

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 2890 of 2022

M/s Kamaladitya Construction (P) Ltd. Petitioner
 Versus

1. The Principal Commissioner of Central Goods and Service Tax and Central Excise, Central Revenue Building 5-A, Mahatma Gandhi Road (Main Road), Ranchi.
2. The Commissioner, Central Excise & Service Tax, Ranchi-II (Bokaro) Central Revenue Building 5-A, Main Road, Ranchi .
3. The Superintendent (Adjudication) O/o Principal Commissioner of Central Goods and Service Tax and Central Excise, Central Revenue Building, 5-A, Mahatma Gandhi Road (Main Road), Ranchi.Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. K. Kurmy, Adv.
 Mr. N. K. Pasari, Adv.

For the Res.-CGST : Mr. P.A.S.Pati, Adv.
 Ms. Ranjana Mukherjee, Adv.

CAV on :-10.05.2023

Pronounced on:-09/10/2023

Per Deepak Roshan, J.

The instant application has been preferred

for the following reliefs:-

- (i) For issuance of writ(s), order(s) and/or direction(s), for quashing and setting aside the impugned Show Cause Notice dated 24.12.2014 bearing No. C. No. V (65) 03/ Inv/ KCPL/ RNC-II (Bok)/2014/637 (Annexure-1) issued by Respondent No.2, and directing the Respondents to cancel, rescind and/or withdraw the same;
- (ii) For issuance of writ(s), order(s) and/or direction(s), for quashing and setting

- aside the impugned Notice dated 06.06.2022 bearing No. C. No. V (65) 03 /Adjn./KCPL/Bok(RanII)/2014/3167 (Annexure-2) issued by the Superintendent (Adjudication) O/o Principal Commissioner of Central Goods and Services Tax and Central Excise, Central Revenue Building, 5-A, Mahatma Gandhi Road (Main Road), Ranchi - 834001, the Respondent No.3;
- (iii) Pending final hearing of this Petition, the Respondents, their servants, agents and subordinates be restrained from giving any effect and/or further effects to and/or acting on the basis of Petitioner in the present writ Petition under Article 226/Article 227 of the Constitution of India is challenging the legality and validity of impugned Show Cause Notice dated 24.12.2014 (Annexure-1) and impugned notice dated 06.06.2022 (Annexure-2) pending the disposal of this application.

2. The petitioner in the present writ application is challenging the legality and validity of the impugned show cause notice dated 24.12.2014 (Annexure-1), issued by the Respondent No.2 in purported exercise of powers under proviso to Section 73(1) of the erstwhile Chapter V of the Finance Act, 1994. The petitioner has further challenged the legality and validity of notice of personal hearing dated 06.06.2022 (Annexure-2) issued by the Respondent No.3

fixing personal hearing on 21.06.2022.

3. The petitioner has challenged the legality and validity of the impugned Show Cause Notice dated 24.12.2014, mainly on grounds of delayed adjudication after lapse of more than 7 years which is contrary to provisions of Sub-section (4B) of Section 73 of erstwhile Chapter V of the Finance Act, 1994 and also beyond the reasonable period of limitation and which offends Article 14 of the Constitution of India being arbitrary and unreasonable.

4. Petitioner had filed reply to the impugned Show Cause Notice vide their letter dated 04.10.2016. The respondent No.2 fixed the matter for personal hearing on dated 5.10.2016 on which date the Petitioner appeared before the Respondent No.2 and made submissions. Thereupon, the adjudication of the impugned Show Cause Notice was kept in suspended animation *sine die* for more than seven years.

The petitioner now received impugned notice dated 06.06.2022 issued by the Respondent No.3 intimating fixation of personal hearing on 21.06.2022 in the office of the Respondent No.1 for adjudication of the impugned Show Cause Notice dated 24.12.2014.

5. Mr. Kartik Kurmy, learned counsel for the petitioner submits that Show-cause notice dated 24.12.2014 (Annexure-1) issued under Section 73 under Chapter-V of the Finance Act, 1994 has not yet been adjudicated upon. Learned counsel further placed relevant provision, in particular Section 73(4B) (a) (b) of the Finance Act, 1994, as per which a limit of six months and one year is provided for completing adjudication proceedings under sub-section (1) thereof or its proviso

with a rider “*where it is possible to do so*”.

Learned counsel for the petitioner submits that personal hearing was held on 05.10.2016 and thereafter, it appeared that the entire proceeding was kept under suspended animation till a fresh date for personal hearing has been fixed on 06.06.2022. Learned counsel contended that the same issue has been under consideration as respects the Central Excise Act, 1944 and Customs Act, 1962 before different jurisdictional High Courts and it has been held that the time limit has to be strictly adhered to if the Revenue does not have explanation for the delay in completing adjudication proceedings.

In crux Mr. Kurmy contended that:-

(A) The words “*where it is possible to do so*” under Section 73(4B) of Chapter V of the Finance Act, 1994 does not extend the time limit perpetually to an indefinite period but is intended to deal with extraordinary situation only based on reasonable ground. In case, there is no extra ordinary - situation, the said time limit would provide the period of limitation for completion of adjudication.

(B) Section 73(4B) of the Chapter V of the Finance Act, 1994 recognizes the well settled principle that delay in adjudication of a dispute causes prejudice to parties and is contrary to Article 14 of the Constitution of India, 1950.

(C) In case where no time limit has been prescribed, the action should be completed within a reasonable time period. The maximum time period under Chapter V of the Finance Act, 1994 is five years under Section 73(1)/73(4). However, in the instant case, the

impugned show cause notice is pending adjudication for more than 7 years.

In support of his contention, learned counsel has relied upon the following judgments:-

- (i) *K.B. Nagur, M.D. (Ayurvedic) Vs. Union of India* reported in (2012) 4 SCC 483 [Para 38]
- (ii) *Government of India Vs. Citedal Fine Pharmaceuticals* reported in 1989 (42) E.L.T. 515 (S.C.) [Para 6]
- (iii) *State of Punjab and Others Vs. Bhatinda District Cooperative Mitk Producers Union Ltd.* reported in (2007) 11 SCC 363 [Para 18]
- (iv) *K.M Sharma Vs. ITO* reported in (2002) 4 SCC 339 [Para 14]
- (v) *UOI Vs. Hansoli Devi and Others* reported in (2002) 7 SCC 273 [Para 9]
- (vi) *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of U.P.* reported in AIR 1961 SUPREME COURT 1170 [Para 7]
- (vii) *Shree Baba Exports Vs. Commissioner of GST & Central Excise* reported in (2022) 72 PHT 35 (P&H) [Para 13]
- (viii) *Meghmani Organics Ltd. Vs. UOI* reported in 2019 (368) E.L.T. 433 (Guj.) [Para 24]
- (ix) *Siddhi Vinayak Put. Ltd Vs. UOI* reported in 2017 (352) E.L.T. 455 (Guj.) [Para 19].
- (x) *GPI Textiles Ltd. Vs. UOI* reported in 2018 (362) E.L.T. 388 (P&H) [Para 17]

Learned counsel lastly submits that the petitioner also filed an application on 15.06.2022 under RTI Act, 2005 asking several questions as to the reasons for delay of more than 7 years in adjudicating the impugned show cause notice and action calling for

personal hearing. Pursuant to that application, a letter dated 11.07.2022 was supplied to the petitioner-company which clearly indicates that no reason has been assigned as to why pursuant to issuance of show cause notice dated 24.12.2014, the adjudication proceeding was kept pending. Relying upon the aforesaid submission learned counsel submits that impugned show cause notice should be quashed and set aside.

6. Mr. P.A.S.Pati, learned counsel for the revenue submits that the adjudication of case is a quasi-judicial function of the officers of the Central Excise and Service Tax Department. Under many corporate laws and also erstwhile Central Excise Act and Service Tax law, there was no time limit prescribed under the law by which the Adjudication Order shall have to be passed. On many occasions, the OIO is passed after many years after the issue of show cause notice.

In the instant case, *Demand cum Show Cause Notice* was issued on the basis of investigation conducted which were well within the knowledge of the petitioner and the same are to be decided, after taking into account their written submission and submissions tendered during personal hearing, by issuing an appealable Order. The Demand cum show cause notice and subsequent order is a part of principle of natural justice. Thus, notice issued for personal hearing before passing an adjudication order is a part of principle of natural justice given to the petitioners.

Due to some administrative constraint emanated after major changes in the indirect taxation laws in the past years, the said adjudication order got delayed as huge legacy cases were to be decided. The

Principal Commissioner who conducted the personal hearing earlier had been transferred before passing the order. The present adjudicating authority, before deciding the case, ordered the Superintendent (Adjn.) to issue a personal hearing notice, which is a part of the principle of natural justice given to the petitioners. The Hon'ble Supreme Court in the case of **CCE, New Delhi Vs M/s Bhagsons Paint Industry (India)**, reported in **2003 (158) ELT 129 (SC)**, has held that there is no statutory bar to adjudicate the matter even after lapse of nine years after the issue of show cause notice and the adjudication pertains only to the actual levy of the duty which is due to the department and not to any levy of interest and penalty.

He lastly submits that the Demand Cum Show Cause Notice have been issued by the competent authority, and the petitioner has an opportunity to get remedy under the Finance Act 1994 and Rules made thereunder to file their stand and contention on each and every point included in the present Writ Petition before the Adjudicating authority. The petitioner has also got the remedy in the form of appeal to the jurisdictional appellate tribunal in case they are still aggrieved with the Order-in-Original passed by the Adjudicating authority. Thus, the petitioner has got proper and legal remedies under the Finance Act 1994 and Rules made thereunder and hence the present Writ Petition is pre-mature.

Learned counsel had relied upon following decisions:

(i) The Hon'ble Supreme Court in the case of **Union Of India Vs Hindalco Industries** reported in **2003(153) ELT.481 (S.C.)**, has observed as follows:

“There can be no doubt that in matters of taxation, it is inappropriate for the High Court to interfere in exercise of jurisdiction under Article 226 of the Constitution, either at the stage of show cause notice or at the stage of assessment where alternative remedy by way of filing a reply or appeal, as the case may be, is available but these are the limitations imposed by the Courts themselves in exercise of their jurisdiction and they are not matters of jurisdictional factors.”

(ii) The Hon’ble Madras High Court in the case of **Raj Leathers Vs Secretary, Home Ministry**, reported in **1990 (46) ELT 238 (Mad)** , has held and to quote:

“In public interest, it is considered that this Court should not issue a Writ of prohibition and stall matters which are against the interest of the country as a whole. Surely, when economic offences are suspected, it is open to the respondents to enquire into the matter to find out the truth. This Court should be very slow in interfering with such investigations, especially when economic offences are suspected. The Writ Petition will stand dismissed.

(iii) The Hon’ble Apex Court in the matter of Civil Appeal No 5121 of 2021 (Arising out of SLP (C) No 13639 of 2021 @ D No.11555 of 2020) (**The . Assistant Commissioner of State Tax & Others vs M/s Commercial Steel Limited**) has pronounced that;

“11. The respondent had a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:

- (i) a breach of fundamental rights;*
- (ii) a violation of the principles of natural justice;*
- (iii) an excess of jurisdiction; or*
- (iv) a challenge to the vires of the statute or delegated legislation.”*

Mr. Pati reiterated that the Hon’ble Apex Court in catena of judgments has held that the writ application can be entertained in the exceptional circumstances where there is a breach of fundamental rights or violation of principle of natural justice or on the point of jurisdiction or the vires of any statute or delegated legislation is under challenge and the instant case does not fail in any of these exceptions.

7. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein, it transpires that the impugned show cause notice was issued vide letter dated 24.12.2014, thereafter the petitioner filed its reply to the said notice vide letter dated 04.10.2016 and the respondent No.2 fixed the matter for personal hearing on 05.10.2016, on which date the petitioner duly appeared and made submissions.

Thereupon, the adjudication of impugned show cause notice was kept in suspended animation for more than 7 years and now again the petitioner received a notice for personal hearing dated 21.06.2022 for adjudication of the show cause notice dated 24.12.2014.

8. It further transpires that Section 73(4B) provides for determination of service tax liability and adjudication of the show cause notices within period of six months, “*where it is possible to do so*” in case where

the show cause notice is issued under the main section 73(1) involving no suppression of facts etc. and within a period of one year where the show cause notice is issued under proviso to Section 73(1) of Chapter V of the Finance Act, 1994, where it is possible to do so.

Sub-Section (4B) was inserted in Section 73 of Chapter V of the Finance Act, 1994 w.e.f. 06.08.2014 by Finance (No.2) Act, 2014.

9. At this stage it is pertinent to note that the words “*where it is possible to do so*” is elastic only when there are reasonable grounds beyond the control of the adjudicating authority to conclude adjudication within the time frame given under Section 73(4B) and not otherwise.

If there is no reasonable explanation, the elasticity would not be available. It is fairly well settled that legislature never wastes words or says anything in vain. The insertion of sub-section (4B) by Finance (No. 2) Act, 2014 is not without any purpose or it is not a dead letter.

The words “*where it is possible to do so*” under Section 73(4B) of the Chapter V of the Finance Act, 1994 must be read reasonably keeping in mind the legislative intent and policies and the mischief sought to be remedied. It cannot be read de hors the same. The provisions of Section 73(4B) of Chapter V of the Finance Act, 1994 is not dead letter and mere surplusage.

The outer limits fixed by the Legislature under Sub-Section (4B) of Section 73 of Chapter V of the Finance Act, 1994 is not without a purpose but manifests the legislative intent and declares the legislative policy that the adjudication of the show cause notices must be

completed within a reasonable time frame set out under Section 73(4B) unless an extra ordinary situation arises beyond the control of the adjudicating authority and it can never be kept pending for an indefinite period or sine die.

10. Similar provisions exist under Section 11A (11) of the Central Excise Act, 1944 and Section 28(9) the Customs Act, 1962. The period of limitation of 6 months or 1 year under Section 73(4B) of the Chapter V of the Finance Act, 1994 be extended to more than seven years as is done in the instant case.

In the case of **K.M Sharma Vs. ITO** reported in **(2002) 4 SCC 339** it is held by the Hon'ble Apex Court that the provisions of a fiscal statute more particularly one regulating the period of limitation must receive a strict construction as the law of limitation is intended to give certainty and finality to legal proceedings.

“14. A fiscal statute, more particularly, on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to a litigant for an indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of Section 150 which intends to lift the embargo of period of limitation under Section 149 to enable the authorities to reopen assessments not only on the basis of orders passed in the proceedings under the IT Act but also on order of a court in any proceedings under any law has to be applied prospectively on or after 1-4-1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for

assessment under Section 149 of the Act.”

11. It is settled presumption of law that the Legislature does not waste words or say anything in vain. Each word in the enactment must be allowed to play its role, however, significant or insignificant the same may be in achieving legislative intent and promoting the legislative object. The statute has to be so construed that every word has a place and everything is in place.

In the case of **UOI Vs. Hansoli Devi and Others** reported in **(2002) 7 SCC 273** it is held by the Hon'ble Apex Court that the legislature is deemed not to waste words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons.

“9. Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in Sussex Peerage case [(1844) 11 Cl & Fin 85 : 8 ER 1034] still holds the field. The aforesaid rule is to the effect: (ER p. 1057)

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.”

It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In Kirkness v. John Hudson & Co. Ltd. [(1955) 2 All ER 345 : 1955 AC 696 : (1955) 2 WLR 1135] Lord Reid pointed out as to what is the meaning of “ambiguous” and held that: (All ER p. 366 C-D)

“A provision is not ambiguous merely because it contains a word which in different contexts is capable of different meanings. It would be hard to find anywhere a sentence of

any length which does not contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning.”

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute. Patanjali Sastri, C.J. in the case of Aswini Kumar Ghose v. Arabinda Bose [(1952) 2 SCC 237 : AIR 1952 SC 369 : 1953 SCR 1] had held that it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In Quebec Railway, Light Heat & Power Co. Ltd. v. Vandry [AIR 1920 PC 181] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. Similarly, it is not permissible to add words to a statute which are not there unless on a literal construction being given a part of the statute becomes meaningless. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these words would have been inserted by the draftsman and approved by the legislature had their attention been drawn to the omission before the Bill had passed into a law. At times, the intention of the legislature is found to be clear but the unskilfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it may be permissible for the court to reject the surplus words, so as to make the statute effective. Bearing in mind the aforesaid principle, let us now examine the provisions of Section 28-A of the Act, to answer the questions referred to us by the Bench of two learned Judges. It is no doubt true that the object of Section 28-A of the Act was to confer a right of making a reference, (sic on one) who might have not made a reference earlier under Section 18 and, therefore, ordinarily when a person makes a reference under Section 18 but that was dismissed on the ground of delay, he would not get the right of Section 28-A of the Land Acquisition Act when some other person makes a reference and the reference is answered. But Parliament having enacted Section 28-A, as a beneficial provision, it would cause great injustice if a literal interpretation is given to the expression “had not made an application to the Collector under Section 18” in Section 28-A of the Act. The aforesaid expression would mean that if the landowner has made an application for reference under

Section 18 and that reference is entertained and answered. In other words, it may not be permissible for a landowner to make a reference and get it answered and then subsequently make another application when some other person gets the reference answered and obtains a higher amount. In fact in Pradeep Kumari case [(1995) 2 SCC 736] the three learned Judges, while enumerating the conditions to be satisfied, whereafter an application under Section 28-A can be moved, had categorically stated (SCC p. 743, para 10) “the person moving the application did not make an application to the Collector under Section 18”. The expression “did not make an application”, as observed by this Court, would mean, did not make an effective application which had been entertained by making the reference and the reference was answered. When an application under Section 18 is not entertained on the ground of limitation, the same not fructifying into any reference, then that would not tantamount to an effective application and consequently the rights of such applicant emanating from some other reference being answered to move an application under Section 28-A cannot be denied. We, accordingly answer Question 1(a) by holding that the dismissal of an application seeking reference under Section 18 on the ground of delay would tantamount to not filing an application within the meaning of Section 28-A of the Land Acquisition Act, 1894.”

In the case of **J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. State of U.P.** reported in **AIR 1961 SUPREME COURT 1170** it is held by the Hon’ble Apex Court that in the interpretation of statutes the courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

“7. To remove this incongruity, says the learned Attorney-General, apply the rule of harmonious construction and hold that clause 23 of the order has no application when an order is made on an application under clause 5(a). On the assumption that under clause 5(a) an employer can raise a dispute sought to be created by his own proposed order of dismissal of workmen there is clearly this disharmony as pointed out above between two provisions viz. clause 5(a) and clause 23; and undoubtedly we have to apply the rule of harmonious construction. In applying the rule, however, we have to remember that to harmonise is not to destroy. In the

interpretation of statutes the court, always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule-making authority also. On the construction suggested by the learned Attorney-General it is obvious that by merely making an application under clause (5) on the allegation that a dispute has arisen about the proposed action to dismiss workmen the employer can in every case escape the requirements of clause 23 and if for one reason or other every employer when proposing a dismissal prefers to proceed under clause 5(a) instead of making an application under clause 23, clause 23 will be a dead letter. A construction like this which defeats the intention of the rule-making authority in clause 23 must, if possible, be avoided.”

12. In the case of **Shree Baba Exports Vs. Commissioner of GST & Central Excise** reported in **(2022) 72 PHT 35 (P&H)** [Para 13] it is held by the Punjab & Haryana High Court that the expression “*where it is possible to do so*” does not mean that the time prescribed can be extended perpetually and 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 case of **Meghmani Organics Ltd. Vs. UOI** reported in **2019 (368) E.L.T. 433 (Guj.)** [Para 24] it is held by the Gujarat High Court that when the legislature has used the expression “*where it is possible to do so*” it means that if in the ordinary course it is possible to determine the amount of duty with the specified time frame, it should be so done. Similar views have been held in the case of **Siddhi Vinayak Put. Ltd Vs. UOI** reported in **2017 (352) E.L.T. 455 (Guj.)**

“19. Reliance was placed upon the decision of the Supreme Court in the case of Abdul Rehman Antulay v. R.S. Nayak, (1992) 1 SCC 225, and more particularly to the contents of paragraph 86 thereof, wherein the Supreme Court has laid down certain propositions which are meant to serve

as guidelines. Reference was made to clause (3)(c) thereof, wherein the Court has observed that the concerns underlying the right to speedy trial from the point of view of the accused are (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. It was submitted that the said decision though rendered in the context of the provisions of the Code of Criminal Procedure would also be applicable to the facts of the present case, inasmuch as, the petitioner also is entitled to the right of speedy adjudication of the show cause notice issued against it and that the delay would result in disappearance or non-availability of witnesses and other documentary evidence on which the petitioner may place reliance. It was submitted that in case of indirect taxation, the sooner the decision is taken, the assessee can recover its dues from the Revenue or the Revenue from the as-sessee, as the case may be. It was submitted that if transferring of a matter to the call book to await adjudication by the higher authority is taken to its logical end, in a given case, if the Appellate Tribunal comes to a particular view and the aggrieved party approaches the High Court and thereafter the Supreme Court, the matters would remain in the call book for years together. It was submitted that the statute does not contemplate such a course of action.”

In the case of **GPI Textiles Ltd. Vs. UOI** reported in **2018 (362) E.L.T. 388 (P&H)** [Para 17] the Hon’ble Punjab & Haryana High Court has held that although the words ‘*where it is possible to do*’ has been used, that will not stretch the period to decades.

13. The CBIC has issued (Instruction F.No.390 Misc 3 2019-JC dated 27-04-2020) for conducting virtual hearing of cases with a view to complete adjudication quickly to tide over the extra ordinary situation arisen out of COVID-19 Pandemic. The said instructions are made mandatory and as a matter of the Respondent/Department have undertaken adjudication of hundreds of cases during COVID-19 restrictions by virtual mode.

In the fiscal statute more particularly a

provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigants for an indefinite period to future unforeseen event.

Section 73 (4B) of the Chapter V of the Finance Act 1994 recognizes the well settled principle that delay in 'adjudication of a dispute causes prejudice to parties and is contra to Article 14 of the Constitution of India 1950. This provision recognizes that delay in adjudication of a matter causes prejudice and detriment to the party and is however contrary to Article 14 of the Constitution of India, 1950. Fixing personal hearing of the petitioner and taking up adjudication after more than 7 years from the date of issuance of the impugned Show Cause Notice dated 24.12.2014 in the instant case is unreasonable, arbitrary, oppressive, and violates Article 14 of the Constitution and such proceedings stand vitiated due to inordinate and unreasonable delay.

In the case of ***CCE Vs. Krishna Wax Private Ltd reported in (2020) 12 SCC 572 (S.C) [Para 10]*** it is held by the Hon'ble Apex Court that the issuance of Show Cause Notice under Section 73 also has some significance in the eyes of law. The day the Show Cause Notice is issued, becomes the reckoning date for various issues including the issue of limitation.

In the case of ***Siddhi Vinayak (P) Ltd. Vs. UOI reported in 2017 (352) E.L.T. 455 (Guj.)*** it is held by the Hon'ble Gujrat High Court that delay in deciding the proceedings without bringing it to the notice of the Petitioner that the case was transferred to the call book

and was therefore pending causes immense prejudice and hence revival of proceedings after long gap without disclosing any reason of delay is in complete breach of the principles of natural justice.

Alternatively, where no time limit has been prescribed the action should be completed within a reasonable time period. The reasonable time period U/s 73 is 5 years under Chapter V of the Finance Act 1994. In the instant case the matter is pending adjudication for more than 7 years.

“24. From the facts and contentions noted hereinabove, as well as on a perusal of the impugned order, it appears to be an accepted position that the show cause notice was issued on 3-8-1998, pursuant to which the petitioner filed its written submissions under letter dated 15-3-2000; however, prior thereto, two Superintendents were cross-examined on 16-2-1999. But, after the petitioner filed its written submissions, for fifteen years no further action was taken by the respondents. It is the case of the petitioner that it was given to understand that similar cases for demanding duty on Draw Winding were dropped in the Surat region and therefore, the cases in Ahmedabad and elsewhere were also closed. In the meanwhile, due to efflux of time, viz., about fifteen years, the petitioner's factory was closed down and possession of the plant and factory was taken over by the Gujarat State Financial Corporation and the same were auctioned around 2004. It appears that the residential house of the Directors was also sold off to clear bank debts in 2002. Thereafter, like a bolt from the blue, the impugned order-in-original came to be served upon the Director after tracing his whereabouts, as mentioned hereinabove. Now, before this Court, in the affidavit-in-reply, the respondents have come out with a case that the show cause notice dated 3-8-1998 issued to the petitioner company was transferred to the call book by the then Commissioner of Central Excise, Ahmedabad-II on 23-3-2000, in view of the fact that in a similar case where the demand was dropped by the Surat-I Commissioner which was reviewed by the Board, the Department had filed an appeal. It appears that the Appellate Tribunal had initially dismissed the appeal on the ground of maintainability against which, the Revenue had approached this High Court, which restored the appeal to the Appellate Tribunal. Ultimately, the Appellate Tribunal by an order dated 18-6-2013 dismissed the appeal filed by the Revenue, which order has been accepted by the Revenue. It is after the dismissal of the

Revenue's. appeal that the show cause notice has been retrieved from the call book on 26-4-2014, whereafter, after a considerable delay, notice for personal hearing has been issued fixing the personal hearing in November, 2015. Thus, there is a delay of more than one and a half year even after the show cause notice came to be retrieved from the call book. However, in the interregnum the aforesaid events have taken place on account of which the petitioner could not be served with the notice of hearing and the second respondent has proceeded to decide the matter ex parte."

14. At this stage, it is also necessary to observe that where the statute does not prescribe any period of limitation within which power has to be exercised by the authorities, in such circumstances also the proceedings must be concluded within a reasonable period of time. The maximum period of limitation provided under the special statute should be considered to be the reasonable period within which the adjudication order should be concluded.

In the instant case period of more than 7 years from the issuance of impugned Show Cause Notice on 24-12-2014 cannot be said to be reasonable period for taking up/concluding adjudication proceedings. Section 73(1)/ 73(4) of Chapter V of the Finance Act, 1994 provides 5 years as a maximum period which in any case should be taken as reasonable period within which the adjudication should be completed.

In the case of ***State of Punjab and Others Vs. Bhatinda District Cooperative Milk Producers Union Ltd.*** reported in ***(2007) 11 SCC 363*** it is held by the Hon'ble Apex Court that what should be the reasonable period of time would vary from case to case. However, the maximum period provided under the Act for other purpose would be the reasonable period for the purposes

of the Act.

“18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.”

Under Section 73 of Chapter V of the Finance Act, 1994, the maximum period of limitation is a period of five years which would be the reasonable period of time for other purposes also for which no time limit is prescribed.

In the case of **K.B. Nagur, M.D. (Ayurvedic) Vs. Union of India** reported in **(2012) 4 SCC 483** it is held by the Hon’ble Apex Court that where there is no time limit prescribed by a statute and there is no statutory requirement, the power has to be exercised within a reasonable time.

“38. This is an extraordinary situation that the elected members continue beyond their prescribed term because the elections had not been held and newly elected members cannot join the Central Council. Though, no outer limit has been specified by the legislature for which such previously elected members can continue in office, but this certainly cannot be for indefinite period. For whatever reason, once recourse to this exceptional situation becomes necessary, then the concept of reasonable time would come into play. It is a settled rule of statutory interpretation that wherever no specific time-limit is prescribed, the concept of reasonable time shall hold the field for completing such an action. The courts in the process of interpretation can supply the lacuna, which would help to achieve the object of the Act and the legislative intent and make the provisions effective and operative.”

15. At this stage, it is worth mentioning that the objection of the Revenue with regards to alternative remedy and/or the judgments cited by the Revenue is not applicable in the instant case, inasmuch as, in the

case at hand, now it would not be possible for the petitioner to defend its case effectively by culling out relevant records, evidences, producing its witness etc. thus, remitting the matter back would cause serious prejudices to the petitioner at this belated stage.

16. In view of the aforesaid discussions and the law laid down by the Hon'ble Apex Court in the judgments referred to hereinabove, we are having no hesitation in quashing the impugned show-cause notice dated 24.12.2014 (Annexure-1) and impugned notice dated 06.06.2022 (Annexure-2) and the same are hereby quashed and set aside.

17. As a result, the instant application stands allowed. Pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Jharkhand High Court, Ranchi

Dated:- 09/10/2023

Fahim/-AFR-