

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 597 OF 2023**

EPL Ltd.

..Petitioner

Vs.

1.The Union of India

2. Commisisoner, CGST & CX

..Respondents

Mr. Prakash Shah with Mr.Jas Sanghavi with Mr.Yash Prakash i/b. PDS
Legal for Petitioner.

Mr. J. B . Mishra with Mr. Ram Ochani, for Respondents.

**CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : AUGUST 22, 2023**

ORAL JUDGMENT (Per G. S. Kulkarni, J.):

1. Rule, made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.
2. This writ petition under Article 226 of the Constitution primarily prays that the show cause notice issued by the Commissioner, Central Excise, Mumbai-III, on 14 February 1997 i.e. about 25 years back, be quashed and set aside. The prayers as made in the petition read thus:-

“(a) that this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner’s case and after going into the validity and legality thereof:

i. quash and set aside the impugned Show Cause cum Demand Notice F. No. CPU.K/case 2/96-97 dated 14.02.1997 issued by the Respondent No.2, with consequential reliefs;

ii. direct the Respondents to refund to the Petitioner INR 10,69,666/- deposited by the Petitioner under protest during the course of the investigation with interest at the rate of 12 per cent per annum from the date of deposit till the date of actual refund;

(b) That this Hon'ble Court be pleased to issue writ of Prohibition or any other appropriate writ in the nature of prohibition prohibiting the Respondents to refrain from taking any further steps or proceeding pursuant to or in furtherance of the impugned Show Cause cum Demand Notice F. No. CPUK/Case 2/96-97 dated 14.02.1997 issued by the Respondent No.2;

(c) that pending the hearing and final disposal of this petition, this Hon'ble Court by an interim order be pleased to restrain the Respondents by themselves, their officers, subordinates, servants and agents from taking any steps or proceedings pursuant to and in furtherance of the impugned Show Cause cum Demand Notice F. No. CPU.K/Case 2/96-97 dated 14.02.1997 issued by the Respondent No.2 including adjudication thereof;

(d) ad-interim reliefs in terms of prayer (c) above;

(e) pass such order or further orders as may be deemed just and proper by this Hon'ble Court in the facts and circumstances of the case."

3. Mr.Shah, learned Counsel for the petitioner would submit that considering the settled principles of law, the show cause notice having not been adjudicated for more than 25 years, the show cause notice ought to be quashed and set aside.

4. Mr.Mishra, learned counsel for the respondents submits that he had time again sought adjournment to take instructions, however, the papers

and proceedings of the case are not being located in the office of the Principal Commissioner. He has placed on record a letter dated 28 March 2023 addressed by the Additional Commissioner to the Principal Commissioner / Commissioner of CGST & C. Ex. to the different Commissionerates, the contents of which are self explanatory, which read thus:-

“F.No.IV/16-06/PCCO/CGST&CX/Legal/Court Cases/2017-18
Mumbai, the 28th March 2023

To,
The Principal Commissioner / Commissioner of CGST & C.Ex.,
Belapur, Bhiwandi, Mumbai Central, East, West, South,
Navi Mumbai, Palghar, Raigad and Thane Commissionerate,
Mumbai Zone.

Sir,
Subject: - Writ Petition (I) No.28950 of 2022 filed before
Bombay High Court in the case of M/s. EPL Limited (formerly
known as Essel Packaging Ltd.) V/s. Union of India &
Commissioner, CGST & Cx. Thane Rural – Regarding

Thane Rural Commissionerate vide letter F.No. V/HLC/
Legal/EPF/31/2022-23/4877 dated 17.02.2023 (copy enclosed)
has informed that Writ Petition (L) No.28950 of 2022 has been
filed by M/s. DPL Limited before the Hon'ble Bombay High
Court for seeking to quash SCN F.No. CPU.K/Case 2/96-97
dated 14.02.1977 issued by erstwhile Commissioner, C.Ex.,
Mumbai-III, for the reasons of inordinate delay in adjudication of
demand notice and also seeking refund of Rs.10,69,666/-
deposited, under protest.

2. Thane Rural Commissionerate has informed that no such
SCN has been received by them after the formation of CST
Commissionerates.

3. As the matter is before the Hon'ble High Court and the next date of hearing is on 11.04.2023, it is requested to scrupulously go through your records to ascertain pendency / disposal of SCN F.No. CPU.K/Case 2/96-97 dated 14.02.1997 issued to M/s.EPL Limited (formerly known as Essel Packaging Ltd.).

4. Any positive outcome on the subject matter may kindly be conveyed to the Thane Rural Commissionerate.

5. This issues with the approval of the Chief Commissioner.

Yours faithfully,

Encl. As above.

(V. V. Pandit)
Additional Commissioner

Copy to the Commissioner, Thane Rural Commissionerate w.r.t letter F.No.V/HLC/Legal/EPF/31/2022-23/4877 dated 17.02.2023, for information.”

5. In the above circumstances, we are in complete agreement with Mr.Shah that it has become impossible for the respondent to proceed to adjudicate the show cause notice, not only for the reasons, which the Additional Commissioner is on record to say, but also in view of the settled principles of law as observed in the decision of the co-ordinate Bench of this Court in **ATA Freight Line (I) Pvt. Ltd. vs. Union of India & Ors.**¹, against which Special Leave Petition (Civil) Diary No. 828 of 2023 filed by the Union of India came to be dismissed; as also the decisions in the case of **CMA-CGM Agencies (India) Pvt. Ltd. vs. Union of India &**

1 Writ Petition No. 3671 of 2022

Ors.²; decision of this Court in **Shreenathji Logistics vs. Union of India & Ors.**³; in **Sushitex Exports (India) Ltd. & Ors. vs. Union of India & Anr.**⁴; in **Sanghvi Reconditioners Pvt. Ltd. vs. Union of India**, through the **Secretary, Department of Revenue & Ors.**⁵; in **Reliance Industries Ltd. vs. Union of India**⁶; in **Parle International Ltd. vs. Union of India**⁷ and in **Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate**⁸, and in the recent decision by this Court in **Coventary Pvt. Ltd. vs. The Joint Commissioner CGST and Central Excise & Anr.**⁹

6. We may also usefully refer to the decision of the Division Bench of this Court in **Premier Ltd. Vs. Union of India**¹⁰ wherein in similar circumstances a Division Bench of this Court, being confronted with a similar issue pertaining to the belated adjudication of a show cause notice issued 25 years back, observed that failure of the adjudicating authority to adjudicate upon the same, for about 25 years, itself would be illegal, and that the authorities could not have been liberal in granting adjournment

2 Writ Petition No. 1313 of 2021

3 Writ Petition No. 540 of 2020

4 2022 SCC Online Bom. 191

5 2017 SCC Online Bom 9781

6 2019 (368) E.L.T. 854 (Bom.)

7 2021 (375) E.L.T. 633 (Bom.)

8 2022 (382) E.L.T. 206(Bom.)

9 2023(8) TMI 352-Bombay High Court

10 2017(354)E.L.T. 365(Bom.)

and not adjudicating the show cause notice for such a long lapse of time. Such view taken by this Court was confirmed by the Supreme Court in dismissing the Special Leave Petitions in **Union of India & Ors. Vs. M/s.Premier Ltd. & Anr.**¹¹

7. In the above circumstances, the prayers as made by the petitioner are required to be granted. The petition is accordingly allowed in terms of prayer clause (a)(i) and (a)(ii) which reads thus:

(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioners' case and after going into the validity and legality thereof:

i. quash and set aside the impugned Show Cause cum Demand Notice F. No. CPU.K/Case 2/96-97 dated 14.02.1997 issued by the Respondent No.2, with consequential reliefs;

ii. direct the Respondents to refund to the Petitioner INR 10,69,666/- deposited by the Petitioner under protest during the course of the investigation with interest at the rate 12 per cent per annum from the date of deposit till the date of actual refund;

8. Rule is accordingly made absolute in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]

11 2018(360) ELT A181 (SC) (SLP Diary No.20757/2017)