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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8675/2017 & C.M.No.35634/2017

SUNDER SYSTEM PVT. LTD. ..... Petitioner

Through Mr.J.K.Mittal with Mrs.Vandana Mittal, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Vinod Diwakar, CGSC with Mr.Abhishek Bhati, Advocate for R-1/UOI.
Mr.Harpreet Singh, Sr.Standing Counsel with Mr.Arunesh Sharma and Mr.Ankit Singh, Advocates for R-2 & 3.

% Date of Decision: 17th December, 2019

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking quashing of the adjudication proceeding initiated by the impugned show-cause notice dated 25th November, 2011 and the hearing notice dated 09th August, 2017 as well as the subsequent corrigendum dated 20th September, 2017 primarily on the ground that the adjudication proceeding had become barred by limitation in view of the limitation period of one year for adjudication from the date of

the show-cause notice prescribed under Clause (b) of sub-section (4B) of Section 73 of the Finance Act, 1994. The petitioner also seeks refund of an amount of Rs.1,13,56,468/- along with interest from the date of deposit. During the pendency of the petition, respondent no.2 has issued the impugned corrigendum dated 20th September, 2017 for changing the jurisdiction of the respondent no.3 to the Central Tax Officer/respondent no.2, who according to the petitioner, is not an officer under the Finance Act.

2. From the written submissions filed by the Union of India (UOI), it is apparent that the petitioner had filed a reply dated 22nd February, 2012 to the show-cause notice dated 25th November, 2011 and for which, the hearing was conducted and concluded on 12th February, 2015, but no order was communicated to the petitioner. The relevant portion of the written submissions filed by respondent nos. 2 & 3 is reproduced hereinbelow:-

Date	*Event*
xxx	*xxx*
21.2.2012	*Reply to the SCN is filed by the petitioner.*
18.9.2014	*The file is re-assigned as per orders dated 14.8.2014 passed by the CC of C.Ex. & ST to CCE, Delhi-II for adjudication.*
16.1.2015	*Personal hearing notice is issued to the petitioner for hearing on 28.1.2015.* *The petitioner, however, requested for any adjournment and which request was allowed.*
3.2.2015	***Another PH notice is issued for hearing on 12.2.2015*** ***The hearing is attended by the counsel for the petitioner and matter is argued.***

13.2.2015	*The adjudicating authority writes to the previous authority seeking legible copy of RUD-III of SCN followed by reminders dated 24.3.2015 and 9.9.2015.*
21.2.2017	***There is a change of adjudicating authority and file is re-assigned to CST, Delhi-IV.***

xxx xxx xxx

B. That, as can be appreciated from the list of dates and events, it cannot be said that the respondent was sitting over the adjudication of the matter or that the matter was under cold storage. Regular hearings and correspondences were taking place and in fact, after the conclusion of hearing on 3.2.2015, the adjudicating authority writes to the predecessor authority requesting for supply of legible copies of certain documents only for the purposes of adjudicating the matter and soon thereafter, the GST regime ushered in and which led to a drastic change in the entire tax structure and also in the change of jurisdiction and adjudicating authorities all over the country."

(emphasis supplied)

3. Learned counsel for the petitioner submits that a limitation period of one year for adjudication of show-cause notice had been prescribed by the amendment made by the Finance (No.2) Act, 2014 w.e.f. 06th August, 2014 and the said limitation had been violated in the present case.

4. He points out that the Board had issued a Circular No.732/48/2003-CX., dated 05th August, 2003 directing that after the conclusion of personal hearing, it is necessary to communicate the decision immediately or at least one month from the date of the personal hearing. He also points out that the Board had issued instructions F.No.280/45/2015-CX.8A, dated 17th September, 2015 emphasising that all the adjudicating authorities are

directed to pass adjudicating order within the time limit prescribed.

5. He further submits that the Bombay High Court in ***Hindustan Lever Ltd. Vs. UOI, 2011 (24) STR 97 (Bom.)*** has held that if no time limit is prescribed for adjudication, it does not mean that proceedings initiated can be concluded at the sweet will and fancy of the department.

6. Though the respondents in the counter-affidavit have not controverted the facts stated in the writ petition, yet the respondents in the counter-affidavit have taken a stand that there is no provision prescribing a time limit for conducting adjudication proceedings.

7. Learned counsel for the respondents further states that in the present case, the delay is not inordinate inasmuch as the Courts have allowed writ petitions only when the delay has been more than ten years.

8. Keeping in view the aforesaid arguments, the short question that arises for consideration is the interpretation of Section 73(4B)(a)&(b) of the Finance Act, 1994. The said provision is reproduced hereinbelow:-

> *"**Section 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. –***
>
> *xxx xxx xxx*
>
> *(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 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 the proviso to sub-section (1) or the proviso to sub-section (4A)."*

9. A Coordinate Bench of this Court in the case of ***National Building Construction Co. Ltd. Vs. Union of India; 2019 (20) G.S.T.L. 515 (Del.)*** has held as under:-

> *"20. ....Sub-section 4B to Section 73 of the Fin Act fixes the time or limitation period within which the Central Excise Officer has to adjudicate and decide the show cause notice. The time period fixed under Clause A or B is six months and one year, respectively. Limitation period for passing of the adjudication order, described as Order-in-Original, starts from the date of notice under Sub-section 1 to Section 73 of the Fin Act."*

10. This Court is also of the view that, even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings. [See: ***State of Punjab Vs. Bhatinda District Coop. Milk P Union Ltd., (2007) 11 SCC 363; S.B. Gurbaksh Singh Vs. Union of India & Ors., 1976 (37) STC 425; Government of India Vs. The Citedal Fine Pharmaceuticals, Madras, AIR 1989 SC 1771; J.M. Baxi & Co. Vs. GOI, 2016 (336) E.L.T. 285 (Mad.)***]

11. Keeping in view the aforesaid mandate of law as well as sub-section (4B) of Section 73 of the Finance Act, 1994, this Court is of the view that a statutory authority has to decide the show-cause notice within the time prescribed wherever it is possible to do so.

12. In the present case, from the respondents' list of dates, it is apparent that it was certainly possible for the adjudicating authority to adjudicate upon the show-cause notice issued to the petitioner within a period of one year at least from the conclusion of arguments on 03rd February, 2015, if not earlier.

13. Since that has not been done, the present writ petition is liable to be allowed on the short ground of limitation alone.

14. Consequently, the present writ petition is allowed and show-cause

notice dated 25th November, 2011 is quashed. The respondents are directed to refund the aforesaid amount to the petitioner within four weeks.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 17, 2019
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