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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8923-2020(O&M)
Date of Decision:05.08.2022

JCBL Limited

..... Petitioner

versus

Principal Commissioner, Ludhiana
and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Amrinder Singh, Advocate for the petitioner.

Mr. Tajender K. Joshi, Senior Standing Counsel
for the respondents.

TEJINDER SINGH DHINDSA, J. (ORAL)

As per pleadings on record petitioner was engaged in fabricating the bodies on chassis received from manufacturers of chassis. After carrying out the activity of body building, petitioner was clearing the same as motor vehicles on payment of excise duty. Petitioner was also receiving chassis for fabrication of bodies from independent/private owners of the chassis. After manufacturing the bodies on such chassis, petitioner cleared such motor vehicles without payment of excise duty claiming exemption under Notification No. 06/2006-CE dated 01.03.2006. Revenue, however, was of the view that petitioner has wrongly availed of the exemption inasmuch as Cenvat Credit on the input consumed in the manufacture of bodies manufactured on duty paid chassis received from independent owners of the chassis had been taken and the vehicles so

manufactured had been cleared for payment of applicable central excise duty. Accordingly two show cause notices dated 04.09.2008 for the period 01.08.2007 to 31.10.2007 amounting to Rs. 1,62,99,205/- and the second dated 12.11.2008 for the period 01.11.2007 to 31.03.2008 amounting to Rs. 2,43,05,657/- were served.

Instant writ petition has been filed assailing the afore-noticed two show cause notices dated 04.09.2008 and 12.11.2008 at Annexures P-2 and P-3 respectively.

That apart it has been projected on behalf of the petitioner that during the pendency of the proceedings an amnesty scheme was announced i.e. Chapter V of the Finance (No.2) Act, 2019 provided a scheme known as Sabka Vishvas (Legacy Dispute Resolution) Scheme, 2019 (hereinafter to be referred as the 'SV Scheme'). The SV Scheme was brought into force w.e.f. 01.09.2019 by way of notification dated 21.08.2019 (Annexure P-6). For the purpose of settling the show cause notice(s), the notice should be pending adjudication on 30.06.2019. As the impugned show cause notices at Annexures P-2 and P-3 were pending adjudication as on 30.06.2019, petitioner in order to settle proceedings filed two declarations under Section 124(1)(a)(ii) of the SV Scheme both dated 23.12.2019. Petitioner treated the amount paid (by way of reversal of the Cenvat Credit) at the rate of 10% of the exempted goods under Rule 6 of the Credit Rules as an amount to be adjusted while calculating the total amount under the SV Scheme. The 2nd respondent i.e. the Designated Committee, Central Goods and Service Tax Commissionerate, Ludhiana disagreed with the petitioner's computation disallowing the deduction of the amount already paid by reversal of the Cenvat Credit under Rule 6 of the Credit Rules. It is the case of the

petitioner that the amounts already paid were liable to be adjusted while payment of 50% of the tax dues in terms of Section 124(2).

We have heard counsel for the parties and have perused the pleadings on record.

During the course of hearing learned counsel representing the petitioner has pressed for the alternate prayer of setting aside of the impugned show cause notices on the short ground of inordinate delay in adjudication of the same.

The issue as regards inordinate delay in adjudication of the show cause notices as per Section 11(A) of the Central Excise Act, 1944 came to be dealt with exhaustively by a Division Bench of this Court in **M/s Shree Baba Exports through proprietor Ms. Jyotsna Agarwal vs. Commissioner, GST & Central Excise, Commissionerate, Chandigarh and another (CWP No. 11860 of 2021)** decided on **15.03.2022**. In *M/s Shree Baba Exports (supra)* it was held as follows:-

“10. Section 11(A) of the Act reads as under :-

“Section 11A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.-

(1) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, for any reason, other than the reason of fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,-

(a) the Central Excise Officer shall, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been so levied or paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with duty may, before service of notice under clause (a), pay on the basis of,-

- (i) his own ascertainment of such duty; or*
- (ii) duty ascertained by the Central Excise Officer, the amount of duty along with interest payable thereon under section 11AA.*

(2) The person who has paid the duty under clause (b) of subsection (1), shall inform the Central Excise Officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty so paid or any penalty leviable under the provisions of this Act or the rules made thereunder.

(3) Where the Central Excise Officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, then, he shall proceed to issue the notice as provided for in clause (a) of that sub-section in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of one year shall be computed from the date of receipt of information under sub-section (2).

(4) Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

- (a) fraud; or*
- (b) collusion; or*
- (c) any wilful mis-statement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,*

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 11AA and a penalty equivalent to the duty specified in the notice.

((5) to (7) xx xx xx)

(7A) Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (4), the Central Excise Officer may, serve, subsequent to any notice or notices served under any of those sub-sections, as the case may be, a statement, containing the details of duty of central excise not levied or paid or short-levied or short-paid or erroneously refunded for the subsequent period, on the person chargeable to duty of central excise, then, service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1) or subsection (3) or sub-section (4) or subsection (5), subject to the condition that the grounds relied upon for the subsequent period are the same as are mentioned in the earlier notice or notices.

(8) Where the service of notice is stayed by an order of a court or tribunal, the period of such stay shall be excluded in computing the period of one year referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), as the case may be.

(9) Where any appellate authority or Tribunal or court concludes that the notice issued under sub-section (4) is not sustainable for the reason that the charges of fraud or collusion or any wilful mis-statement or suppression of facts or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty has not been established against the person to whom the notice was issued, the Central Excise Officer shall determine the duty of excise payable by such person for the period of one year, deeming as if the notice were issued under clause (a) of sub-section (1).

(10) The Central Excise Officer shall, after allowing the concerned person an opportunity of being heard, and after considering the representation, if any, made by such person, determine the amount of duty of excise due from such person not being in excess of the amount specified in the notice.

(11) The Central Excise Officer shall determine the amount of duty of excise under sub-section (10)-

(a) within six months from the date of notice where it is possible to do so in respect of cases falling under subsection (1);

(b) within one year from the date of notice, where it is

possible to do so, in respect of cases falling under subsection (4) or subsection (5).”
...”

11. *The Division Bench of this Court in CWP No.10530 of 2017 titled as 'M/s GPI Textiles Limited vs. Union of India and others' relying upon the view of the Gujarat High Court in the case of 'Siddhi Vinayak Syntex Private Limited vs Union of India', 2017 (352) E.L.T. 455' has held that :-*

“14. In the aforesaid case, Gujarat High Court had set aside the order passed after a long delay in pursuance to the show cause notice issued.

15. The judgment of Gujarat High Court was challenged by the revenue before Hon'ble the Supreme Court by filing Special Leave Petition (C) No. 18214 of 2017 – Union of India and others vs M/s Siddhi Vinayak Syntex Private Limited, in which notice has been issued only to the extent as to whether Circular No. 162/73/95-CX dated 14.12.1995, issued by the Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, is in conformity/ authorized by the provisions of Section 37-B of the Central Excise Act, 1944. The order on merit has been upheld vide order dated 28.7.2017.

16. The view expressed in M/s Siddhi Vinayak Syntex Private Limited's case (supra) was subsequently followed by Gujarat High Court in Parimal Textiles' case (supra), where again belated order passed after issuing show cause notice, was set aside.

17. Section 11A(11) of the Act provides that Central Excise Officer shall determine the amount of duty within six months in case notice has been under Sub-section 1 thereof, whereas in the case of fraud, collusion, etc., the period prescribed is one year. No doubt, the words 'where it is possible to do so'

have been used, however, that will not stretch the period to decades as is in the cases in hand.

18. In Bhatinda District Co-op. Milk P. Union Limited's case (supra), Hon'ble the Supreme Court upheld a Division Bench judgment of this Court where opinion expressed was that where no period of limitation is provided for exercise of any power, any notice issued more than five years thereafter was held to be unreasonable.

19. For the reasons mentioned above, we find that the notices in the present cases having been issued more than decade back and the proceedings having not been concluded within reasonable time, the same deserves to be quashed.”

*12. The Apex Court in '**Commissioner of Central Excise vs. Krishna Wax (P) Limited**', (2020) 12 SCC 572, while interpreting the same provision has held that -*

“10. The issuance of Show Cause Notice under Section 11-A also has some significance in the eye of the law. The day the Show Cause Notice is issued, becomes the reckoning date for various issues including the issue of limitation...”

13. Thus, it is clear that in Section 11-A(11), the legislature has prescribed a time limit. The Authority(s) are duty bound to abide the same. The expression “where it is possible to do so” does not mean that the time prescribed can be extended perpetually. The time limit cannot be taken to be directory except in a case where the Authority has a reason to offer as an explanation for extending the said time limit. In the present case, no explanation has been offered in the written statement which can be held to be a plausible explanation for not adjudicating upon the Show Cause Notice within the time prescribed.

14. So far as the pendency of appeals before Jammu &

Kashmir High Court are concerned admittedly the same were filed in 2018. No explanation has been offered in the written statement as to why the Show Cause Notice(s) issued in 2009/2010 could not be adjudicated prior to 2018. The Division Bench of this Court in CWP No.11990 of 2020 titled as 'M/s Mentha & Allied Products Ltd. through its Authorised Representative Satya Narain vs. Commissioner, Central Goods & Service Tax, Chandigarh' has already dealt with the aforesaid issue holding that :-

“ With regard to filing of the appeal before the Jammu & Kashmir High Court against order dated 28.08.2018 passed by CESTAT, Chandigarh pertaining to supplier of the petitioners (purchaser), it is held that it would have no bearing upon the findings recorded above, keeping in view the peculiar facts & circumstances of the case and law laid down referred to above. Moreover, the Jammu & Kashmir High Court has not granted any interim order in favour of the respondent(s)/ Revenue on the appeal filed after 1 ½ year of passing of order of the Tribunal in case of supplier (seller) of goods to the petitioner (purchasers).”

15. Thus, keeping in view the aforesaid position of law, the present writ petitions are allowed. Show Cause Notices Annexure P-1 (in all writ petitions) impugned in the present writ petitions, issued to the petitioners more than 11 years ago, are hereby quashed.

16. Ordered accordingly.

(AJAY TEWARI) (PANKAJ JAIN)
JUDGE JUDGE”

In the facts of the present case the impugned show cause notices were issued in the year 2008. The same have not been adjudicated upon and the only explanation coming forth in the written statement is that the matter

had been transferred to the Call Book as per CVIC guidelines issued from time to time. We find that no cogent basis or legal impediment has been offered which may be construed to be a plausible explanation for not adjudicating upon the show cause notices within the time prescribed.

In view of the above and by following the dictum laid down in M/s Shree Baba Exports case (supra) and such view having been affirmed by the Hon'ble Supreme Court in SLP (C) No.12376 of 2022 (Commissioner CGST and Central Excise & Anr. vs. M/s Shree Baba Exports) vide order dated 29.07.2022 the impugned show cause notices cannot sustain as there has been an inordinate delay in adjudication of the same.

Resultantly the show cause notices dated 04.09.2008 and 12.11.2008 at Annexures P-2 and P-3 issued to the petitioner in the year 2008 are hereby quashed.

Other issues raised in the writ petition are, however, kept open.

Petition is allowed in the aforesaid terms.

(TEJINDER SINGH DHINDSA)
JUDGE

(PANKAJ JAIN)
JUDGE

05.08.2022
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No