HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.8243 of 2017

Date of Decision: 26.11.2019

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M/s Panacea Biotech Ltd. ... Petitioner

VS.

Union of India & Anr. ... Respondents

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CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

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Present: Mr. Jagmohan Bansal, Advocate for the petitioner

Mr. Sourabh Goel, Advocate for the respondents

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GIRISH AGNIHOTRI, J.

(1) The petitioner in this writ petition has prayed for issuance of a writ in the nature of *certiorari* quashing the show cause notice dated 08.02.2012 (P-1) on the ground of non-adjudication, even though a period of more than 5 years has expired from the date of impugned show cause notice (P1).

(2) The petitioner, namely, Panacea Biotech Ltd. (a public limited company) is engaged in the manufacturing and clearance of PP Medicaments having its permanent unit in Punjab i.e. at Lalru, SAS Nagar.

(3) Learned counsel for the petitioner on the basis of the pleadings in the writ petition, has contended that on 08.02.2012 (P1), a show cause notice was issued by the office of Commissioner, Central Excise Commissionerate, Chandigarh-II to the petitioner. The brief background as submitted in the writ petition is that the petitioner is availing CENVAT credit on various inputs, input services and capital goods. The respondents initiated an investigation and concluded that the petitioner has wrongly availed credit on various input services. Accordingly, a show cause notice raising demand of duty amounting to ₹ 1.29 crores was issued by the respondents. The positive case of the

petitioner is that the petitioner filed its reply to the said show cause notice on 13.04.2012 (P6), yet to-date no adjudication order has been passed.

(4) In the writ petition, the petitioner has made averments regarding various communications between the petitioner and the respondents some of them have also been appended. However, for the sake of brevity, reference *in extenso* is not being made to all the documents.

(5) The petitioner is stated to have written a letter dated 07.05.2014 (P9) to the Commissioner, Central Excise Commissionerate, Chandigarh. In this letter, reference was made to previous hearings, submission of written submissions and supplementary reply. It was then specifically submitted that even though a period of two years is over by now since the hearing took place in the matter, the adjudication order has not been received so far. It is submitted that the company's statutory Auditors are pressing hard for the fate of the liability. Accordingly, a request was made to the authorities to provide a copy of the adjudication order, if passed.

(6) This letter dated 07.05.2014 (P9) was duly acknowledged by the office of Commissioner, Central Excise Commissionerate, Chandigarh vide letter dated 26.05.2014 (P10). In this letter, by making reference to the letter of the petitioner dated 07.05.2014, it was intimated that both the show cause notices, referred to above, are still pending adjudication as the same have been placed in the "Call Book" category. The pleaded case of the petitioner then further is to the effect that at a later stage, the petitioner then even apprised the Department that it would not be appropriate to transfer and keep the case of the petitioner under Call Book category. The petitioner again vide letter dated 06.09.2016 (P17) brought to the notice of the authorities that the issue of transfer of cases to Call Book category has been examined by the Hon'ble

Gujarat High Court in the case titled as ***M/s Styrolution ABS (India) Ltd. vs. Union of India, 2016(338) ELT 678 (Guj)***.

(7) With *inter alia* the above pleaded facts, the petitioner has filed the present writ petition by making a grievance that the petitioner filed reply to the show cause notice well within time. It is submitted that the matter was finally heard on 09.05.2012. It is also submitted that more than 5 years have expired but till date adjudication order has not been passed. The amount of duty involved is ₹ 1.29 crores and that the petitioner being a public limited company has no option but to show in the balance-sheet.

(8) Heard learned counsel for the parties and gone through the record.

(9) The petitioner has relied upon the judgment of this Court in ***CWP No.10530 of 2017 (M/s GPI Textiles Ltd. Vs. UOI & Ors.)*** decided on 02.08.2018 wherein the show cause notice was set aside on the ground of delay. We find that, concededly, the said case involved same/similar issue as involved in the present case. The Division Bench has taken the following view:-

> *"13. Similar issue was considered by Gujarat High Court in M/s Siddhi Vinayak Syntex Private Limited's case (supra). Judgments of different High Courts were referred to and it was summed up that delay in conclusion of proceedings pursuant to show cause notices after a long gap without proper explanation, is unlawful and arbitrary. The Court further examined the fact as to whether transfer of proceedings to call book in view of circular dated 14.12.1995 can be said to be a reasonable explanation. The opinion expressed was that the mandate of law cannot be diluted by issuing circular especially when there is no power to issue such directions regarding transfer of cases to call book. Relevant paras 23 and 24 thereof are extracted below:-*
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> > *"23. Insofar as the show cause notice in the instant case is concerned, the same has been issued under section 11A of the Act. Proceedings under section 11A of the Act are adjudicatory*

proceedings and the authority which decides the same is a quasi-judicial authority. Such proceedings are strictly governed by the statutory provisions. Section 11A of the Act as it stood at the relevant time when the show cause notice came to be issued, provided for issuance of notice within six months from the relevant date in ordinary cases and within five years in case where the extended period of limitation is invoked. Section 11A thereafter has been amended from time to time and in the year 2011, various amendments came to be made in the section including insertion of sub-section (11) which provides that the Central Excise Officer shall determine the amount of duty of excise under sub-section (10) - (a) within six months from the date of notice where it is possible to do so, in respect of cases falling under 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 sub- section (4) or sub-section (5).

24. Thus, with effect from the year 2011 a time limit has been prescribed for determining the amount of duty of excise where it is possible. It cannot be gainsaid that when the legislature prescribes a time limit, it is incumbent upon the authority to abide by the same. While it is true that the legislature has provided for such abiding by the time limit where it is possible to do so, sub-section (11) of section 11A of the Act gives an indication as to the legislative intent, namely that as far as may be possible the amount of duty should be determined within the above time frame, viz. six months from the date of the notice in respect of cases falling under sub- section (1) and one year from the date of the notice in respect of cases falling under sub-section (4) or sub-section (5). When the legislature has used the expression "where it is possible to do so", it means that if in the ordinary course it is possible to determine the amount of duty within the specified time frame, it should be so done. The legislature has wisely not prescribed a time limit and has specified such time limit where it is possible to do so, for the reason that the adjudicating authority for several reasons may not be in a position to decide the matter within the specified time frame, namely, a large number of witnesses may have to be examined, the record of the case may be very bulky, huge workload, non-availability of an *officer, etc. which are genuine reasons for not being able to determine the amount of duty within the stipulated time frame. However, when a matter is consigned to the call book and kept in cold storage for years together, it is not on account of it not being possible for the authority to decide the case, but on grounds which are extraneous to the proceedings. In the opinion of this court, when the legislature in its wisdom has prescribed a particular time limit, the C.B.E. & C. has no power or authority to extend such time limit for years on end merely to await a decision in another case. The adjudicatory authority is required to decide each case as it comes, unless restrained by an order of a higher forum. This court is of the view that the concept of call book created by the C. B. E. & C., which provides for transferring pending cases to the call book, is contrary to the statutory mandate, namely, that the adjudicating authority is required to determine the duty within the time frame specified by the legislature as far as possible. Moreover, as discussed hereinabove, there is no power vested in the C. B. E. & C. to issue such instructions under any statutory provision, inasmuch as, neither section 37B of the Central Excise Act nor Rule 31 of the rules, envisage issuance of such directions. The concept of call book is, therefore, contrary to the provisions of the Central Excise Act and such instructions are beyond the scope of the authority of the C. B. E. & C. Transferring matters to the call book being contrary to the provisions of law, the explanation put forth by the respondents for the delay in concluding the proceedings pursuant to the show cause notice 3.8.1998 cannot be said to be a plausible explanation for not adjudicating upon the show cause notice within a reasonable time. In view of the settled legal position, as propounded by various High Courts, with which this court is in full agreement, the revival of proceedings after a long gap of ten to fifteen years without disclosing any reason for the delay, would be unlawful and arbitrary and would vitiate the entire proceedings."*

14. In the aforesaid case, Gujarat High Court had set aside the order passed after a long delay in pursuance to the show cause notice issued.

15. The judgment of Gujarat High Court was challenged by the revenue before Hon'ble the Supreme Court by filing Special Leave Petition (C) No.

18214 of 2017 – Union of India and others vs M/s Siddhi Vinayak Syntex Private Limited, in which notice has been issued only to the extent as to whether Circular No. 162/73/95-CX dated 14.12.1995, issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, is in conformity/ authorized by the provisions of Section 37-B of the Central Excise Act, 1944. The order on merit has been upheld vide order dated 28.7.2017.

16. The view expressed in M/s Siddhi Vinayak Syntex Private Limited's case (supra) was subsequently followed by Gujarat High Court in Parimal Textiles' case (supra), where again belated order passed after issuing show cause notice, was set aside.

17. Section 11A(11) of the Act provides that Cental Excise Officer shall determine the amount of duty within six months in case notice has been under Sub-section 1 thereof, whereas in the case of fraud, collusion, etc., the period prescribed is one year. No doubt, the words 'where it is possible to do so' have been used, however, that will not stretch the period to decades as is in the cases in hand.

18. In Bhatinda District Co-op. Milk P. Union Limited's case (supra), Hon'ble the Supreme Court upheld a Division Bench judgment of this Court where opinion expressed was that where no period of limitation is provided for exercise of any power, any notice issued more than five years thereafter was held to be unreasonable.

19. For the reasons mentioned above, we find that the notices in the present cases having been issued more than decade back and the proceedings having not been concluded within reasonable time, the same deserves to be quashed."

(10) In view of the facts, grounds, law and our above findings noticed above, we are of the considered opinion that the present writ petition deserves to be allowed in the same terms as ***GPI Textiles Ltd.*** (supra). Accordingly, it is directed that:-

(i) the writ petition is allowed by applying the same *ratio* as laid down by this Court in ***GPI Textiles Ltd***. (supra);

(ii) show cause notice dated 08.02.2012 (P-1) is quashed;

(iii) the petitioner shall be entitled to all consequential benefits.

(iv) No order as to costs.

26.11.2019 **(Jaswant Singh)** **(Girish Agnihotri)**
vvishal **Judge** **Judge**

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*