

  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 13738/2024

M/s Hero Motocorp Limited, Having Its Office At Plot No. 101 -103, 104 -107, 108 -109, Delhi Jaipur Highway, Industrial Area Phase II, Neemrana, Alwar, Rajasthan - 301705, Through DGM Finance Mr. Mukesh Mishra.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Finance (Department Of Revenue), Having Its Address At Room No. 46, North Block, New Delhi.
2. The State Of Rajasthan, Through The Secretary, Department Of Commercial Taxes, Government Of Rajasthan, Secretariat, Jaipur, Rajasthan.
3. The Additional Commissioner (AE), CGST, Commissionerate, Alwar, A Block, Surya Nagar, Alwar, Rajasthan.
4. The Central Board of Indirect Taxes And Customs, North Block, Central Secretariat, New Delhi- 110001, Through Its Chairman.

----Respondents

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For Petitioner(s)	:	Mr. S. Ganesh, Senior Advocate assisted by Ms. Purvi Mathur, Advocate, Mr. Kushagra Sharma, Advocate & Mr. Devashish Marwah, Advocate (through VC)
For Respondent(s)	:	Mr. Sandeep Taneja, AAG with Ms. Kinjal Surana, Advocate Mr. Sandeep Pathak, Advocate with Mr. Palash Gupta, Advocate

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**HON'BLE MR. JUSTICE PANKAJ BHANDARI  
HON'BLE MR. JUSTICE GANESH RAM MEENA  
Order**

**27/08/2024**

1. The petitioner has filed this writ petition *inter alia* challenging the show-cause notice in Form GST DRC-01 dated 03.08.2024.

2. It is contended by learned Senior Advocate appearing for the petitioner that all the other manufacturers who are similarly situated to the petitioner have not been issued such show-cause notice. The petitioner and all other similarly situated manufacturers have been paying GST @18% since 2017, however, vide notice dated 03.08.2024, the respondents seek to levy GST @28%. It is contended that if the GST is levied @28%, the same would result in closure of the establishment of the petitioner-company, as its similarly situated counterparts would get the benefit. It is also contended that circulars have been issued by the Central Board of Indirect Taxes and Customs wherein, it is mandated that before issuing any show-cause notice if there is any change in the interpretation of some issue pertaining to the prevalent trade practice, the same would be referred to the Board. It is further contended that the show-cause notice has been issued without referring the matter to the Board as well as GST Council and without obtaining advance ruling.

3. Mr. Sandeep Pathak, learned counsel appearing on behalf of the respondents No.1, 3 and 4 has opposed the writ petition. It is contended that the show-cause notice cannot be challenged by way of writ petition. It is contended that the petitioner has right to file reply to the show-cause notice and any order passed, would have been passed after affording an opportunity of hearing to the petitioner under Sections 73, 74 and 75 of the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act'). Learned counsel for the respondents has placed reliance on the judgment passed in the case of *Union of India & Ors. Vs. Coastal Container Transporters Association & Ors.* : **(2019) 20 SCC 446** which was

the case under the Excise and Customs Act. It is contended that in the CGST Act also if any order is passed, appeal of the same lies to the Hon'ble Apex Court, which fact is not disputed by learned Senior Counsel appearing for the petitioner.

4. It is argued that show-cause notice cannot be made subject matter of the writ petition as held by the Division Bench of this Court in the case of *M/s. Global One Resources LLP Vs. Deputy Commissioner, SGST & Ors.: D.B. Civil Writ Petition No.18424/2022* decided on 17.01.2023.

5. We have considered the submissions.

6. The main grievance of the petitioner is that by issuing show-cause notice, the respondents want to levy GST @28% instead of prevalent GST @18%, which the petitioner and his counterparts have been paying since 2017. Such levy of additional 10% GST would result in payment of thousand crores of tax, which will seriously hamper the business of the petitioner-company.

7. We are of the considered view that merely because petitioner has been given notice and his counterparts have not been given notice, the same cannot said to be bad in law. We are also of the view that merely on issuing of the show-cause notice, writ jurisdiction cannot be invoked for the very reason that the petitioner has right to file reply to the show-cause notice and as per the CGST Act, they have a right to be heard before any order is passed on the show-cause notice. Further, any order passed by the authorities is appealable.

8. In view of the above, we find no force in the writ petition and the same deserves to be and is accordingly, dismissed.

9. However, the petitioner is free to file reply to the representations and the respondents are required to act in accordance with law while dealing the representations.

(GANESH RAM MEENA),J

(PANKAJ BHANDARI),J

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