IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8486 OF 2021

Rapid Enterprises Pvt. Ltd. and Anr. ….Petitioners

V/s.

Union of India And Anr. …Respondents

Mr. Ashok Singh for Petitioner.
Mr. J.B. Mishra i/b Mr. Dhananjay B. Deshmukh for Respondents.

CORAM : K.R. SHRIRAM &
MILIND N. JADHAV, JJ.
DATED : 11th JULY, 2022

P.C. :

1. By consent taken up for hearing at the admission stage itself.

2. Petitioner is impugning an order dated 11th November 2020 passed by Respondent No.2 on various grounds, inter alia, (a) that Respondent No.2 has not considered the orders passed by the Additional Commissioner of Central Excise and Commissioner of Central Excise where they have taken a contrary view; and (b) the adjudication has been made more than 20 years after the show cause notices were issued and therefore, as held by various courts, these are stale notices. The adjudicator, Respondent No.2, should not have proceeded with adjudication.

3. Petitioner is engaged in the manufacture of electrical equipments and parts and holds Central Excise Registration under the Central Excise Act, 1944. Petitioner was paying on regular basis duty from CENVAT Account or from personal ledger account from time to time.

Petitioner was manufacturing junction boxes for voltage not exceeding 1000 Volts and blanking plates and module plates of various types and sizes. Those were classified under CSH 8536.90 and 8538 of the Central Excise Tariff Act, 1985. The products were sold under brand name 'Vinay Carol'. It is petitioner's case that its products were reputed.

4. Petitioner received a show cause notice dated 4th May 2000 proposing recovery of Central Excise duty of Rs.4,16,125/- for the period 1st March 1998 to 15th January 1999 along with interest and was also called upon to show cause why penalty should not be imposed on petitioner for improper classification of its products and why the admissibility of SSI exemption under Notification No. 09/2000-CE dated 1st March 2000 should not be refused.

5. Petitioner filed reply for the above mentioned show cause notice and availed personal hearing. The Additional Commissioner, Central Excise & Customs, Surat II by an order dated 20th December 2000 discharged the show cause notice dated 4th May 2000. This order was also upheld by the First Appellate Authority, by an order dated 24th April 2002. As department did not take any further action petitioner states this order had attained finality. But Mr. Mishra states that appeal was preferred impugning this order before the tribunal but it was later withdrawn since the amount involved was below the threshold limit for continuing to prosecute the appeals.

6. In the meantime, petitioner received two further show cause notices dated 13th March 2000 and 4th May 2001 calling upon to show cause why central excise duty of Rs. 57,970/- and Rs.4,80,010/- should not be recovered. Petitioner filed reply vide their communication dated 20th September 2000 and 16th September 2002. In both these replies petitioner mentioned about the orders passed by the Additional Commissioner and upheld by the Commissioner of Appeals.

7. Almost 20 years nothing happened and one fine day petitioner received a notice dated 17th August 2020 from Respondent No.2 to attend personal hearing. In the notice for personal hearing there was reference to some earlier intimations and petitioner in its reply dated 14th August 2020, denied having received any such intimations. Be that as it may, petitioner took a stand that the show cause notices had become stale in as much as courts have time and again held that if show cause notices are not adjudicated for a long period of time they become stale on account of inordinate delay in adjudication. Petitioner referred to some of the judgments in its reply. Petitioner also attended a personal hearing and reiterated its stand. Thereafter, an order dated 11th November, 2020 came to be passed by the Assistant Commissioner of CGST & Central Excise which is impugned in this petition.

8. Mr. Mishra submitted that petitioner has also filed an appeal against this order and therefore, this court should not entertain the petition

but direct petitioner to persuade the appeal. In normal circumstances, we would have, perhaps, granted the submission made by Mr. Mishra but in this case we do not wish to. We are inclined to exercise our jurisdiction under Article 226 of the Constitution of India because it is a blatant case where petitioner may not get complete justice. The reason why we say this because in the impugned order Respondent No.2 has not dealt with the submissions of petitioner that contrary view has already been taken by the Additional Commissioner and the Commissioner (Appeal) who are both superior officers of Respondent No. 2. There is not even a whisper about these orders in the impugned order. Respondent No.2 has also not dealt with submissions of petitioner that the failure to adjudicate the show cause notices within reasonable time has rendered the show cause notices stale. Mr. Mishra submitted that the judgments that petitioner relied upon, were cases where adjudication order had not been passed but in this case adjudication order having been passed, the question of show cause notices becoming stale would not arise. We cannot accept these submissions of Mr.Mishra.

9. Mr. Singh tendered a compilation containing 16 judgments many passed by this court, some by the Hon'ble Madras High Court and one of the Hon'ble Apex Court. We would refer to one of them, i.e., ***Parle International Ltd. vs. Union of India***[1] where the court has held that delayed adjudication after more than a decade, defeats the very purpose of issuing

1 2021 (375) E.L.T. 633 (Bom.)

show cause notice. An assessee or a dealer or a taxable person must know where it stands after issuance of show cause notice and submission of reply. If for almost 20 years thereafter there is no response from the departmental authority, an assessee or a taxable person cannot be faulted for taking the view that its reply had been accepted and the authorities have given a quietus to the matter. Moreover, it is not respondent's case that it was petitioner's who were responsible for the delay. The delay occurred at the hands of respondents.

10. Paragraph nos. 18 to 23 reads as under :

> *18. Question for consideration is whether in the facts and circumstances of the case, such delayed adjudication of the show-cause notices would be just, proper and legal? Ancillary to the above question would be the question as to whether the order-in-original passed pursuant to such adjudication would be legally tenable? Further question which would arise for consideration is whether such an order passed after filing of the writ petition before the High Court questioning the inordinate delay in adjudication would stand the test of reasonableness and legality?*
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> *19. Way back in 1983, this Court in Bhagwan S. Tolani Vs. B. C. Agrawal, 1983 (12) ELT 44 examined an adjudication proceeding which was started after 11 years of issue of show-cause notice. It was held that a stale matter could not be allowed to be reopened, since to allow it to be reopened would cause serious detriment and prejudice to the petitioner. When the department had contended that there was no limitation in commencing adjudication proceedings, this Court held that if such contentions as to limitation were to be accepted, it would mean that the department can commence adjudication proceedings 10 years, 15 years or 20 years after the original show-cause notice was issued which could not be permitted. The position would have been different had there been any default on the part of the petitioner which contributed to the long delay. In such a case, petitioner would not be permitted to take advantage of his own wrong but that was not even the case of the department.*
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> *20. The above view of this Court has been consistently followed in subsequent cases. In Sanghavi Reconditioners Private Limited*

Vs. Union of India, 2018 (12) GSTL 290, a Division Bench of this Court examined a challenge to such delayed adjudication. In that case show-cause notice was issued on 28.03.2002 and after more than 15 years, notice of hearing was issued on 07.09.2017. On behalf of the respondents it was contended that the show-cause notice was kept dormant in a call book because of related litigation in the Supreme Court. Ultimately, after the litigation was over, the show-cause notice was retrieved from the call book and notice of personal hearing was issued. It was further contended that this was a procedural aspect and should not be a ground for setting aside adjudication proceedings. In the above backdrop this Court held as follows:-

> *"15. With the assistance of Mr. Raichandani and Mr.Jetly, we have perused the Petition and the annexures thereto. We have also perused the consistent view taken by this Court, based on which the judgment in the case of Lanvin Synthetics Private Ltd. (supra) was rendered. The obligation on the respondents to adjudicate the show-cause notices with expediency has been repeatedly emphasized. The decisions in the cases of Shirish Harshavadan Shah vs. Deputy Director, E.D., Mumbai [2010 (254) Excise Law Times 259] and Cambata Indus. Pvt. Ltd. Vs Additional Dir. Of Enforcement, Mumbai [2010 (254) Excise Law Times 269] underline as to how show-cause notices issued decades back cannot be allowed to be adjudicated by the Revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. The adjudication proceedings serve a definite purpose. The object is to secure and recover public revenue. The larger public interest therefore requires that the Revenue and its officials adjudicate the show-cause notices expeditiously and within a reasonable time. The term 'reasonable time' is flexible enough and would depend upon the facts and circumstances of each case. There is no rigidity or inflexibility, in the sense, a time is prescribed in the judgments of this Court and that is termed as reasonable. Thus, what would be a reasonable time depends upon the facts and circumstances of each case. Surely, a period of 13 years as was found in the case of Shirish Harshavadan Shah (supra) and equally long period in the case of Cambata Indus. Pvt. Ltd. (supra) was not termed as reasonable. This Court, relying upon the judgment of the Hon'ble Supreme Court in the case of Government of India vs Citedal Fine Pharmaceuticals Madras & Ors., reported in AIR 1989 SC 1771, held that in absence of any period of limitation, it is settled law that every authority should exercise the power within a reasonable period. What would be the reasonable period would depend upon the facts of each case and no hard and fast rule can be laid down in this behalf.*

16. In the case of Lanvin Synthetics Private Ltd. as well, the period of 17 long years was found to be entirely unreasonable. Concededly in the present case, the show-cause notice was issued on 28th March 2002. The petitioners forwarded their reply to the show-cause notice after receipt thereof on 14th September, 2002. Concededly, there was a hearing in the year 2004.

17. The first affidavit-in-reply filed in this Petition by the Assistant Commissioner of Customs does not dispute this factual position at all. All that it tries to impress upon the Court is the seriousness of the allegations and prays for an opportunity to adjudicate the issue even now. The affidavit emphasizes that the petitioner has voluntarily deposited a sum of Rs.3,33,37,598.92/-. That was duty liability calculated in the year 1999 and much before the issuance of the show-cause notice. It may be that the amount was not received in full and final settlement of the Department's demand. However, there was an equal obligation, once the show-cause notice was issued on 28th March, 2002, to have adjudicated it expeditiously. The reasons assigned from paragraph 14 onwards would indicate that there were personal hearings in relation to all the notices. There may be voluminous records and there may be number of persons who have allegedly violated the provisions of law. However, the affidavit proceeds to state that there was a personal hearing held on 25th March, 2004. A written brief was submitted by the petitioners and they relied upon the order of the CESTAT in the case of A.S. Moloobhoy & Sons (supra). However, the Revenue found that there were adjournments sought but in the meanwhile, the Department/Revenue challenged the judgment of the CESTAT in the case of A.S. Moloobhoy & Sons in the Supreme Court of India. Thereupon, all the matters were sent in the dormant list/call book. It may be a procedural aspect for the Department/Revenue. Unless and until the Revenue establishes that there is a law mandating taking cognizance of these procedural requirements or these procedural requirements have been engrafted into the applicable legislation so as to enable the Revenue/Department to seek extension of time, in writ jurisdiction, we are not obliged to take notice of these procedural delays at the end of the Revenue/Department. Accepting that case would defeat the rule of law itself. That would also result into taking cognizance of extraneous matters and basing our conclusion thereupon would then mean violating the principles laid down in the binding judgments of this Court and the Hon'ble Supreme Court. That the matters of present nature have to be concluded expeditiously and within a reasonable time.

We do not therefore find the explanation from paragraphs 14 to 18 of this affidavit to be enough for granting the Revenue an opportunity to now adjudicate the subject show-cause notice. We have not found from any of these averments and statements in the affidavit that there was a bar or embargo, much less in law for adjudicating the show-cause notice. This Court indulged the Revenue enough and by giving them an opportunity to file an additional affidavit. The additional affidavit as well, does not indicate as to why the Revenue took all these years, and after conclusion of the personal hearing in the year 2004, to pass the final order. Now allowing the Revenue to pass orders on the subject show-cause notice would mean we ignore the principle of law referred above. 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.

18. In the light of the above discussion, we are of the firm opinion that insofar as the petitioner before us is concerned, the Revenue/Department has not been able to justify its lapse in not adjudicating the show-cause notice issued on 28th March, 2002 for more than 15 years. There may be reasons enough for the Revenue to retain some matters like this in the call book, but those reasons do not find any support in law insofar as the present petitioner's case is concerned. Merely because there are number of such cases in the call book does not mean that we should not grant any relief to the petitioner before us."

21. Firstly, this Court held that a show-cause notice issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. Larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. What would be the reasonable period would depend upon the facts and circumstances of each case but certainly a period of 13 years cannot be termed as a reasonable period. Secondly, regarding keeping the show-cause notice in the dormant list or the call book, this Court held that such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. To accept such a contention would defeat the rule of law itself. Taking cognizance of *such an aspect would amount to giving credence to extraneous matters. In any case such a procedure internally adopted by the respondents is not binding on the Court.*

22. This position has been reiterated by this Court in Raymond Limited Vs. Union of India, 2019 (368) ELT 481 (Bombay). That was a case where show-cause notices were issued during the period 2001 to 2004. Adjudication proceedings were sought to be commenced after 14 to 17 years. Again the show-cause notices were kept in dormant list / call book, awaiting final decision in Central Excise Receipts Audit (CERA) audit objection. This Court after referring to various judicial pronouncements took the view that the weight of judicial pronouncements leaned in favour of quashing the proceedings if there had been an undue delay in deciding the same. In the absence of any period of limitation it is incumbent upon every authority to exercise the power of adjudication post issuance of show-cause notice within a reasonable period. This Court referred to the earlier decision in Sanghavi Reconditioners Private Limited (supra) and held that when the revenue keeps the show-cause notice in call book then it should inform the parties about the same. It serves two purposes - (1) it puts the party to notice that the show-cause notice is still alive and is only kept in abeyance. This would enable the party concerned to safeguard the evidence till the show-cause notice is taken up for adjudication; and (2) if the notices are kept in call book, the parties gets an opportunity to point out to the revenue that the reasons for keeping it in call book are not correct and that the notices should be adjudicated promptly. Thus, informing the parties about keeping the show-cause notice in call book would advance the cause of transparency in revenue administration. It was held as under:-

> *"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 purposes - 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 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 C.B.E. & C. Circular No.1053/2017-CX., dated 10-3-2017. In paragraph 9.4 of the above circular of C.B.E.&C. 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."

23. In the present case, it is evident that the delay in adjudication of the show-cause notices could not be attributed to the petitioner. The delay occurred at the hands of the respondents. For the reasons mentioned, respondents have kept the show-cause notices in the call book but without informing the petitioner. Upon thorough consideration of the matter, we are of the view that such delayed adjudication after more than a decade, defeats the very purpose of issuing show-cause notice. When a show-cause notice is issued to a party, it is expected that the same would be taken to its logical consequence within a reasonable period so that a finality is reached. A period of 13 years as in the present case certainly cannot be construed to be a reasonable period. Petitioner cannot be faulted for taking the view that respondents had decided not to proceed with the show-cause notices. An assessee or a dealer or a taxable person must know where it stands after issuance of show-cause notice and submission of reply. If for more than 10 years thereafter there is no response from the departmental authorities, it cannot be faulted for taking the view that its reply had been accepted and the authorities *have given a quietus to the matter. As has been rightly held by this Court in Raymond Limited (supra), such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained. Sudden resurrection of the show-cause notices after 13 years, therefore, cannot be justified.*

11. In this case, Respondent No.2 has conveniently failed and neglected to even refer to the orders passed by its superior officers where contrary view has been taken. Respondent No.2 has also conveniently not dealt with the submissions of petitioner that delayed adjudication defeats very purpose of issuing the show cause notices. We would be justified for taking a view that Respondent No.2 chose to not deal with these submissions of petitioner because it was inconvenient to Respondent No.2 and he could not have taken a view otherwise.

12. In our view, therefore, it makes no sense in making a party to pursue an appeal against order passed disposing show cause notices that were issued 20 years ago.

13. In the circumstances, we allow the petition in terms of prayer clause – (a) which reads as under :

(a) this Hon'ble Court may be pleased to issue Writ of Certiorari or any other appropriate Writ or direction to setting aside/quashing the impugned Order-in-Original No.DIV-III/ AC/DMN/05/2020-21 dated 11.11.2020 passed by the Respondent No.2.

14. Mr. Singh undertakes to withdraw the appeal already filed within two weeks from the date this order is uploaded. Undertaking accepted.

15. Petition disposed with no order as to costs.

(MILIND N. JADHAV, J.) **(K.R. SHRIRAM, J.)**