IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6757 OF 2022

M/s. Siemens Ltd.
A Registered Company having its
factory at Plot No.E-76, MIDC,
Waluj, Aurangabad, through its
Authorised Mr. Babasaheb Salunke ... **PETITIONER**

VERSUS

1. The Union of India
through the Revenue Secretary,
Department of Revenue, Ministry of
Finance having his office at 128-
A/North Block, New Delhi
2. The Assistant Commissioner of Goods
and Service Tax, Aurangabad Rural
Division, having his office at N-5, Town
Centre, CIDCO, Aurangabad DN-II -
431030 ... **RESPONDENTS**

WITH
WRIT PETITION NO.6760 OF 2022

M/s. Siemens Ltd.
A Registered Company having its
factory at Plot No.E-76, MIDC,
Waluj, Aurangabad, through its
Authorised Mr. Babasaheb Salunke ... **PETITIONER**

VERSUS

1. The Union of India
through the Revenue Secretary,
Department of Revenue, Ministry of
Finance having his office at 128-
A/North Block, New Delhi
2. The Assistant Commissioner of Goods
and Service Tax, Aurangabad Rural
Division, having his office at N-5, Town
Centre, CIDCO, Aurangabad DN-II -
431030 ... **RESPONDENTS**

WITH
WRIT PETITION NO.6761 OF 2022

M/s. Siemens Ltd.
A Registered Company having its
factory at Plot No.E-76, MIDC,
Waluj, Aurangabad, through its
Authorised Mr. Babasaheb Salunke ... **PETITIONER**

VERSUS

1. The Union of India
through the Revenue Secretary,
Department of Revenue, Ministry of
Finance having his office at 128-
A/North Block, New Delhi

2. The Assistant Commissioner of Goods
and Service Tax, Aurangabad Rural
Division, having his office at N-5, Town
Centre, CIDCO, Aurangabad DN-II -
431030 ... **RESPONDENTS**

WITH
WRIT PETITION NO.6762 OF 2022

M/s. Siemens Ltd.
A Registered Company having its
factory at Plot No.E-76, MIDC,
Waluj, Aurangabad, through its
Authorised Mr. Babasaheb Salunke ... **PETITIONER**

VERSUS

1. The Union of India
through the Revenue Secretary,
Department of Revenue, Ministry of
Finance having his office at 128-
A/North Block, New Delhi
2. The Assistant Commissioner of Goods
and Service Tax, Aurangabad Rural
Division, having his office at N-5, Town
Centre, CIDCO, Aurangabad DN-II -
431030 ... **RESPONDENTS**

WITH
WRIT PETITION NO.6793 OF 2022

M/s. Siemens Ltd.
A Registered Company having its factory at Plot No.E-76, MIDC, Waluj, Aurangabad, through its Authorised Mr. Babasaheb Salunke ... **PETITIONER**

VERSUS

1. The Union of India through the Revenue Secretary, Department of Revenue, Ministry of Finance having his office at 128-A/North Block, New Delhi
2. The Assistant Commissioner of Goods and Service Tax, Aurangabad Rural Division, having his office at N-5, Town Centre, CIDCO, Aurangabad DN-II - 431030 ... **RESPONDENTS**

...

Advocate for petitioner : Mr. Rahul Thakur h/f Mr. Palod Lalitkumar
Advocate for Respondent Nos.1 and 2 : Mr. D.S. Ladda

...

CORAM : MANGESH S. PATIL AND SHAILESH P. BRAHME, JJ.

Reserved on : 25.09.2023

Pronounced on : 03.10.2023

JUDGMENT :

Heard both the sides. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matters are heard finally at the stage of admission.

2. Since a common issue arises in all these petitions filed by the same public limited company regarding powers of the Revenue Department to resume inquiry into the show cause cum demand notices issued in the matters of proposed reversal under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944,

after lapse of more than 10 years, we are disposing of these writ petitions by this common order to avoid rigmarole.

3. The petitioner company is having a central excise registration having been engaged in manufacturing excisable goods. The excise returns filed by it for the period July 2010 to June 2011 were audited by respondent No.2 which is the Assistant Commissioner of Goods and Service Tax, Aurangabad. He found that the petitioner was not entitled to the Cenvat Credit which it had availed of. It was served with separate show cause notices which were responded to by the petitioner. The information can be collated as under :

Sr. No.	Matter	Show cause notice date	Replied on	Second notice date	Personal hearing notice
1.	WP No.6757/2022	11.07.2011	04.08.2011	06.01.2022	
2.	WP No.6761/2022	07.09.2009	09.11.2009		06.01.2022
3.	WP No.6760/2022	18.12.2008	13.04.2009	14.01.2022	
4.	WP No.6762/2022	07.09.2009	09.11.2009	19.01.2022	
5.	WP No.6793/2022	26.07.2010	09.08.2010	06.01.2022 and 19.01.2022 and 02.02.2022	

4. The petitioner is aggrieved by these communications, whereby, the respondent No.2 has now resumed the inquiries.

5. The learned advocate for the petitioner by referring to catena of judgments, to which we shall advert a little later, would submit that the inquiries have been sought to be resumed after lapse of inordinate

delay of 10 to 13 years. The respondent No.2 was bound to take decision pursuant to the show cause notices issued and the reply filed within a reasonable time as provided in Section 11A (11). He would submit that due to inordinate and unexplained delay in adjudicating the matters after issuance of show cause notices which were promptly replied, the respondent No.2 is not entitled to resume the inquiries. Petitioner cannot be kept under the hanging sword for years together and a mandamus be issued directing the respondents to drop the proceeding.

6. The learned advocate would rely upon the following decisions :

i. Raymond Ltd. Vs. The Union of India ; 2019-VIL-405-BOM-CE

ii. Parle International Ltd. Vs. Union of India and others; 2020-VIL-592-BOM-CE

iii. Sushitex Exports (India) Ltd. & Ors. Vs. The Union of India & Ors.; 2022-VIL-55-BOM-CU

iv. The Bombay Dyeing and Manufacturing Company Ltd. Vs. Deputy Commissioner of CGST & CX ; W.P. No.2874 of 2022, order dated 14.02.2022

v. Reliance Transport and Travel Pvt. Ltd. Vs. The Union of India ; 2022-VIL-238-BOM-ST

vi. ATA Freight Line (I) Pvt. Ltd. Vs. Union of India; 2022-VIL-244-BOM-ST

vii Conventry Estates Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.; W.P. No.4082/2022 vide order dated 25.07.2023

7. The learned advocate Mr. Ladda for the respondents referring to the affidavit-in-reply would submit that there is no dispute

about the fact that the petitioner company was served with the show cause notices for reversal of the Cenvat Credit availed by it to which it was not entitled to. He also submits that even the petitioner had promptly responded to the show cause notices but submits that there were peculiar reasons why the inquiries were held up. He would point out that the petitioner company had availed the Cenvat Credit to which it was not entitled to. The department had filed an appeal before the Supreme Court in the matter of availment of inadmissible credit in terms of Rule 2(1) of the Cenvat Credit Rules, 2004. As per the office procedure of the Department of Administrative Reforms and Public Grievances the petitioner's cases were transferred to the Call Book maintained by the department as at the relevant time no action to expedite its disposal was possible. It was pursuant to the orders of the Range Commissioner Excise that the cases were kept pending. The appeal was however withdrawn by the department on account of low tax effect in terms of the CBEC's instructions dated 11.07.2018. Accordingly the Supreme Court dismissed the Special Leave to Appeal on 06.02.2019. Subsequently the pending call book cases have been revived in the light of provisions of Section 11A (8) to 11 A (11) of the Central Excise Act and the period for the alleged delay should only be counted from 06.02.2019 when the matter before the Supreme Court was disposed of. Since there was pandemic thereafter, some time was lost. There is no intentional or deliberate attempt to protract the inquiries. The petitioner is a public limited company and cannot be allowed to take such technical defence.

8. We have carefully considered the rival submissions and perused the papers. As far as the facts are concerned regarding issuance of the show cause notices and the petitioner's replies to those, there is no dispute. Since the proposed action regarding reversal was contemplated, the provisions of Section 11A of the Central Excise Act, 1944 are sought to be invoked for raising the demand and recovery. The provision of Section 11A *inter alia* provides for a period of limitation within which the notices are supposed to be issued to make the recoveries and provides that the action of recovery has to be initiated within six months/2 years from the date of notice depending upon the facts whether it is a case falling under Sub-Section 1 or Sub-Section 2 respectively. It is, therefore, abundantly clear that contrary to this statutory time limit, the respondents have now revived the inquiries after more than a decade and the action would apparently be illegal. Precisely in similar set of fact, in the aforementioned matters, coordinate benches of this Court have from time to time struck down similar actions revived belatedly.

9. Though the respondents are now coming with a stand about the petitioner's show cause notices having been kept in the Call Book in the light of the CBEC's circular, the conspicuous absence in the reply about the petitioner having ever been informed about it in view of the pendency of the appeal before the Supreme Court clearly demonstrates

that the explanation for the delay is coming forth as an after thought. It was imperative for the respondents if they were intending to keep the show cause notices in abeyance, to have informed the petitioner about it. This is what has been emphasised by this Court in the matters of **Raymond Ltd.** and **Parle International Ltd** (supra).

10. Even in respect of similar proceedings under the service tax matters under Section 73 of the Finance Act, coordinate benches of this Court in the matters of **Reliance Transport and Travel Pvt. Ltd.**, **ATA Freight Line (I) Pvt. Ltd.** and **Coventry Estate Pvt. Ltd.** (supra), the actions initiated after prolonged period have been struck down.

11. In our considered view, the impugned actions are clearly iniquitous and arbitrary. In view of the consistent observation of this Court in catena of judgments (supra), the impugned actions of reviving the inquiries which were in cold storage for more than a decade are clearly contrary to the law and is liable to be struck down.

12. The writ petitions are allowed.

13. The Rule is made absolute in all these petitions in terms of prayer clauses ‘B’.

(SHAILESH P. BRAHME, J.) **(MANGESH S. PATIL, J.)**

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