



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.468 OF 2021

CMA - CGM Agencies (India) Pvt. Ltd.
(Formerly Known As APL (India) Pvt. Ltd) ...Petitioner

Versus

The Union of India,
Ministry of Finance,
Through The Secretary,
Dept. of Revenue & Anr. ...Respondents

Mr. Prasad Paranjpe for the Petitioner.

Mr. Ram Ochani for the Respondents.

CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.

DATE : 21st AUGUST, 2023.

Oral Order (Per Jitendra Jain, J)

. Rule made returnable forthwith. Respondents waives service. By consent of the parties heard finally.

2. This petition is filed under Article 226 of the Constitution of India praying for the following substantial relief:-

“(a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner’s case and after going into the validity and legality thereof to quash and set aside the (i) Show Cause Notice No.185/2010 dated 15.04.2010; (ii) Show

Cause Notice No.97/2011 dated 01.04.2011; and (iii) Show Cause Notice No.408/2011 dated 05.10.2011 [Exhibit "A to C"], pending for adjudication before the Respondent No.2, due to incordinate delay of almost 10 years in their adjudication;"

3. **Narrative of the relevant events :-**

- (i) The Petitioner is engaged in the business of managing and distribution of logistics for export and import of goods.
- (ii) Prior to 9th September 2010, the Petitioner was operating under the Decentralised Service Tax Registration. However, on the Petitioner's application, the Respondents granted Centralised Registration for all its operations at Mumbai w.e.f. 9th September 2010.
- (iii) Respondents issued three show cause notices for demanding service tax on container detention charges, repair and maintenance of containers and incentives received from CFS. The details of the show cause notices and replies filed as under:-

T A B L E

Sr. No.	SCN Date	Period	Date of reply
1.	15.04.2010	April 2007 to November 2009	14.05.2010
2.	01.04.2011	December 2009 to March 2010	04.06.2011

3.	05.10.2011	April 2010 to March 2011	30.11.2011
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(iv) Meanwhile, on 28th November 2011, the case records of the Petitioner with respect to various show cause notices including the three show cause notices assailed in the present petition were transferred from the Commissioner of Service Tax, Chennai to the Commissioner of Service Tax, Mumbai.

(v) The Respondents after almost 10 years from the date of aforesaid show cause notices that is on 23rd December 2020 and 8th January 2021 issued a notice for personal hearing for adjudication of the aforesaid three show cause notices.

(vi) It is on the above backdrop that the Petitioner has filed the present petition on 20th January 2021 praying for the reliefs reproduced hereinabove.

4. **Submissions of the Petitioner:** The Petitioner contended that the revenue has not taken any action since 2010 for completion of the adjudication proceedings initiated by issuing various show cause notices referred to above. The Petitioner submits that such a long delay in completing the adjudication proceedings is contrary to the scheme of the Service tax Act. The Petitioner further contended that they are seriously prejudiced to

attend the adjudication proceedings at such a belated stage. The Petitioner further contended that on an identical issue in their own case in Writ Petition no.1313 of 2021 and the judgment dated 25th July 2023 in the case of **Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.**¹, this court has quashed the show cause notice which was pending adjudication for almost 10 years.

5. **Submission of the Respondents:** The Respondents have contended that personal hearing was granted on 4th August 2015 vide Letter F. No.V-Adj./ST-II/APL(I)/15-178/2011 dated 23rd July 2015 issued by the Adjudication Section of Service Tax-VII, Mumbai Commissionerate. However, the Petitioner did not attend the hearing. The Petitioner further stated that Show Cause Notice No.408/2009 dated 18th September 2009 was transferred to the call book case on 26th July 2016 pending outcome of the CESTAT Mumbai Order in the case of Greenwich Meridian Logistics (India) Pvt. Ltd. The Respondents, therefore, contended that they did not proceed to adjudicate impugned show cause notices since 2000, on identical issue other show cause notices were kept in call book. The Respondents further contended that personal hearing was also fixed on 18th September 2017 and 8th January 2021, which the Petitioner did not attend. The Respondents,

1 Writ Petition No.4082 of 2022

therefore, contended that the petition be dismissed because the Petitioner has not attended the hearing and the revenue should be permitted to proceed with the show cause notices.

6. **Rejoinder of the Petitioner:** In reply to the Respondents, the Petitioner in the rejoinder contended that they have not received any notice of personal hearing which is alleged to have been fixed on 4th August 2015 and 18th September 2017. The Respondents have not produced any proof of service of such notice of hearing and furthermore the reference number referred to in the reply of the revenue does not match with the reference number of the original show cause notice. The Petitioner further contended that nothing prevented the Respondents from proceeding with the adjudication proceedings ex-parte, if the case of the Respondents is to be accepted that the Petitioner did not attend the personal hearing. The Petitioner also submitted that no proof of service of notice of 2015 and 2017 have been produced even pursuant to the RTI application made to the Respondents.

7. **Analysis:** We have heard learned counsel for the Petitioner and Respondents and with the assistance of the parties have perused the records of the petition.

8. In our view, the Respondents have not explained the delay as to why after issuing notices in 2010/2011, they could not

complete the adjudication proceedings for a period of almost 10 years. The Respondents have not furnished any proof of the notice of personal hearing, alleged to have been, granted in the year 2015 and 2017 except making an averment in the affidavit-in-reply nor pursuant to RTI application proof of service of these notices were furnished to the Petitioner. The Respondents were not prevented to complete the adjudication proceedings ex-parte if the Petitioner, as alleged by the Respondents, did not attend the so called personal hearing granted in 2015 and 2017. There is no explanation provided by the Respondents explaining delay in adjudication.

9. Thus, in our view, the delay in completion of the adjudication proceedings for a period of almost 10 years cannot be attributed to the Petitioner and further in the absence of the delay having been explained by the Respondents, the impugned notices ought to be quashed.

10. In the context in hand, we may usefully refer to the decision of this Court in **Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.** (supra). In such decision, considering the relevant provisions of the Finance Act 1994, and the principles of law as laid down in several decisions in regard to the delayed adjudication of the show cause notice

namely in the decisions in *Sushitex Exports (India) Ltd. Vs. Union of India & Ors.*², *Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate*³ and *ATA Freight Line (I) Pvt. Ltd. Vs. Union of India & Ors.*⁴ the Court made the following observations :-

14. Insofar as the first issue is concerned, we are required to note the provisions of Section 73(1) and Section 73(4B), which reads thus:

“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 whose limitation is specified as eighteen months 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).

15. Considering the plain consequences, Section 73(4B)(a) and (b) would bring about, it would be an obligation on the Central Excise Officer to determine the amount of service tax due under sub-section (2), within six months from the date of notice or within a period of 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). Thus, the statute itself prescribes for such period within which the service tax would be required to be determined. Sub-section (1) of Section 73 would also be relevant when it restricts the liability to service tax, to the period of five years under the situations falling below the proviso to sub-section (4) in cases of fraud, collusion, willful mis-statement, suppression of facts, contravention of any of the provisions of Chapter V of the Finance Act, 1994.

2 2022 SCC Online Bom. 191

3 2022 (382) E.L.T. 206 (Bom.)

4 Writ Petition No.3671 of 2022

16. We are thus of the opinion that there has to be a holistic approach and reading of the provisions of Section 73, when it concerns the obligation and repository of the power to be exercised by the concerned officer to recover service tax, in adjudicating any show cause notice, issued against an assessee considering the *raison d'être* of the provision. It is hence expected that the approach and expectation from the officer adjudicating the show cause notice would be to strictly adhere to the timelines prescribed by provisions of the Act, as there is a definite purpose and intention of the legislature to prescribe such time limits, either under Section 73(4B) of six months and one year respectively or of five years under Section 73(1).

17. In our opinion, in the facts of the present case, such requirement and obligation the law would mandate is completely overlooked by the officer responsible for adjudicating the show cause notice. We are not shown any provision, which in any manner would permit any authority to condone such inordinate delay on the part of the adjudicating officer to adjudicate show cause notice. There can be none, as the legislature has clearly intended to avoid uncertainty, which otherwise can emerge. Thus, what would become applicable are the settled principles of law as laid down in catena of judgments, that the period within which such adjudication should happen is as mandated by law and in any case it needs to be done within a reasonable period from the issuance of the show cause notice. Further, whether such period is a reasonable period would depend upon the facts and circumstances of each case.

18. An inordinate delay is seriously prejudicial to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show cause notice, and that too keeping the same pending for such a long period itself is not what is conducive.

19. It is well said that time and tide wait for none. It cannot be overlooked that the pendency of show cause notice not only weighs against the legal rights and interest of the assessee, but also, in a given situation, it may adversely affect the interest of the revenue, if prompt adjudication of the show cause notice is not undertaken, the reason being a lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication.

20. We are also of the clear opinion that a substantial delay and inaction on the part of the department to adjudicate the

show cause notice would seriously nullify the noticee's rights causing irreparable harm and prejudice to the noticee. A protracted administrative delay would not only prejudicially affect but also defeat substantive rights of the noticee. In certain circumstances, even a short delay can be intolerable not only to the department but also to the noticee. In such cases, the measure and test of delay would be required to be considered in the facts of the case. This would however not mean that an egregions delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgment of a right of appeal, which the assessee may have. Thus, for all these reasons, delay in adjudication of show cause notice would amount to denying fairness, judiciousness, non-arbitrariness and fulfillment of an expectation of meaningfully applying the principles of natural justice. We are also of the clear opinion that arbitrary and capricious administrative behaviour in adjudication of show cause notice would be an antithesis to the norms of a lawful, fair and effective quasi judicial adjudication. In our opinion, these are also the principles which are implicit in the latin maxim "lex dilationes abhorret", i.e., law abhors delay.

21.

25.

26. We are also not inclined to accept the contention of Mr. Adik that the department be permitted to adjudicate the show cause notice, by referring to the order dated 10 July, 2023 passed by the Supreme Court in the case of Commissioner, GST and Central Excise, Commissionerate II (supra). In our opinion, the directions as made in such order are required to be read in the facts and circumstances of the case before the Court. It also cannot be said that any concrete proposition of law has been laid down in the said order to the effect that even if there exists a gross, unjustifiable and inordinate delay in adjudication of the show cause notice, the Revenue could nonetheless proceed to adjudicate the same. Mr. Adik would also fairly submit that such position in law cannot be derived from such decision. Also the judgment of a co-ordinate Bench of this Court in case of Oil and Natural Gas Corporation Limited (supra) would not assist the revenue, inasmuch as the said decision has not considered the views expressed in the different decisions, which we have noted hereinabove, as the same is rendered purely in the facts and circumstances as set out in paragraphs 8 and 9 of the said judgment.

27. In the light of the above discussion, we are inclined to allow this petition and the same is allowed in terms of prayer clause (a)."

11. The above observations are applicable in the facts of the present case as it cannot be expected that oblivious to the above position in law as also the mandate of Section 73(4B) of the CGST Act, the adjudicating officer would nonetheless proceed to adjudicate the show-cause notice.

12. The Petitioner is also justified in relying upon the decision of the Coordinate Bench of this court in Writ Petition No.1313 of 2021 in its own case where on a similar facts, the show cause notices were quashed on the ground of delay in adjudication of the show cause notices.

13. In the light of the above discussion, we are inclined to allow this petition and the same is allowed in terms of prayer clause (a). No order as to costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]