

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.11860 of 2021

Date of decision : March 15, 2022

M/s Shree Baba Exports through proprietor Ms. Jyotsna Agarwal
...Petitioner

Versus

Commissioner, GST & Central Excise, Commissionerate, Chd. and another
...Respondents

CWP No.11867 of 2021

M/s A.B. Industries through proprietor Mr. Ankush Bansal
...Petitioner

Versus

Commissioner, GST & Central Excise, Commissionerate-II, Chd. and
another
...Respondents

CWP No.11941 of 2021

M/s Shiv Shakti Enterprises through proprietor Mr. Mukul Agarwal
...Petitioner

Versus

Commissioner, GST & Central Excise, Commissionerate-II, Chandigarh and
another
...Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Rajat Mittal, Advocate
for the petitioner.

Mr. T.K. Joshi, Advocate
for the respondents.

PANKAJ JAIN, J.

By this judgment, we are deciding the aforesaid three writ
petitions involving common question of law which needs to be answered in

the light of identical facts.

2. The petitioners are seeking writ in the nature of certiorari for quashing of Show Cause Notices issued to them more than 11 years ago and still lying unadjudicated. For the convenience, reference is being made to the facts pleaded in CWP No.11860 of 2021.

3. Petitioner claims to be engaged in the manufacture of Menthol Crystal/ Powder/ Solution, falling under Chapter Sub-Heading 2906 11 00 and De-Mentholised Oil (DMO), Peppermint Oil, Terpinenes, etc. falling under sub-heading 330125 90 of the First Schedule of the Central Excise Tariff Act, 1985. Between 2005-2010, he purchased raw material for manufacturing final products from suppliers based out in Jammu & Kashmir. During 2008-2010, investigations were carried out by the respondent/Department against various units engaged in the manufacture of Menthol Crystal/ Powder/ Solution, falling under Chapter Sub-Heading 2906 11 00 and De-Mentholised Oil (DMO), Peppermint Oil, Terpinenes, etc. falling under sub-heading 330125 90 of the First Schedule of the Central Excise Tariff Act, 1985. The petitioner was also investigated.

4. Based on the aforesaid investigation conducted by the officer of Central Excise of Meerut-II, Commissionerate, respondent No.2 issued Show Cause Notice bearing C.No. IV-CE(9) CP/SBA/06/06 Pt. - 15/21192 dated 31.12.2009 to the petitioner alleging that he has been availing Cenvat Credit on inputs, namely, "Menthol/Menthol flakes and Mentholised Oil (DMO), Deterpinated Menthol & like inputs" against invoices issued by the

J&K and North East based units by showing supply of raw materials without supply of goods, and that the petitioner was utilizing the Cenvat Credit so availed, towards the payment of Excise duty on its final products for domestic as well as for export of goods and thereafter was claiming the rebate of duty so paid on the exported goods. Similar notices were issued in other two writs also. Details of the Show Cause Notices are as under :-

Sr. No.	CWP No.	Date of show Cause Notice impugned
1	CWP-11860-2021	31.12.2009
2	CWP-11867- 2021	12.03.2010
3	CWP-11941-2021	23.02.2010

5. It is the aforesaid notice(s) which has been impugned by the petitioner in the present writ petition(s).

6. The respondents-Authorities have filed written statements in all writs wherein the fact w.r.t. non-adjudication of Show Cause Notices has not been disputed. Respondent No.1 asserted that owing to Central Excise Appeals filed and pending before the Jammu & Kashmir High Court in 2018, all the pending Show Cause Notices including the one impugned in the present writ petition has been transferred to Call Book category in terms of Circular No.1053/02/2017-CX dated 10.03.2017, issued by the Central Board of Indirect Taxes & Customs (CBIC), with the approval of the Competent Authority on 20th March, 2019 and thus Show Cause Notices

cannot be quashed for non-adjudication.

7. Ld. Counsel for the petitioner contends that the present Show Cause Notice(s) were issued in 2009/2010 and despite lapse of more than 11 years, the same have not been adjudicated upon. In support of his contention, he has placed reliance upon Section 11(A) of the Central Excise Act, 1944 (for short, 'the Act') and interpretation thereof by Courts in '**Siddhi Vinayak Syntex Private Limited vs Union of India**', 2017 (352) E.L.T. 455; Special Leave Petition (C) No. 18214 of 2017 – '**Union of India and others vs M/s Siddhi Vinayak Syntex Private Limited**', decided on 28.07.2017; '**Parimal Textiles vs. Union of India**', 2018(8), GSTL 361 and that of the Supreme Court in '**State of Punjab vs. Bathinda District Co-op. Milk P. Union Limited**', 2007(217) ELT 325'.

8. Ld. Counsel for the respondents on the other hand has relied upon the aforesaid Circular No.1053/02/2017-CX dated 10.03.2017 to state that the matters have been transferred to the Call Book in terms of the circular and thus, non-adjudication of the Show Cause Notice cannot be said to be illegal.

9. We have heard learned counsel for the parties and have carefully gone through the record.

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 sub-section (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 sub-section (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 Cental 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)
JUDGE**

**(PANKAJ JAIN)
JUDGE**

March 15, 2022

Dpr

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes