

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1194 OF 2022

CNH Industrial (India) Private Limited
Having registered office at
Level-4, Rectangle-1, D-4, District Center,
Commercial Complex, Saket,
New Delhi – 110 017.

Also having office address at :-

1601 III, 16th Floor, B Wing, The Capital,
Plot C – 70, G Block Road, Bandra Kurla Complex,
Bandra East, Mumbai 400 051.

... Petitioner

Versus

1. The Union of India,
through the Secretary, Ministry of Finance,
Department of Revenue, Aayakar Bhavan,
New Marine Lines, Mumbai – 400 023.
and Also at :-
The Union of India,
through the Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi – 110 001.

2. Commissioner of GST and Central Excise
Mumbai East Commissionerate,
9th Floor, Lotus Info Centre,
J. B. Marg, Near Parel Station,
Mumbai, Maharashtra – 400 012.

... Respondents

**WITH
WRIT PETITION (L) NO. 1068 OF 2021**

CNH Industrial (India) Private Limited
Having registered office at
Level-4, Rectangle-1, D-4, District Center,
Commercial Complex, Saket,
New Delhi – 110 017.

Also having office address at :-

B1-207, 2nd floor, Boomerang,
Chandivall Farm Road, Near Chandivall Studio,
Andheri (East), Mumbai – 400 072.
Maharashtra.

... Petitioner

Versus

1. The Union of India,
through the Secretary, Ministry of Finance,
Department of Revenue, Aayakar Bhavan,
New Marine Lines, Mumbai – 400 023.
and Also at :-
The Union of India,
through the Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi – 110 001.
2. Commissioner of GST and Central Excise
Mumbai East Commissionerate,
9th Floor, Lotus Info Centre,
J. B. Marg, Near Parel Station,
Mumbai, Maharashtra – 400 012.
3. Joint Commissioner of GST and Central Excise
Mumbai East Commissionerate,
9th Floor, Lotus Info Centre,
J. B. Marg, Near Parel Station,
Mumbai, Maharashtra – 400 012.
4. Additional Commissioner of GST and Central Excise
Mumbai East Commissionerate,
9th Floor, Lotus Info Centre,
J. B. Marg, Near Parel Station,
Mumbai, Maharashtra – 400 012.

... Respondents

Ms. Kanupriya Bhargava a/w Ms. Divya Bhardwaj and Mr. Aditya Narandar i/by
M/s. IRIS Legal for the Petitioner in both Writ Petitions.

Mr. Pradeep Jetly, Senior Advocate a/w Mr. P. S. Patkar for the Respondents in
WPL/1068/2021.

Mr. Mohamedali Chunawala for the Respondent No.2 in WP/1194/2022.

Mr. Swapnil Bangur a/w Mr. Ram Ochani for the Respondent No.2 in
WP/1194/2022.

**CORAM: R. D. DHANUKA AND
S. M. MODAK, JJ.**

**RESERVED ON : 28th FEBRUARY, 2022
PRONOUNCED ON : 24TH MARCH, 2022**

JUDGMENT (Per R.D. Dhanuka, J.) :-

. Rule. Mr. Mohamedali Chunawala, learned counsel for the respondent no.1 and Mr. Bangur, learned counsel for the respondent no.2 waives service. Mr. Jetly, learned Senior Counsel for the respondents in Writ Petition (L) No. 1068 of 2021 waives service. By consent of parties, both the petitions were heard together and are being disposed of by common order.

Facts in Writ Petition No. 1194 of 2022 :-

2. By Writ Petition No. 1194 of 2022 filed by the petitioner under Article 226 of the Constitution of India, the petitioner has prayed for a writ of certiorari for quashing and setting aside the Show Cause Notice F.No.V.Adj(30)/Kurla/CR-67/Commr/2005/M.II/409 dated 17th February, 2006 and seeks writ of prohibition to prohibit the respondents from adjudicating the said show cause notice against the petitioner.

3. Ms. Bhargava, learned counsel for the petitioner invited our attention to various show cause notices annexed to the petition and would submit that there was no communication from the respondents since 17th February, 2006 in respect of the said show cause notice and submits that the respondent ought to have adjudicated upon the said show cause notice expeditiously. The petitioner cannot be made to suffer because of the delay on the part of

the respondent no.2 in proceeding with the said show cause notice.

4. It is submitted that the petitioner was never informed about the objection raised by the department to the query raised by the office of the Comptroller and Accountant General nor was informed about the show cause notice allegedly having been transferred to call book. Learned counsel for the petitioner placed reliance on judgment of Gujarat High Court in case of *Apollo Tyres Ltd. v/s. Union of India, 2020 (372) E.L.T. 52 (Guj.)* and judgment of this Court delivered on 14th February, 2022 in case of *The Bombay Dyeing and Manufacturing Company Limited v/s. Deputy Commissioner of CGST & CX, Div-IX, Mumbai Central GST Commissioner* in Writ Petition No. 2874 of 2021.

5. Respondent No.2-Commissioner issued a show cause notice dated 17th February, 2006 to the CNH Industrial (India) Private Limited for recovery of Rs.6,52,64,433/- on the ground that the credit was alleged to have been wrongly availed on capital goods by the petitioner during the period between June 2001 to December 2001 and for demanding interest and penalty thereon.

6. On 18th June, 2008, the name of the said company i.e. 'Fiat India Private Limited' was changed to 'New Holland Fiat (India) Private

Limited'. On 12th August, 2016, the name of the said company i.e. 'New Holland Fiat (India) Private Limited' was changed to 'CNH Industrial (India) Private Limited'.

7. On 19th February, 2019, the Assistant Commissioner, Adjudication Section sent an intimation to the petitioner for personal hearing. On 3rd June, 2019, the petitioner requested the respondent no.2 to provide copies of all the documents relevant to the said show cause notice, as available on record from the files of the respondents, since there was no communication from the respondents, since the date of issuance of show cause notice till the date of said intimation dated 19th February, 2019. There was no response to the said letter addressed by the petitioner. The petitioner thus filed this petition.

8. Mr. Mohamedali Chunawala, learned counsel for the respondent no.1 and Mr. Bangur, learned counsel for the respondent no.2 submitted that the show cause notice was issued based on CERA objection raised in March 2003 on the issue of wrong availment of Cenvat Credit on Capital Goods without physical receipt thereof in their factory and seeking reversion of inadmissible Cenvat Credit. The said CERA objection was contested, however, with a view to safeguard the interest of the revenue. The show cause notice was issued on 17th February, 2006 and was transferred to call

book as per circular dated 14th December, 1995.

9. It is submitted that the Central Board of Excise & Customs vide letter dated 16th January, 2017 communicated that the audit had accepted the objection raised by the department and action be taken accordingly. The respondents accordingly removed the said show cause notice from the call book in the month of April 2017. However, due to implementation of Goods & Service Tax Act from 1st July, 2017, there was re-organisation of whole Central Excise department to Central Goods & Service Tax department and thus the files were transferred from one place to another and thus there was delay since 2017. He submits that there was no deliberate delay on the part of the respondents. There is no definite time limit prescribed for adjudication of show cause notice.

10. It is submitted that the petitioner was issued a letter on 19th February, 2019 for granting opportunity of personal hearing. The department had filed Special Leave Petition (Civil) No. 19492 of 2019 before the Hon'ble Supreme Court of India against order dated 10th January, 2019 passed by the Gujarat High Court in Special Civil Application No. 16157 of 2018 in the matter of ***Apollo Tyres Ltd. v/s. Union of India, 2020 (372) E.L.T. 52 (Guj.)*** wherein the Hon'ble Supreme Court has issued a notice. The said matter was tagged with more than 50 matters where the circular dated 14th

December, 1995 issued under Section 37B of the Central Excise Act, 1944 was being examined.

11. Learned counsel for the respondents invited our attention to the letter dated 16th January, 2017 from the Commissioner (PAC) to Chief Commissioner of Central Excise and other Authorities informing that the office of the Audit Comptroller and Accountant General vide letter dated 11th January, 2017 had settled six reports on various issues and have finally settled those issued by audit and there were no issues pending, which means the audit had accepted the reply of the department and accordingly action be taken.

REASONS & CONCLUSION IN WRIT PETITION NO.1194 OF 2022 :-

12. It is an admitted position that there was no communication received from the respondent no.2 by the petitioner for any date for personal hearing since 17th February, 2006 till 19th February, 2019. The petitioner was never informed by the respondents about the objection raised by the respondents to the query raised by the office of the Comptroller and Accountant General. The respondents also did not inform the petitioner that the said show cause notice was transferred to call book at any point of time.

13. A perusal of the letter dated 16th January, 2017 from the

Commissioner (PAC) to the Chief Commissioner of Central Excise and various other Authorities informing that the audit had accepted the reply of the department and action may be accordingly taken, does not indicate as to which issue covered by the show cause notice was pending before the audit. The petitioner was never informed about the said objection alleged to have been raised by the respondents before the office of the Comptroller and Accountant General.

14. There was thus gross delay of more than 12 years in adjudicating upon the said show cause notice dated 17th February, 2006.

15. This Court in case of *The Bombay Dyeing and Manufacturing Company Limited* (supra) after adverting to the various judgments of this Court has held that when a show-cause notice is issued to a party, it is expected that the same would be taken to its logical conclusion within a reasonable period so that a finality is reached. In this case, the show-cause notice has not been adjudicated upon for about 16 years. We have perused the affidavit-in-reply filed by the Respondent. In the affidavit-in-reply, the Respondents have not alleged that the Petitioner was informed about the show-cause notice having been kept in call book at any point of time.

16. If the Respondent would have informed the Petitioner about the said

show cause notice in the year 2005 itself, having been kept in call book, the Petitioner would have immediately applied for appropriate reliefs by filing the appropriate proceedings. It is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the Show-Cause Notice. The Respondent having issued the Show-Cause notice, it is their duty to take the said Show-Cause notice to its logical conclusion by adjudicating upon the said Show-Cause Notice within a reasonable period of time. In view of the gross delay on the part of the Respondent, the Petitioner cannot be made to suffer. The principles of law laid down by the Division Bench of this Court in the case of *The Bombay Dyeing and Manufacturing Company Limited* (supra) and judgments referred above apply to the facts of this case. We do not propose to take any different view in the matter. Hearing of show cause notice belatedly is in violation of principles of natural justice.

Facts in Writ Petition (L) No. 1068 of 2021 :-

17. By Writ Petition (L) No. 1068 of 2021 filed by the petitioner under Article 226 of the Constitution of India, the petitioner has prayed for writ of certiorari for quashing and setting aside the Show Cause Notices described in prayer clause (a) i.e. SCN No.V/Adj(30)/Kurla/Fiat/CR-125/JC/M-II/2007/57 dated 12th January, 2007, SCN No.V/Adj(30)/Kurla/CR-52/ADC/

M-II/07/704 dated 27th July, 2007, SCN No.V/Adj/Kurla/R-02/CR-66/Commr./2005/M-II/164 dated 18th January, 2006, SCN No.V/Adj(30)/Kurla/CR-49/Commr./2005/M-II/516 dated 28th September, 2005, SCN No.V/Adj/Ku/R-02/CR-11/2005/Comm./M-II/160 dated 29th April, 2005, SCN No.V/Adj/Ku/R-02/CR-177/2004/Comm./M-II/1066 dated 30th September, 2004 and SCN No.V/Adj/Ku/R-02/CR-9/2005/Comm./M-II/513 dated 25th April, 2005 and seeks writ of prohibition to prohibit the respondents from adjudicating the said show cause notices against the petitioner.

18. Ms. Bhargava, learned counsel for the petitioner invited our attention to various show cause notices annexed to the petition and would submit that in last more than 10 years, no notice was received from the respondent no.2 intimating the date of hearing pursuant to the said show cause notices, prior to 19th February, 2019.

19. It is submitted by the learned counsel that there was gross delay on the part of the respondent no.2 in proceeding with the show cause notices. Learned counsel placed reliance on the same judgments of this Court and would submit that at no point of time the petitioner was informed about the transfer of the show cause notices/files to call book. She submits that the judgment on issue decided by the Gujarat High Court in case of **Apollo Tyres Ltd.** (supra) and the Special Leave Petition (Civil) No. 19492 of 2019 were not

relevant for the purpose of transferring the show cause notices to call book. She submits that in any event, there was no communication to the petitioner about the transfer of such show cause notice to call book. The petitioner cannot be made to suffer because of the gross delay of more than 10 years on the part of the respondents in adjudicating upon the show cause notices.

20. On 12th January, 2007, the respondent no.2 issued a show cause notice alleging that the petitioner with the intent to evade payment of duty, failed to include advertisement expenses in the assessable value and thereby had contravened the provisions of Section 4(1)(a) of the Central Excise Act, 1944 read with Rule 6 of the Central Excise Valuation Rules, 2000 and for demanding penalty thereon. On 26th September, 2007, the petitioner replied to the said impugned notice. On 22nd November, 2007, the petitioner addressed a letter to the respondent no.3 stating that on the same issue, for the period from July 2000 to December 2005, the Central Excise and Service Tax Tribunal (for short 'CESTAT') had allowed the appeal filed by the petitioner by order dated 11th October, 2007 and requested the respondent no.3 to quash the proceedings.

21. On 27th July, 2007, 18th January, 2006, 28th September, 2005, 29th April, 2005, 30th September, 2004 and 25th April, 2005, the respondents issued six other show cause notices to the petitioner. All those show cause

notices were duly replied by the petitioner on 26th September, 2007, 25th August, 2006, 29th September, 2005 in respect of the 2nd, 3rd and 4th show notice. In respect of the remaining show cause notices, the petitioner applied for extension of time to file reply. Since, there was no communication from the respondent no.2 in respect of any of the show cause notices issued during the period between 2004-07, the petitioner filed this writ petition on 26th December, 2020. Respondents filed affidavit-in-reply notarized on 12th July, 2021.

22. Mr. Jetly, learned senior counsel for the respondents on the other hand submits that the said show cause notices were transferred to call book in view of the objections raised by the department before the Comptroller and Accountant General, which objections raised by the department were accepted by the audit only on 16th January, 2017. It is submitted that no prejudice would be caused to the petitioner, if the respondents are allowed to adjudicate upon those show cause notices at this stage.

23. Learned counsel for the petitioner in her rejoinder arguments submits that the arguments advanced by the learned senior counsel for the respondents is contrary to the catena of decisions of this Court. She tenders a compilation in support of her contention.

REASONS AND CONCLUSION IN WRIT PETITION (LODGING)
NO.1068 OF 2021 :-

24. A perusal of the record indicates that for more than 10 years there was no communication from the respondents to the petitioner about the objection alleged to have been raised by the respondents to the query raised by the Comptroller and Accountant General.

25. The other similar arguments which are raised in this Writ Petition are already dealt with in the earlier paragraphs of this judgment while dealing with the Writ Petition No.1194 of 2022. The reasons recorded therein apply to this petition also.

26. We therefore pass the following order in Writ Petition No.1194 of 2022 :-

- (a) The impugned Show Cause Notice bearing F.No.V.Adj(30)/Kurla/CR-67/Commr/2005/M.II/409 dated 17th February, 2006 is quashed and set aside.
- (b) Writ Petition is allowed in terms of prayer clause (a). Rule is made absolute accordingly. There shall be no order as to costs.
- (c) Parties to act on an authenticated copy of this order.

27. For the reasons recorded aforesaid, we pass the following order in Writ Petition (Lodging) No.1068 of 2021 :-

- (a) The impugned Show Cause Notices described in prayer clause

- (a) of the petition are quashed and set aside.
- (b) Writ Petition is allowed in terms of prayer clause (a). Rule is made absolute accordingly. There shall be no order as to costs.
- (c) Parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]

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