

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12780 OF 2016

1. Premier Ltd.
(formerly known as The Premier
Automobiles Ltd.), a Company
incorporated under the Companies
Act, 1956, 58, Nariman Bhavan,
Nariman Point, Mumbai-400 021.
2. Maitreya V. Doshi,
Chairman and Managing Director of
Petitioner No.1, Indian Inhabitant
having his office at 58, Nariman
Bhavan, Nariman Point,
Mumbai-400 021.

.... Petitioners

- Versus -

1. The Union of India
through the Secretary,
Department of Revenue, Ministry
of Finance, Government of India.
2. The Commissioner of Central
Excise, Thane-I, having his office
at Navprabhat Chambers, IV
Floor, Ranade Road, Dadar (West),
Mumbai-400 028.
3. The Assistant Commissioner of
Central Excise, having his office
at Kalyan III Division of Thane-I
Commissionerate, 2nd Floor,
Aabha Building, Vali Peer Road,
Kalyan (West) – 421 301.

.... Respondents

Mr. Prakash Shah with Mr. Prasad Paranjpe & Mr. Jas Sanghavi i/by M/s. PDS Legal for the Petitioners.

Mr. Swapnil Bangur with Mr. Sham V. Walve for the Respondents.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : FEBRUARY 13, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.):

1. In this writ petition, the only relief that the petitioners seek is of a declaration that the proceedings pursuant to a Show Cause-cum-Demand Notice dated 22-7-1991, issued to them, be declared as *non est* and the Notice itself be quashed and set aside for it refuses to bind the petitioners after such an unexplained and enormous delay. The writ petition is filed on 11-11-2016 containing the above two declarations in prayer clauses (a) and (b).

2. We had on the earlier occasion issued notice on this petition with the understanding to the parties that it would be disposed of finally. Hence, we grant **rule**. The respondents waive

service. By consent, the writ petition stands disposed of in terms of this Judgment.

3. It is undisputed that the petitioners carry on business of manufacture of motor vehicles and parts thereof. They availed of what was then prevailing as modvat credit of duty paid on inputs. A classification list was filed. That list was processed and it was discovered that the petitioners have mis-declared certain goods and that is how they allegedly evaded central excise duty in the sum of Rs.32,31,366.25 for the period 1-7-1986 to 28-2-1988. Hence, a Show Cause Notice was issued in 1991.

4. It has not been adjudicated till date. Explanation for not adjudicating the same is sought to be provided in para 3(C) of the affidavit in reply which reads as under:-

“(C) A Personal Hearing fixed by the Commissioner on 15.10.1997 to decide the case. However, the assessee vide letter dated 08.10.1997 requested for Adjournment of the case. As requested by the assessee personal Hearing was re-fixed on 01.12.1997. Assessee filed written submission along with power of Attorney in favour of Matubai Jaitram on 01.12.1997 and also made further submissions on

08.12.1997. Meanwhile the SCN was transferred to Call Book being CERA objection was contested. During the review of call book cases it was observed that the objection of CERA was settled in the year 2008. However, a point was raised as to CERA has closed the Para or Ministry has admitted the objection and later on the Para was closed. This issue is still to be settled and therefore, the matter was continued to be kept in call book.”

5. We have carefully perused this paragraph and the explanation that is provided subsequently. Concededly, the Show Cause Notice is dated 22-7-1991. Even if we are to proceed on the footing that the assessee delayed the matter, what is evident from the affidavit in reply is that the assessee offered an explanation to the Show Cause Notice on 11-3-1992. From that day nothing was done and the records indicate that personal hearing was fixed by the Commissioner on 15-10-1997. The assessee may have requested for an adjournment of this hearing but the personal hearing then was refixed on 1-12-1997. The Revenue compounds the matter, when the assessee had already filed written submissions and further submissions in December, 1997 itself, by sitting over the files. We do not have any explanation provided for the lapse on the part of the

Revenue in not passing any orders though it was empowered in law to do so. It could have passed an order on the footing that the available material includes written submissions of the petitioner/assessee. The Revenue is aware of the proceedings and its pendency. Hence nothing prevented it from 1997 onwards and within a reasonable time to pass a final order. That has not been passed and what the petitioner/assessee apprehends is that it may be passed now and to cover up this lapse. The petitioner/assessee before us has filed this petition on the footing that an attempt is made to pass an order belatedly and we should not encourage it. If that is encouraged, there would be uncertainty and no predictability or end in sight to such proceedings. The petitioners had requested that they be provided with a copy of the Show Cause Notice because in their record nothing was available. They state that they cannot now attend the hearing in such a Show Cause Notice after 25 years. Nothing would be available including the records. The Superintendent proceeded to inform them that the Show Cause Notice would now be adjudicated. They would revive the same

and adjudicate it. Such notice being issued in the month of September and October, 2016 that the petitioners rushed to this Court.

6. The Division Benches of this Court have been consistently, in some matters or the other of this type, called upon to rule on this approach of the Revenue. The earliest decision that we have been shown is of a Division Bench of this Court in the case of *Hindustan Lever Limited Vs. Union of India* {Writ Petition No.2395 of 2006}, decided on 6-10-2010 and also reported in 2011 (24) S.T.R. 97 (Bom.).

7. Thereafter, a prior Judgment of this Court delivered way back in 1982 in the case of *Bhagwandas S. Tolani Vs. B.C. Aggarwal and Others*, reported in 1983 (12) E.L.T. 44 (Bom.), together with the Judgment in *Hindustan Lever Limited* (supra), was pointed out to another Division Bench of this Court to which one of us (Shri S.C. Dharmadhikari, J.) was a party. These Judgments have been consistently followed and the dictum applied in at least two further Judgments of this Court to

which one of us (Shri S.C. Dharmadhikari, J.) has been a party.

8. The entire compilation of the Judgments would denote as to how identical issues have been dealt with on prior occasions by this Court.

9. Though Mr. Bangur is aware of these Judgments, he would submit that the facts in this case are somewhat distinct. It is the assessee who is to be blamed for keeping the proceedings pending. The Revenue had made every attempt to adjudicate them, but for want of co-operation from the assessee. We must outline the difference between the power that the authorities possess and which has to be exercised coupled with a duty. Just as there is power to issue any Show Cause Notice, equally there is a duty to adjudicate it promptly. If one is interested in protecting the revenue and to subserve the larger public interest, then, expediency demands that once a Show Cause Notice is issued and duly served, reasonable opportunity has to be afforded to the assessee to reply to the same and/or to submit his/her explanation on merits. If such an opportunity is availed

of by the assessee and he/she duly inspects the record, then, the Revenue cannot be said to be acting unreasonably if it directs the assessee to get ready and argue the case. The Revenue would be justified in granting reasonable accommodation, but liberal adjournments do not serve any purpose but would rather defeat the public interest. The Revenue must understand that just as it is anxious to recover public money, the assessee is equally keen to face the consequences of legal proceedings. They do not wish to keep the proceedings lingering for they would want to concentrate on their business and not legal proceedings. It is a waste of their time as well. If an adjudication order is passed with reasonable expediency, even the assessee would arrange their affairs and in the event they are aggrieved, they would avail of the further remedies. Therefore, this is a power coupled with a duty and which the Revenue officials must realise. The earlier it is the better it would be for all concerned.

10. The second aspect which requires elaboration is, if the understanding of the Revenue is that it has to wait endlessly for the assessee to appear and make submissions, it is not the

assessee's right to delay the matter. There is no vested right in prolonging the proceedings and none can claim that the law permits this course. Adjournments may be sought frequently but they are not to be granted liberally. That gives impression that the Revenue is not interested in proceeding with the matter, or rather has a vested interest in assisting the assessee. In the case of *Sangram Singh Vs. Election Tribunal, Kotah and another*, reported in AIR 1955 SC 425, the Hon'ble Supreme Court was required to explain as to what is an *ex parte* order.

11. Therefore, once the assessee is given sufficient opportunity to remain present, to argue his case, either by himself or with the assistance of an Advocate, then, the Revenue would be justified, if the assessee is prolonging the matter and deliberately, to pass orders in his absence. These orders can be then passed on merits and none can complain that he was not aware of or was denied the opportunity to defend himself. The principles of natural justice are not codified. They only contemplate that opportunity to defend has to be granted in the event an adverse order having civil consequences has to be

passed. Therefore, the quasi-judicial authorities should realise that they need not be friendly or liberal with the assessee and to such an extent as would give an opportunity to the assessee to complain that the Show Cause Notice having been issued decades back, it cannot be adjudicated.

12. In the present case, we find that the petitioners' argument is that it is impossible for them to remember what was the issue and some decades back, what are the records on which it is based and how it is to be presented. Possibly all the records with them are destroyed or the units having been re-arranged, it is impossible for them to re-trace the records for want of staff and resources. In the circumstances, we do not think that the petitioners should be denied the relief.

13. We make the rule absolute by quashing the impugned Show Cause Notice. We declare that it cannot be adjudicated any longer. There will be no order as to costs.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)