs. GOI (2018) 361 E.L.T. 176 (Mad.)***
- (iii) State of Punjab & Anr. vs. Bhatinda District Co-operative Milk Producers Union Ltd. (2007) 217 E.L.T. 325 (S.C.)***
- (iv) J.Sheik Parith vs. Commissioner of Customs (2020) 374 E.L.T. 15 (Mad.)***
- (v) Sunder Systems Pvt. Ltd. vs. UOI (2020) 33 G.S.T.L. 621 (Del.)***
- (vi) Lanvin Synthetics Pvt. Ltd. vs. UOI (2015) 322 E.L.T. 429 (Bom.)***
- (vii) Parle International Ltd. vs. UOI (2020) 11 TMI 842 (Bom.)***
- (viii) Hindustan Lever Ltd. vs. UOI (2011) 264 E.L.T. 173 (Bom.)***
- (ix) Universal Generics vs. UOI (1993) 68 E.L.T. 27 (Bom.)***
- (x) Cambata Indus Pvt. Ltd. vs. Addl. Director of Enforcement, Mumbai (2010) 254 E.L.T. 268 (Bom.)***

5. On the other hand, learned counsel for the respondents submitted



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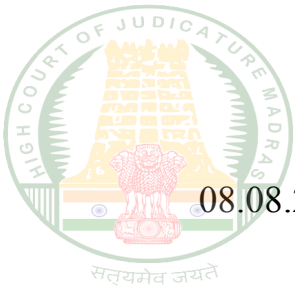


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that there is no delay in the proceedings as the case was referred to the call-book as early as on 08.04.2011. It is submitted that the decision was subsequently taken by the Board in its letter bearing reference F.No.206/01/21-CX.6 dated 19.05.2021, wherein, it has been stated that none of the Action Taken Notes included in Annexure B of the said circular was pending with Comptroller and Auditor General, apart from the cases mentioned in Annexure I annexed to the letter dated 19.05.2021 and has directed that all show-cause notices pertaining to all audit objections as per Annexure B of the said circular may be taken up for adjudication as per the procedure prescribed in Paragraph No.5 r/w. Paragraph No.6.1 of the said circular. It is therefore submitted that it is not open for the petitioner to state that there is a delay in adjudication of the show-cause notices.

5.1. That apart, it is submitted that against the decision of the Gujarat High Court in the case of ***Siddhi Vinayak*** (*supra*), the Department has preferred an appeal before the Hon'ble Supreme Court in SLP(C) No.18214 of 2017, wherein, the Hon'ble Supreme Court has observed that in the light of the monetary restrictions, the Department could not proceed with the SLP in terms of Circular No.17/2019 (F. No. 279/Misc. 142/2007-ITJ(Pt.)) dated

11/18



08.08.2019.

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5.2. It is submitted that the Hon'ble Supreme Court has categorically restrained the Department from proceeding further with the cases relating to challenge to the proceedings, where the cases were transferred to the call-book and that the case can be referred back to the Department to await for the further decision of the Hon'ble Supreme Court of India on the challenge to the show-cause notice proceedings on account of transfer to the show-cause noticee call-book.

5.3. That apart, the learned counsel for the respondent drew the attention of this Court to yet another decision rendered by the Hon'ble Supreme Court in ***Commissioner, GST and Central Excise, Commissionerate – II & Ors. vs. Swati Menthol and Allied Chemicals Ltd. & Anr. (2023) SCC Online SC 1566***, wherein, the Hon'ble Supreme Court has interfered with the order passed by the Punjab and Haryana High Court dated 17.05.2021, whereby, the proceedings in two show-cause notices dated 02.03.2010 and 06.05.2010 were closed, demanding tax for



W.P.Nos.2489 & 2496 of 20__

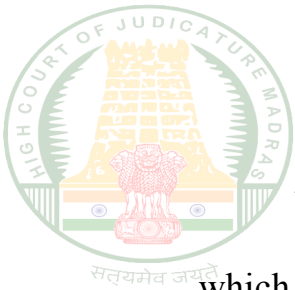


the period between April, 2005 to March, 2009 and during April, 2009 to February, 2010.

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5.4. It is submitted that the decision of the Delhi High Court, which was referred to by the learned counsel for the petitioner in *M/s.VOS Technologies India Pvt. Ltd. (supra)*, the Delhi High Court has also refrained from dealing with the issue relating to the challenge to the show-cause proceedings pursuant to the transfer of show-cause notices to the call-book. Instead, the Court has referred to other decisions and concluded that there was a delay in adjudication and therefore, the proposals in the show-cause notices were dropped.

6. I have heard the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents and I have also perused the Show Cause Notices, Affidavit, Counter Affidavits & various Case Laws cited by learned counsel on either side.



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7. There are several circulars, which have been issued by the Board which have enjoined the Department to adjudicate the show-cause notice proceedings as expeditiously as possible. A reference is made to the following schemes:

- i. Circular No.20/92-CX.6; dated 21.12.1992.
- ii. F.No.275/17/2015-CX.8A; dated 11.03.2015.
- iii. Circular No.1053/02/2017-CX; dated 10.03.2017.
- iv. Circular No.732/48/2003-CX; dated 05.08.2003.

8. That apart, there are earlier schemes referring cases to call-book has been referred to in Circular no.1023/11/2016-CX, dated 08.04.2016. In paragraph 6.1, it has been stated as under:

“6.1. All audit objections relating to Central excise and Service tax issued prior to 1-3-2014 shall be compared with the pending Action Taken Notes (ATNs), received from the office of CAG, enclosed as Annexure B with the Circular. For Customs, the list shall be separately issued. Show Cause Notices (SCNs) relating to audit objections figuring in the list should not be adjudicated and further action may be taken on them in consultation with the Commissioner (PAC). The rest of the objections stand finally vetted by CAG Audit with no further comments which means that the reply of the department has been accepted by the CAG office. SCNs relating to these objections may be taken up for adjudication on merit, including those in the call-book, following the procedure prescribed in paragraph 5.”

9. The decisions cited by the learned counsel for the petitioner, particularly, that of this Court indicate that the delay in adjudication of

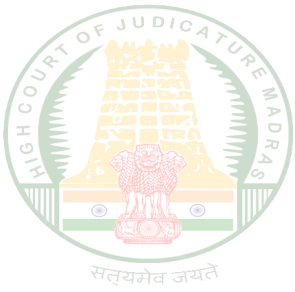


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show cause proceedings has to result in abatement of the aforesaid proceedings. In this case, the Show Cause Notices were issued in the year 2008. Now, more than 17 years have lapsed.

10. In the case of **J.Sheik Parith** referred to supra, this Court has held that where the period of more than 8 years had lapsed from the issuance of show cause notice and there was no proper or justifiable explanation from the Revenue for the delay in their adjudication, show cause proceedings have to abate.

11. In the present case also there are no justifiable reasons forthcoming from the Revenue for the delay in adjudication of the show cause proceedings. Thus, the continuation of show cause proceedings long after their issuance have to be held to be arbitrary and offending under Article 14 of the Constitution of India. Therefore, these writ petitions are deserve to be allowed in view of the overwhelming body of decisions of various Courts holding that the proceedings initiated long before cannot be continued after efflux of time.



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12. I do not wish to take any contrary view although it is a well settled principle of law that equity and tax are strangers and equitable considerations are not to be invoked in tax matters.

13. Though really no prejudice can be said to have been caused to the petitioner on account of the transfer of the case to the Call Book and delay in adjudication of the Show Cause proceedings. Nevertheless, in view of the overwhelming body of decisions of the Courts including that of this Court, these writ petitions deserve to be allowed.

14. Accordingly, these Writ Petitions are allowed and the Show Cause Notices dated 29.09.2008 & 05.11.2008 impugned in these writ petitions are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.05.2025

kkd/drm/mrr

Index : Yes/No

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Neutral Citation: Yes/No

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Speaking Order (or) Non-Speaking Order

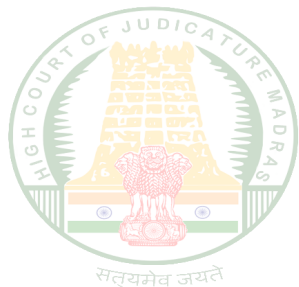
To

- 1.The Joint Commissioner of GST and Central Excise,
Chennai – III, Commissionerate,
135, Mahatma Gandhi Road,
Chennai – 600 034.
- 2.The Assistant Commissioner of GST and Central Excise,
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130B, Mudichur Road, Tambaram,
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C.SARAVANAN, J.



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09.05.2025