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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7819 OF 2015**

Zodiac Clothing Co. Ltd.
Nyloc House,, 254, D-2,
Dr. Annie Besant Road,
Worli, Mumbai – 400030 … Petitioner

vs.

1. The Union of India
through the Ministry of Finance,
Department of Revenue, having
its office at Udyog Bhavan,
New Delhi – 110011

2. Commissioner of Central Excise,
Customs and Service tax, Daman,
3rd Floor, Adarshdham Building,
Opposite Old Town Police Station,
Vapi- Daman Road, Vapi – 396191, … Respondents
Gujarat

Mr. Rohan Shah a/w. Mr. Sabari Rajan, Mr. Aurup Dasgupta, Ms. Sonam Ghiya and Ms. Aishah Shekhani and Mr. Mohammed Anajwalla i/b. M/s. Jhangiani, Narula & Associates for the Petitioner.

Mr. Swapnil Bangur and Ms. Maya Mjumdar for the Respondents.

**CORAM : NITIN JAMDAR AND GAURI GODSE, JJ.**

**DATE : 16 DECEMBER 2022**

**Oral Judgment: (Per: Nitin Jamdar, J.)**

The Petitioner has sought to challenge the notice dated 8 April 2015 and 7 July 2015 issued pursuant to the show cause notice dated 7 July 1997. The principal ground of challenge is the gross delay and resultant prejudice to the Petitioner.

2. The Petitioner is a company incorporated under Companies Act, 1956. The Petitioner is a 100% export oriented company. The Petitioner received notice dated 7 July 1997 under Section 124 of the Customs Act, 1962. The show cause notice called upon the Petitioner to show cause as to why an amount of Rs. 13,69,60,000/- should not be recovered from the Petitioner under Section 12 read with Section 28 of the Customs Act, 1962 read with Notification No.13/81 dated 9 February 1981 for non fulfillment of conditions of the notification dated 9 February 1981 and 3 June 1997. The Petitioner was also called upon to explain why penalty should not be imposed on the Petitioner under Section 112 of the Customs Act, 1962.

3. The predecessor of the Petitioner, Metropolitan Trading Company had applied for setting up export oriented unit and was granted letter of permission on 8 September 1982. The requisite bond was furnished to the Custom Authorities on 20 May 1984 and the letter of permission was transferred in favour of the Petitioner which was approved by the concerned authority on 11 December

1984. The Petitioner commenced production as export oriented unit on 21 December 1984 and on 8 December 1988 the Petitioner was granted permission to import additional capital goods. Thereafter the show cause notice as above was received by the Petitioner.

4. The Petitioner replied to the show cause notice on 6 August 1997. Thereafter the Petitioner did not receive any further communication in regard to the show cause notice. Neither the proceeding pursuant to show cause notice dated 7 July 1997 were taken forward.

5. In the meanwhile a Final De-bonding Order for the Export Oriented Unit (EOU) was issued by the Development Commissioner, Kandla Free Trade Zone who had also issued letter that the Petitioner had achieved the necessary export obligation as mentioned in the letter dated 8 September 1998. These communications were issued on 8 September 1998 and 14 May 1999. The Petitioner received notice calling upon the Petitioner for personal hearing in respect of the show cause notice dated 7 July 1997 and hearing notices dated 8 April 2015 and 7 July 2015.

6. The Petitioner thereafter filed the present Petition challenging the notice issued to the Petitioner calling upon the Petitioner for personal hearing contending that the show cause notice issued

18 years ago was being given effect to. The Division Bench of this court while issuing Rule in this Petition on 25 January 2016 passed an interim order whereby the Respondents were restrained from acting in furtherance of the show cause notice dated 7 July 1997.

7. The question as on today therefore is, when the Petition has come up for hearing in 2022, whether the Petitioner can be subjected to further proceedings in furtherance of the show cause notice dated 7 July 1997 that is 25 years (including the period of interim order).

8. In support of his contention that gross delay without any justifiable reason in acting in furtherance of the show cause notice is not found to be legal and proper by this court on the count of administrative discipline and prejudice to the party. The learned counsel for the Petitioner relied upon series of decisions. These are :

(a) *Lanvin Synthetics Pvt. Ltd. and Anr. vs. The Union of India and Anr.*[1]

(b) *Bhagwandas S. Tolani vs. B.C. Aggarwal and Others*[2]

(c) *Cambata Indus Pvt. Ltd. vs. Additional Dir. of Enforcement, Mumbai*[3]

(d) *Government of India vs. Citedal Fine Pharmaceuticals*[4]

(e) *Universal Generics Pvt. Ltd. vs. Union of India*[5]

1 [2105 TIOL 1668 HC MUMCUS]
2 1983 (12) E.L.T.44 (Bom)
3 2010 (254) E.L.T. 269 (Bom)
4 1989 (42) E.L.T. 515 (S.C.)
5 1993 (68) E.LT. 27 (Bom)

This position is summarised in the case of *Eastern Agencies Aromatics (P) Ltd. vs. Union of India and Ors.*[6] Learned counsel for the Petitioner contends that in view of the settled law as enumerated in the above case, the show cause notice and the notice calling upon the petitioner for personal hearing requires to be quashed and set aside. Learned counsel for the Respondent relied upon affidavit in reply filed.

9. As regards the aspect of delay reply affidavit is filed by the Assistant Commissioner of Central Excise on 17 November 2015. After perusing the reply, the Division Bench has issued Rule and granted interim order. Thereafter no reply is filed. In the reply affidavit it is accepted that the file of the Petitioner was transferred to the Call book on 26 August 1998. It is stated that there was an Audit by the Comptroller and Auditor General of India and which issue was concluded on 26 March 2012 and therefore the case could not be adjudicated before 12 March 2012 and therefore there is no error in giving effect to the show cause notice and the Petitioner can contest the issue on merits.

10. Assertion of the Petitioner that the Petitioner was not informed that the file of the Petitioner was transferred to the call book has not been controverted. The position continued for 18 years. The fact situation where show cause notice has been transferred to the Call book and the noticee is not informed about the pendency for

6 Writ Petition (L) No. 30629 of 2022 dated 24 November 2022

an unreasonable period of time has been considered in various decisions. It has been held that not only it is necessary that the show cause notice should be taken to its logical end at the earliest as a matter of administrative discipline, but keeping the show cause in Call book without informing the notice for a long period of time causes severe prejudice, as the notice may act on the premise that the proceedings have been dropped and it is also likely that the record and proceedings are not available. In the present case the show cause notice was kept dormant and the notice for personal appearance was issued 18 years ago. The dicta as laid down is clearly applicable to the facts of the present case. There is no dispute and cannot be any dispute regarding the above position of law laid down in these decisions. The petition was admitted and Rule was issued, and thus, the position has continued for 25 years.

11. Writ Petition is accordingly allowed. Notice dated 8 April 2015 and 7 July 2015 calling the petitioner for personal hearing in consequence of show cause notice dated 7 July 1997 are quashed and set aside. The Respondents are restrained from enforcing the impugned show cause notice dated 7 July 1997.

12. Rule is made absolute in above terms. No costs.

**(GAURI GODSE, J.)** **(NITIN JAMDAR, J.)**