IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4246 OF 2022

Beico Industries Pvt Ltd.
Formerly known as (Beico Electrical
Insulation Pvt Ltd.) ….Petitioner

V/s.
The Union of India & Ors. …Respondents

Mr. Prakash Shah a/w Mr. Jas Sanghavi and Mr. Durgaprasad Poojary i/b PDS Legal for Petitioner
Mr. Jitendra Mishra a/w Ms Sangeeta Yadav for Respondents

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ
DATED : 19th AUGUST 2022

P.C. :

1 Petitioner, who is engaged in manufacturing electrical grade insulating papers and has a factory at Nashik, has approached this court for quashing 16 show cause notices in view of inordinate delay on the part of respondents in adjudicating the same. The earliest show cause notice is dated 10th October 1991 (31 years old) and the latest show cause notice is dated 4th April 1994 (28 years old). It is petitioner's case that the inordinate delay in not adjudicating the impugned show cause notices, is clearly in breach of principles of natural justice and contrary to law declared by this court, Apex Court and other High Courts.

2 At the relevant time, electrical grade insulating papers that petitioner was manufacturing, were classified under Chapter heading 48.11 of the Central Excise Tariff Act 1985. It was respondents' case that electrical grade

insulating papers that petitioner manufactured was classifiable under Chapter heading 85.46 of the first schedule to the Central Excise Tariff Act 1985.

3 Petitioner had received a notice dated 28th June 1989, calling upon to show cause as to why petitioner's product should not be classified as paper covered, coated laminated plastic attracting central excise duty @35% as per notification no.64/88 dated 1st March 1988 as amended by notification no.54/89 dated 1st March 1989. Petitioner by a letter dated 20th July 1989 replied to the show cause notice.

4 By an order dated 7th September 1989, the then Assistant Collector approved the classification list effective from 1st April 1989 under Rule 173B of the Central Excise Rules, 1944 without any modification. Later, the show cause notice issued came to be withdrawn. Petitioner was issued two further show cause notices dated 28th September 1990 and 7th February 1991, calling upon to show cause as to why the differential central excise duty on the product cleared by petitioner during March 1990 to August 1990 and September 1990 to January 1991, should not be recovered under Section 11A of the Central Excise Rules 1944.

5 By an order dated 18th June 1991, the then Assistant Collector ordered classification of petitioner's product under Chapter heading 85.46 and confirmed the demands made earlier. This order was impugned by petitioner in the appeal before the Collector of Central Excise and Customs (Appeals). The appeal was allowed by an order dated 7th September 1989

and 8th August 1991. While allowing the appeal, petitioner's submission that the product manufactured by petitioner should be classified under Chapter heading 48.11 with notification no.64/88 dated 1st March 1988 was upheld.

6 Aggrieved by this order, respondents preferred an appeal before the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi, which is now Customs Excise and Service Tax Appellate Tribunal (Tribunal). The Tribunal by an order dated 18th August 1998 allowed respondents' appeal and held that petitioner's product was classifiable under Chapter heading 85.46. Aggrieved by this order, petitioner approached the Apex Court and filed a Civil Appeal No.5819-5822 of 1998. By an order dated 10th May 1999, the Apex Court was pleased to set aside the order passed by the Tribunal and remanded the matters back to the Tribunal for considering the matter on merits in the light of notification bearing no.77/89 dated 1st March 1989. The remanded matters were never decided by the Tribunal. In 2019, when the Government of India introduced under the Finance (2) Act of 2019 Sabka Vishwas (Legacy Dispute Resolution) Scheme. Petitioner to put an end to its disputes, decided to take advantage of this scheme and settled the matter as regards the show cause notices which were subject matter of the appeals remanded by the Apex Court to the Tribunal.

7 In the meanwhile, between 1991 and 2020 nothing happened with regard to 16 show cause notices that has been referred to earlier in this order. There was total silence on the part of respondents. We have to of

course note that petitioner had shown cause to the 16 notices and those replies are referred to in paragraph 23 of the petition.

8 Out of the blue, petitioner received a letter dated 8th February 2022 from Superintendent GST and Central Excise, Nashik-II Division, informing petitioner that a personal hearing has been granted to petitioner at 11.30 a.m. on 25th February 2022 before respondent no.3. By its letter dated 23rd February 2022, petitioner informed the said Superintendent that due to non-availability of the related papers, it is very difficult for petitioner to attend the personal hearing on 25th February 2022 and requested for deferring the personal hearing and in the meanwhile requested to provide to petitioner copies of show cause notices and replies. The said show cause notices and replies were supplied by Superintendent by a letter dated 23rd February 2022. This was followed by another letter dated 3rd March 2022 from respondent no.3 informing petitioner that respondent no.3 would give a personal hearing at 11.30 Hr. on 7th April 2022. At this stage, petitioner approached this court for quashing the said show cause notices on various grounds including that delayed adjudication of those show cause notices is in breach of principles of natural justice and contrary to law laid down by the courts.

9 Mr. Shah submitted that petitioner was under the impression that department was not interested in prosecuting the show cause notices and had abandoned it. These proceedings according to Mr. Shah are now being commenced after such a long gap and after having let petitioner to

reasonably accept that the proceedings are dropped. Mr. Shah submitted that giving notice for hearing after a gap of almost 30 years is to catch petitioner by surprise and prejudice a fair trial as the documents relevant to the show cause notices are not available with petitioner. Mr. Shah submitted that even if respondents provided the copies of show cause notices and the replies filed by petitioner, still that would not help petitioner because nobody would even remember the facts of the case and the employees who were employed then have also left the organisation. Mr. Shah submitted that the show cause notices have to be quashed and set aside and relied upon the following 8 judgments in support of his case:

(1) Premier Ltd Vs. Union of India[1]

(2) Union of India Vs. Premier Ltd.[2]

(3) Raymond Ltd. Vs. Union of India[3]

(4) Parle International Ltd. Vs. Union of India[4]

(5) Sushitex Export India Ltd. & Ors Vs. Union of India & Anr.[5]

(6) The Bombay Dyeing & Manufacturing Company Ltd. Vs. Deputy Commissioner of CX, Div-IX, Mumbai Central GST Commissioner[6]

(7) Reliance Transport & Travel Pvt Ltd. Vs. Union of India & Ors.[7]

(8) Rachana Garments Pvt Ltd. Vs. Commissioner

1. 2017 (354) ELT 365 (Bom)
2. 2018 (360) ELT A181 (SC)
3. 2019 (368) ELT 481 (Bom)
4. 2021 (375) ELT 633
5. Bombay High Court - Writ petition (L) No.9641 of 2020 dated 14.01.2022
6. Bombay High Court - Writ Petition No.2874 of 2021 dated 14.02.2022
7. Bombay High Court - Writ petition no.6097 of 2020 dated 24.03.2022

of Customs (Preventive) New Custom, Mumbai[8]

10 In the affidavit in reply filed by respondent no.2 for respondents, the stand taken is that the Apex Court by its order dated 10th May 1999 had remanded the matters to Tribunal to consider the matters on merits in the light of notification no.77/89 dated 1st March 1989 and since the matter was pending before the Tribunal for a long time and respondents' enquiries with its departmental representative was not being responded, the show cause notices were transferred to call book in view of the case pending before the CESTAT. This is the only defence taken.

11 Mr. Mishra submitted that from time to time respondents were making enquiries with petitioner to know the status of the appeal that respondents had filed before the Tribunal and, therefore, petitioner should be deemed to be aware that 16 show cause notices were still alive and respondents were interested in prosecuting the show cause notices and have not abandoned it. Mr. Mishra also submitted that petitioner was intimated about the show cause notices being kept in call book.

12 We would, at the outset, state that we are not impressed with the stand taken by respondents and the submissions made by Mr. Mishra. As regards the intimation regarding the show cause notices being kept in call book, the only document annexed to the affidavit in reply is dated 14th October 2020, which is 29 years after the first show cause notice was issued and 26 years after the 16th show cause notice was issued. Moreover, the said intimation is totally silent as to when the show cause notices were

8. 2022 (8) TMI 345 (BOM)

transferred to the call book. Even in the affidavit in reply, respondent no.2 is secretive about the date on which the show cause notices were transferred to call book. Respondent no.2 simply states "the show cause notices were transferred to call book in view of case pending in CESTAT". Nothing prevented respondent no.2 from disclosing the date on which the notices were transferred to call book. We would agree with Mr. Shah's submission that the reason why the date is not mentioned was because if mentioned, it would perhaps indicate that transferring the show cause notices to the call book may have nothing to do with the case pending in CESTAT.

13 Moreover, the show cause notices issued were also restricted to classify petitioner's product under Chapter 85.46 of the first schedule to the Central Tariff Act, which had already been decided by the CESTAT and conceded by petitioner before the Apex Court. The only issue that was pending before the CESTAT on remand from the Supreme Court was to consider petitioner's case on merits in the light of notification no.77/89 dated 1st March 1989, which is not even referred to in the show cause notices. Moreover, this notification is also not reflected in the reply filed by petitioner to the show cause notices.

14 A very similar situation was considered by a Division Bench of this Court in *Raymond Ltd (Supra)*. There also, the grievance of petitioner was that by issuing show cause notices for personal hearing long after, (i.e., 14 to 17 years) the impugned show cause notices were issued, were bad in law. Petitioner had submitted that revival of abandoned show cause notices long

after they were issued would cause prejudice to petitioner. The stand of Revenue was similar to the stand taken in the case at hand. Revenue raised an identical issue that in respect of petitioner's Bhopal and Indore Units decided by the Tribunal matter was pending before the Apex Court and hence respondents decided to keep the impugned show cause notices in the call book, awaiting the final decision of the Apex Court. Revenue took a stand that it was only after the Apex Court passed its order that the impugned show cause notices were removed from the call book and the notices for personal hearing were issued to petitioner. In that case, the Revenue had given even the details on which dates the show cause notices were transferred to call book, unlike in the case at hand, where no details are provided. Still, this court set aside all those show cause notices by holding that respondents should have given intimation to petitioner of keeping the show cause notices in the call book and respondents should have also given to petitioner reasons for keeping the show cause notices in the call book. The Division Bench held, by not doing so, it hampered petitioner's case to appropriately meet the show cause notices because the delay in taking up adjudication of show cause notice primarily in the absence of any fault of the party complaining is a facet of breach of principles of natural justice and impinges on procedural fairness. The court held that revenue should have put petitioner's to notice that the show cause notices will be taken up for consideration after some event and/or time, when it is not possible to hear in a reasonable time. Paragraphs 3, 4, 6, 9, 10 and 11 read as under:

> *3. The grievance of the petitioner is that by issuing notices for personal hearing long after the impugned showcause 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 showcause 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 showcause notices. It is, therefore, submitted as held by this Court that even in the absence of any time limit being provided in the statute, showcause notices must be disposed of within reasonable time. ....*
>
> *4. .... Thereafter, the officers of the Revenue realized that an identical issue in respect of petitioner's Bhopal and Indore Units were decided on 8 th 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.*
>
> *xxxxxxxxxxxxxxxxxxxx*
>
> *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 showcause 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.*
>
> *xxxxxxxxxxxxxxxxxxxx*
>
> *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 showcause 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 showcause notices are not available with the petitioners.

15 Mr. Mishra submitted that petitioner had already replied to the show cause notice and had also attended the personal hearings and respondents should be granted liberty to conclude the proceedings. To this, in our view, it will be apposite to reproduce paragraphs 15 and 16 in *Sushitex Exports (India) Ltd.* (supra) and, it reads as under :-

> *"15. We are also not persuaded, at this distance of time, to agree with Mr. Jetly that the respondents should be granted liberty to conclude the proceedings. It is the petitioners who have approached the Court to have the impugned show-cause notice set aside. Had the petitioners not invoked the writ jurisdiction of this Court, the show-cause notice would have continued to gather dust. The petitioners, in such circumstances, cannot possibly be worse off for seeking a Constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings which, because of the inordinate delay in its conclusion, is most likely to work out prejudice to them.*
>
> *16. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. The State action in this case is such that arbitrariness is writ large, thereby incurring the wrath of such article. It is a settled principle of law that when there is violation of a Fundamental Right, no prejudice even is required to be demonstrated."*

We respectfully agree with the view expressed by the division bench of this Court in *Sushitex Exports (India) Ltd.* (supra).

16 After 31 years, petitioner having approached this Court impugning the show cause notice, cannot be made to suffer an order to facilitate conclusion of the proceedings which, because of the inordinate delay in its

conclusion, is most likely to work out prejudicial to them.

17 In our view, therefore, it would only be reasonable for petitioner to proceed on the basis that department was not interested in prosecuting the show cause notices and had abandoned it. If respondents wanted to keep the show cause notices alive, they should have strictly followed the instructions given in the CBE & C circular dated 10th March 2017 referred to in paragraph 10 of *Raymond Ltd.* (supra), where CBE & 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 circular only states the obvious because one would have expected the state even in the absence of such a circular, to formally issue such communication to a party. 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 respondent no.2 pointing out that the show cause notices had been kept in the call book. If only had been so communicated, petitioner would have been put to notice 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. Admittedly, this has not been done.

18 In the circumstances, impugned show cause notices; (i) V(85)15-219/ADJ/91 dated 10.10.1991, (ii) V(48)15-142/ADJ/92 dated 22.04.1992,

(iii) V(39)15-29/ADJ/92 dated 29.09.1993, (iv) V(3)15-81/ADJ/93 dated 26.02.1993, (v) V(39)15-429/ADJ/93 dated 27.11.1992, (vi) V(39)15-209/ ADJ/93 dated 22.06.1993, (vii) V(85)15-271/ADJ/94 dated 04.02.1994, (viii) V(48)15-319/ADJ/91 dated 19.11.1991, (ix) V(48)15-107/ADJ/93 dated 18.03.1993, (x) V(39)15-137/ADJ/93 dated 23.04.1993, (xi) V(39)15-247/ADJ/93 dated 26.08.1993, (xii) V(48)15-235/ADJ/92 dated 20.07.1992, (xiii) V(48)15-53/ADJ/92 dated 30.01.1992, (xiv) V(48)15-21/ADJ/93 dated 03.12.1993, (xv) V(48)15-18/ADJ/93 dated 29.01.1993, (xvi) V(85)15-66/ADJ/94 dated 04.04.1994, are hereby quashed and set aside.

19 Petition disposed with no order as to costs.

(A. S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**