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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5001 OF 2025

Mr.Amit Manilal Haria & Ors.

.. Petitioners

Versus

The Joint Commissioner of CGST & CE & Ors.

.. Respondents

**Mr.Abhishek Rastogi a/w Mr.Manish Rastogi a/w Ms.Pooja Rastogi
a/w Ms.Meenal Songire a/w Ms.Aarya More, Advocates for the
Petitioners.**

**Mr.Ram Ochani a/w Mr.Umesh Gupta i/b Ms.Sangeeta Yadav,
Advocates for the Respondents.**

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: APRIL 16, 2025

P. C.

1. The above Writ Petition *inter alia* challenges the Order dated 1st February 2025 to the extent it has been issued to the Petitioners. By the impugned Order, a penalty of approx. Rs.133 crores has been demanded from the three Petitioners before us. Petitioner No.1 is the Chief Financial Officer of M/s.Shemaroo Entertainment Limited, Petitioner No.2 is the Chief Executive Officer and Director of the said M/s.Shemaroo Entertainment Limited and Petitioner No.3 is the Joint Managing Director of the said

M/s.Shemaroo Entertainment Limited. According to the Petitioners, the impugned Order is challenged on three main grounds, amongst others, which are as under:-

a. That the liability is foisted on the Petitioners by virtue of the provisions of Section 122 (1A) which was brought into force from 1st January 2021. However, the show cause notice proposed to impose penalty on the Petitioners for the period starting from July 2017 to March 2022. According to the Petitioners, assuming everything to be correct, no penalty could have been demanded for any period prior to 1st January 2021, as the said provision is prospective in nature.

b. That in any event, the impugned Order goes beyond the show cause notice inasmuch as the show cause notice relates to the period from July 2017 to March 2022, but the impugned Order relates to the period July 2017 to July 2023. In other words, the impugned Order goes beyond the show cause notice.

c. That in any event, for Section 122 (1A) to apply, the Petitioners have to be taxable persons, and who have retained

the benefit of a transaction covered under clauses (i), (ii), (vii) or (ix) of sub-section (1) of Section 122, and at whose instance such transaction was conducted. According to the Petitioners, in the present case, the Petitioners are not taxable persons and in law could never retain any benefit of any transaction covered under the aforesaid clauses.

2. According to the Petitioners, one of the issues involved in the present Petition is *no longer res integra* and is squarely covered by a decision of another Division Bench of this Court in the case of ***Shantanu Sanjay Hundekari vs. Union of India, [2024(89) G.S.T.L. 62 (BOM)]***.

3. The learned Advocate appearing on behalf of the Revenue sought time to file an Affidavit in Reply to the above Writ Petition. Acceding to the request of the Revenue, we direct that the Affidavit in Reply shall be filed within a period of two weeks from today and a copy of the same shall be served on the Advocates for the Petitioners. If the Petitioners wants to file any Affidavit in Rejoinder, they may do so within a period of one week from the date of service of the Affidavit in Reply on them.

4. We now place the above matter on 10th June 2025.

5. As far as ad-interim relief is concerned, we find that a prima facie case is made out for grant of ad-interim relief. Atleast prima facie, we find substance in the argument canvassed on behalf of the Petitioners. It is not in dispute that Section 122 (1A) was brought on the statute book only with effect from 1st January 2021 and yet penalty is sought to be imposed on the Petitioners for a period much prior thereto. Also, prima facie, we find that one of the issues raised in the present Petition is squarely covered by a decision of this Court in the case of ***Shantanu Sanjay Hundekari*** (supra).

6. In these circumstances, we find that a strong prima facie case is made out. We also find that the balance of convenience is in favour of the Petitioners. In these circumstances, there will be ad-interim relief in terms of prayer clause (f), which reads thus:

“(f) pending the hearing and final disposal of this Petition, the Respondents by themselves, their officers, subordinates, servants and agents be directed:

i. Not to act on or in consequence of the Impugned Order dated 01.02.2025 [Exhibit- 'A'] to the extent it has been passed against the Petitioners;

ii. Not to take any coercive steps in any manner, in consequence of, or in relation to the Impugned Order dated 01.02.2025 [Exhibit- 'A'] to the extent it has been passed against the Petitioners.”

7. Stand over to 10th June 2025.

8. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]