IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12780 OF 2018

Raymond Limited .. Petitioner.
v/s.
The Union of India through
the Ministry of Finance and Anr. .. Respondents.

Ms. Ginita Bodani a/w. Mr.Gopal Mundhra I/b. Economic Laws Practice for the petitioner.
Mr. Pradeep S. Jetly a/w. Mr.Jitendra B. Mishra for the respondents.

CORAM: M.S.SANKLECHA, &
S.C.GUPTE, JJ.
DATE : 6th AUGUST, 2019.

P.C:-

1. By our order dated 3rd July, 2019, we had put the parties to notice that it is likely that the petition will be disposed of finally at the stage of admission. Today, when the petition is called out, the learned Counsel for the parties state that they are ready to make submissions for the final disposal of this petition. Therefore, this petition is taken up for final disposal at the stage of admission.

2. This petition under Article 226 of the Constitution of India, challenges the action of respondent No.2, the Commissioner CGST and

Central Excise Thane in seeking to revive six show cause notices dated 4th April, 2001, 18th September, 2001, 24th January, 2002, 24th June, 2002, 26th March, 2003 and 12th January, 2004 under the Central Excise Act, 1944 (the Act) by issuing notices for personal hearing in respect thereof on 26th June, 2018 and 11th July, 2018.

3. The grievance of the petitioner is that by issuing notices for personal hearing long after the impugned show-cause notices i.e. between 14 to 17 years of its issue and after 15 years of the last hearing in 2003 in respect of some of the impugned notices, is bad in law. This revival of abandoned show-cause notices long after the last hearing in 2003, causes prejudice to the petitioner as the relevant documents pertaining to the impugned notices were not available, so as to appropriately meet the charge in the impugned show-cause notices. It is, therefore, submitted as held by this Court that even in the absence of any time limit being provided in the statute, show-cause notices must be disposed of within reasonable time. This Court in ***Bhagwandas S. Tolani V/s. B.C. Agarwal and Ors., 1983(12) ELT 44 (Bom.), Premier Limited V/s. Union of India 2017 (354) ELT 365 (Bom)*** and ***Sanghvi Reconditioners Pvt. Ltd. V/s. Union of India*** (Writ Petition No.2585/2017 decided on 12/12/2017) held that holding adjudication, after a long delay after the

issuing of show-cause notices, is bad in law.

4. In response to the above, it is the case of the Revenue in its affidavit-in-reply that admittedly the show cause notices were issued to the petitioners during the period 2001 to 2004. These notices were issued on the basis of CERA objection (audit objection), which the Revenue contested with CERA Audit. Because of its objection, the Revenue had kept the show cause notices issued to the petitioner in the call book in the year 2001 (although show cause notices for the subsequent period were issued). It was only in September, 2011 that the respondents accepted the CERA's objection and consequently, the notices were retrieved from the call book on 24/09/2012. Thereafter, the officers of the Revenue realized that an identical issue in respect of petitioner's Bhopal and Indore Units were decided on 8th April, 2005 by the Tribunal and pending in Revenue Appeal before the Apex Court. Thus, the respondents decided to keep the impugned show cause notices again in the call book, awaiting the final decision of the Hon'ble Supreme Court, to which, Appeals had been filed by the Revenue from the order dated 8th April, 2005 of the Tribunal. This resulted in the impugned show cause notices being transferred to the call book again on 06/02/2013. It is the case of the Revenue that it was only after the Hon'ble Supreme Court

passed the final order in the Revenue's Appeal on 06/09/2017 that the impugned show cause notices were removed from the call book and the notices for personal hearing were issued to the petitioners.

5. In the above facts, it is contended by Mr. Jetly, Learned Counsel appearing on behalf of the Revenue that the officers of the Revenue were obliged to keep the impugned show cause notices in the call book in terms of the CBEC circular No.162/73/95-CX dated 14/12/1995. The above circular provides that where similar matters are pending in Appeal before the appropriate Authority, then the subsequent notices should be kept in a call book and await the decision of the appropriate appellate authority. It is further submitted that the decision relied upon by the petitioners would have no application to the present facts for the reason that in this case, where after the show-cause notices were issued, the Revenue kept the show-cause notices in a call book for a valid reason in terms of CBEC circular. It is submitted that at no time did the Revenue inform the petitioner that the show-cause notices are being dropped, therefore, it was obligatory on the part of the petitioner to keep the papers and proceedings available till such time as the show cause notices were disposed of. Therefore, it is submitted that the facts in this case are different from the cases relied upon by the petitioner and cannot

be applied. In particular, attention was drawn to the decision of this Court in Sanghvi Reconditioners (supra) to submit that same is distinguishable on facts as in that case it was found that there was no justification for keeping the show cause notices in the call book. In this case viz. CERA audits and the pending appeal before the Hon'ble Supreme Court were justifiable reasons for keeping it in call book. Thus, the petition should be dismissed and the petitioner be directed to attend the hearing of the show-cause notices.

6. We specifically asked Mr. Jetly, Learned Counsel appearing for the Revenue, whether any intimation was given to the petitioners either in 2001 or in 2013 that the show cause notices are being kept in the call book and the reason for it i.e. awaiting a final decision in the CERA audit objection and / or the decision in the Apex Court in the appeal filed by the Revenue from the order of the Tribunal in case of petitioners' Indore and Bhopal Unit. Mr. Jetly very fairly states that no intimation of keeping the show-cause notices in the call book was given. Thus, the occasion to give any reasons for it being kept in the call book to the petitioner did not arise.

7. In the aforesaid facts, the issue that arises for our

consideration is whether in the present facts, commencement of adjudication proceedings after a long delay of 14 to 17 years is justified when the party in all these years has not been put to notice that the proceedings were kept in abeyance. In fact, this Court, in the case of Bhagwandas Tolani (Supra) decided as far back as 1982, has held that even if there is no time limit provided in the statute for adjudication proceeding, yet it is not permissible to commence adjudication proceeding after a long period of 10/15/20 years, particularly when the delay is not on account of any default on the part of the answering party. It further held that re-opening of an adjudication proceeding after a long time would cause serious prejudice to the parties, as in the meantime, the relevant records may have been misplaced, the persons who were in charge of the affairs relating to issue raised in the show cause notice may no longer be available. Further, in ***Cambata Industries Pvt.Ltd. V/s. Additional Dir. Of Enforcement, Mumbai (2010) 254 ELT 269 (Bom),*** this Court held that in absence of any fault on the part of the petitioners, it is not open to the Revenue to re-open proceedings after long delay without justifiable reasons. In ***Hindustan Liver Limited V/s. Union of India 264 ELT 173 (Bom)***, this Court has observed as under :-

> *"15. ……………..*
>
> *The weight of the judicial pronouncements lean in favour of quashing the proceedings, if there has been an undue delay in deciding the same. See Government of India V/s. The Citedal Fine Pharmaceuticals, Madras and Ors., 42 ELT 515 (S.C.) and the judgment of the Division Benches of this Court in Bhagwandas S. Tolani V/s. B.C. Aggarwal and Ors. Reported in 1983 (12) ELT 44 (Bom.) and Universal Generics Pvt. Ltd. V/s. Union of India reported in 1993 (68) ELT 27 (Bom.). The underlying principle laid down in the said judgments is that in absence of any period of limitation, it is required that every Authority is to exercise the power within a reasonable period."*

8. Further, this Court in the case of M/s. Sanghvi Re-conditioners (supra) had occasion to consider an identical submission as made before us by the Revenue i.e. show-cause notices had been kept in the call book as an identical challenge in case of another assessee was pending in the Hon'ble Supreme Court. This defence on the part of the Revenue was negatived by the Court. This on the ground that accepting such a stand on behalf of the Revenue would defeat the rule of law itself. In fact, the Court noted as under :-

> *"Secondly, we also omit totally from our consideration the complaint of the petitioner that in a matter as old as of 1999, if now the adjudication has to be held, it will be impossible for them to trace out all the records and equally, contact those officials who may not be in their service any longer. Thus, they would have no opportunity, much less reasonable and fair, to defend the proceedings. That is equally a balancing factor in the facts and circumstances of the present case."*

9. In the present facts, it is the case of the petitioner that because of long delay, papers and proceedings relevant to meet the show-cause notice are not available. Thus, seriously hampering the petitioners to appropriately meet the show cause notice. This delay in taking up the adjudication of the show-cause notice (in the absence of any fault on the part of the party complaining) is a facet of breach of principles of natural justice. It impinges on procedural fairness, in the absence of the party being put to notice that the show cause notices will be taken up for consideration, after some event and / or time, when it is not heard in a reasonable time. In the absence of the above, particularly as in this case, long delay has resulted in papers being misplaced. The reasonable period may vary for case to case. However, when the notices are being kept in abeyance (by keeping them in the call book as in this case), the Revenue

should keep the parties informed of the same. This serves two fold purpose - One it puts the party to notice that the show cause notice is still alive and is only kept in abeyance. Therefore, the party can then safeguard its evidence, till the show cause notice is taken up for adjudication. Secondly, if the notices are being kept in the call book for some reason, the party gets an opportunity to point out to the Revenue that the reasons for keeping it in call book are not correct and the notices could be adjudicated upon immediately. This is the transparent manner in which the State administration must function.

10. In fact, we note that the above manner of functioning is the objective of the State administration, as our attention has been drawn to the CBEC Circular No.1053 of 2017 dated 10/03/2017. In paragraph 9.4 of the above circular of CBEC has directed the officers of the department to formally communicate to the party that the notices which have been issued to them, are being transferred to the call book. This would be expected of the State even in the absence of the above circular; the circular only states the obvious. In this case, the show cause notices were kept in the call book not at the instance of petitioner, but by the Revenue of its own accord. After having kept it in the call book, no intimation /communication was sent by the Commissioner pointing out that the

show cause notices had been kept in the call book. Thus, bringing it to the notice of the petitioners that the show cause notices are still alive and would be subject to adjudication after the show cause notices are retrieved from the call book on the dispute which led to keeping it in the call book being resolved. This, admittedly has not been done by the Revenue in this case.

11. Therefore, it was reasonable for the petitioners to proceed on the basis that the department was not interested in prosecuting the show cause notices and had abandoned it. These proceedings are now being commenced after such a long gap, after having led the petitioner to reasonably expect that the proceedings are dropped. Therefore, even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the show-cause notices are not available with the petitioners.

12. In the above circumstances, the impugned show cause notices dated 4th April, 2001, 18th September, 2001, 24th January, 2002, 24th June, 2002, 26th March, 2003 and 12th January, 2004 under the Act and the consequent hearing notices dated 26/06/2018 and 11/07/2018 are quashed and set aside.

13. Petition is disposed of in above terms.

(S.C.GUPTE,J.) **(M.S.SANKLECHA,J.)**