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Writ Petition No.12074 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

C O R A M

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Writ Petition No.12074 of 2023

and

W.M.P.No.11916 of 2023

M/s.Steel Authority of India Limited
Salem Steel Plant
Salem - 636 013.
represented by Mr.JV Sivakumar,
General Manager (Finance & Accounts)

... Petitioner

Vs.

- 1.Office of the Commissioner of GST & CE,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem - 636 001.
- 2.Office of the Assistant Commissioner of GST & CE,
106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road, Salem - 636 007.
- 3.Office of the Superintendent of Central Excise,
Salem III Range,
No.15, 1st Floor, Rajaramnagar Main Road,
Sahadevapuram, Salem - 636 007.
- 4.The Central Board of Indirect Taxes and Customs,



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Department of Revenue, Ministry of Finance,
Government of India (Through its Chairman),
North Block, New Delhi - 110 002.

5. Union of India

represented by its Under Secretary,
Ministry of Finance, Department of Revenue,
North Block, New Delhi - 110 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the Show Cause Notice No.10/2011 with C.No.V/73/15/172/2008 - C. Ex., Adj dated 09.03.2011 as amended by the Corrigendum bearing DIN 20230259XP000021792D dated 24.01.2023 issued in the impugned Show Cause Notice Sl.No.10/2011 (ADC) dated 09.03.2011 by the first respondent and quash the same.

For Petitioner : Mr.Raghavan Ramabadran
For Respondents : Mr.S.R.Sundar
Senior Standing Counsel [R1 to R4]

ORDER

The present writ petition has been filed challenging the Show Cause Notice dated 09.03.2011 issued by the first respondent.



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2. The brief facts of the case is as follows:

2.1. The petitioner is the manufacturer of Cold Rolled Stainless Steel (CRSS) Sheets and Coils. The petitioner receives purchase orders from various Co-operative Unions for Stainless Steel milk cans conforming to desired specifications. The petitioner does not directly undertake the manufacture of these milk cans as their factory under the above Central Excise Registration does not have the necessary facility to manufacture milk cans. Therefore, the petitioner utilizes the services of M/s.Oscar Indus to fulfill such orders, a Small Scale Industry ("SSI") job-worker. The petitioner executes purchase orders with job-worker for manufacturing milk cans from the CRSS Sheets and Coils. The petitioner dispatches CRSS Sheets and Coils to the job-worker after payment of excise duty under Rule 11 of the Central Excise Rules, 2002. The job-worker manufactures the milk cans, after which the milk cans are either cleared to the petitioner or directly to the customer. When the job-worker clears the milk cans directly to the customer, the petitioner would reimburse the freight and delivery charges to the job-worker upon production of proof of delivery to the petitioner. The job-worker then raises an invoice for the conversion charges on the petitioner.



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Subsequently, the petitioner raises an invoice on the customers for the milk cans. No excise duty is charged or reflected on this commercial invoice as the milk cans are NIL rated.

2.2. An EA 2000 Audit was conducted in the petitioner's premises from 25.05.2006 to 30.05.2006 and the petitioner's accounts for the period from December 2005 to March 2006 were audited by the Internal Audit Department of the first respondent. The petitioner received the audit objections from the third respondent, wherein it is stated that duty had not been paid on the branded goods by the job-worker and no evidence had been provided for payment of duty on the milk cans manufactured by Oscar Indus. The audit objections also requested the petitioner to direct Oscar Indus to pay the duty and to submit proof. The petitioner responded to the audit objections stating that the milk cans are kitchen utensils subject to Nil rate of duty *vide* Notification No.10/2003 - CE 01.03.2003 and thus, there can be no excise duty levied on the manufacture of milk cans.



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2.3. Thereafter, the impugned show cause notice was issued by the first respondent proposing to demand excise duty of Rs.11,29,864/- on the milk cans cleared from 2005-06 to May 2008 along with interest u/s.11-AB of the Central Excise Act, 1944 [for brevity 'the Act'] and penalty under Section 11-AC of the Act. The show cause notice also proposed to invoke extended period of limitation under Section 11-A of the Act alleging that the petitioner had suppressed the facts regarding the manufacture and clearance of milk cans to the knowledge of the first respondent.

2.4. The petitioner submitted a reply dated 25.04.2011 to the impugned show cause notice praying that the proposals in the impugned show cause notice be dropped and that the petitioner be granted an opportunity of personal hearing before the impugned show cause notice is adjudicated. Thereafter, the impugned show cause notice was never broached by the respondents. Hence, the petitioner was of the bonafide belief that the petitioner's reply had been accepted and the proceedings initiated under the show cause notice had been closed.



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2.5. A corrigendum was issued to the impugned show cause notice and the same was received by the petitioner on 11.02.2023, wherein it is stated that the second respondent would now be the adjudicating authority. This was the first communication regarding the impugned show cause notice ever since the reply was filed on 25.04.2011.

2.6. To the shock of the petitioner, the petitioner received a personal hearing notice on 11.03.2023 stating that the impugned show cause notice was being posted for personal hearing on 24.03.2023, 28.03.2023 and 31.03.2023 before the second respondent. The petitioner was required to attend the personal hearing on any one of the above dates and in the event of failure, the matter would be decided *ex parte* on the basis of the documents available on record. Since the impugned show cause notice pertained to transactions which transpired 12 years ago, the petitioner requested the first respondent for time to gather information and records available *vide* letter dated 17.03.2023, which has been acknowledged by the second respondent, but, no response has been received by the petitioner till date. Left with no other option, the petitioner has filed the present writ petition.



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3. Heard Mr.Raghavan Ramabadran, learned counsel for petitioner and Mr.S.R.Sundar, learned Senior Standing Counsel appearing for respondents 1 to 4.

4. Learned counsel for petitioner submitted that the impugned show cause notice was issued on 09.03.2011 and the personal hearing notice was issued on 11.03.2023. The act of scheduling personal hearing on 24.03.2023 after a lapse of 12 years and 15 days, reckoned from 09.03.2011 (date of issuance of show cause notice), amounts to inordinate delay in adjudication. Such delay is fatal to the proceedings and that the show cause notice merits to be quashed on this ground alone. Learned counsel further submitted that Section 11A(2A)(a) of the Act as it existed during the impugned period, contemplated a time limit of one year for the Central Excise Officer to determine the amount of duty where it was not paid or short-levied by reason of fraud, collusion or any other willful mis-statement or suppression of facts. Admittedly, Section 11A(2A) of the Act prescribed the above time lines to be followed "where it is possible to do so". Even assuming, there was some impossibility in adjudicating the show cause notice, a delay of 12 years is unreasonable



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and completely unfair. Learned counsel further submitted that Section 11-A of the Act was substituted *vide* Finance Act, 2011, w.e.f. 08.04.2011 and Section 11-A(11) of the Act prescribed clear time lines for determination of excise duty after issuance of notice. As last amended w.e.f. 14.05.2016, Section 11A(11)(b) of the Act prescribed that a Central Excise Officer shall determine the amount of duty due within two years where the duty was not paid or short-levied by reason of fraud, collusion or any other willful misstatement or suppression of facts. Further, prior to stipulation of such time lines in the Act, the principle of timely adjudication of the matter was provided in the Circulars. The fourth respondent had issued Circular No.223/8/85-CX dated 21.03.1985 stipulating a maximum time frame of six months for adjudication of disputes to be calculated from the time of issuance of show cause notice. The same principle stood reiterated in Circular No.20/92-CS dated 12.12.1992 and subsequently, in Circular No.1053/02/2017-CX dated 10.03.2017.

5. In support of his contention, learned counsel placed reliance on various judgments of the other High Courts as well as this Court. Learned



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counsel placed strong reliance on the judgment of this Court in *M/s.Steel Authority of India Limited v. Office of the Assistant Commissioner of GST [2022 (11) TMI 1393]* and the judgment of the Bombay High Court in *Raymond Ltd. v. Union of India [2019 (368) ELT 481 (Bom.)]*. Submitting as above, learned counsel prays for quashing the impugned show cause notice.

6. *Per contra*, learned counsel for respondents submitted that the present matter was kept in the Call Book pursuant to the circular issued by the department and hence, the delay has occurred. When this Court posed a question as to whether intimation was provided to the petitioner, learned counsel for respondents fairly submitted that no such intimation was provided to the petitioner.

7. Relying on the counter affidavit, learned counsel submitted that though the audit objections were contested by the respondents, the show cause notice was issued as a protective measure. The show cause notice was ordered to be transferred into call book category based on the



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Board's Circular No.162/73/1995-CX dated 14.12.1995, as the issue pertains to the petitioner herein falls under category (iii), which deals with cases where audit objections are contested by the then Commissioner on 18.05.2009. Further, there were no statutory obligation on the part of the respondents herein to inform the petitioner about the transfer of their case into the call-book category as the same was introduced only in the year 2017. Thus, the respondents have not violated any of the provisions in transferring the case of the petitioner into call-book category based on the board circular. Learned counsel further submitted that Clause (a) of Section 11A(11) of the Act clearly stipulates that the Central Excise officer shall determine the amount of duty under sub-section 10, within one year from the date of notice where it is possible to do so. Therefore, the time limit is not applicable to all the cases and it is applicable only to the show cause notices where the adjudicating authority was able to decide the cases. In the instant case, the Central Excise Officer was not in a position to adjudicate the cases as the department contested the issue with the Audit as there were audit objections. Therefore, the cases were transferred to call book as per the instructions issued therein. Hence, it is not mandatory for the respondents



herein to decide all the cases within one year from the issue of notice. In other words, the time limit is dependent on the circumstances of the case. In view of the same, the adjudicating authority has not deliberately delayed the adjudication proceedings. Hence, the time limit prescribed u/s.11A(11)(b) of the Act, is not applicable to the show cause notice in question.

8. Learned counsel further submitted that all audit objections relating to Central Excise and Service Tax issued prior to 01.03.2014 shall be compared with the pending Action Taken Notes (ATNs), received from the office of CAG, enclosed as Annexure B with the Circular. For customs, the list shall be separately issued. Show Cause Notices (SCNs) relating to audit objections figuring in the list should not be adjudicated and further action may be taken on them in consultation with the Commissioner (PAC). The rest of the objections stand finally vetted by CAG Audit with no further comments which means that the reply of the department has been accepted by the CAG office. Show Cause Notices relating to these objections may be taken up for adjudication on merits, including those in the call-book, following the procedure prescribed. Submitting as above, learned counsel prays for



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dismissal of the writ petition.

9. This Court has considered the rival submissions and perused the materials available on record.

10. The central issue to be decided in the present case is whether the proceedings is barred by limitation or not ?

11. A show cause notice was issued on 09.03.2011 by the respondents and a reply was filed by the petitioner on 25.04.2011. After a period of 12 years, a personal hearing notice was issued by the respondents to the petitioner to appear for personal hearing on 09.03.2023. The main grievance of the petitioner is that after a period of 12 years, the respondents have no *locus standi* to proceed against the petitioner. At this juncture, it would be appropriate to examine the time limit provided in the Act with regard to determination of duty by the Central Excise Officer.

12. Section 11A(11) of the Act reads as follows:

"(11) The Central Excise Officer shall determine the amount of



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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 sub-section (1);
- (b) within [two years] from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4)."

13. The petitioner falls under Section 11(b) of the Act. Therefore, the respondents are supposed to have determined the amount of duty within a period of two years. Merely because the words "where it is possible to do so" are provided in the Act, it does not mean that they can take their own time to determine the excise duty. It must be done within a reasonable time i.e. within one or two years. In the present case, the delay is more than 12 years, which is an inordinate one.

14. The Government of India issued a circular dated 21.12.1992, which reads as follows:

"Circular : 20/92-CX.6 dated 21-Dec-1992

Adjudication - Time limit for finalisation of
Circular No.20/92-CX.6, dated 21-12-1992
[From F.No.213/28/92-Cx.6]
Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi
Subject : Time period for finalisation of Adjudication -
Regarding.

The Trade has been represented in the meeting of the 33rd Advisory Council that they are facing problems due to the



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inordinate delays in the adjudication of cases. The Board's D.O.F.No.223/8/85-CX.6, dated 21-3-1985 had already stipulated a maximum period of 6 months from the date of issue of show cause notice within which the case is to be decided. It may be ensured that, as far as possible, this limit is adhered to.

2. The above instructions should be brought to the notice of the Trade and field formations through appropriate Trade Notices and circulars."

15. In the aforesaid circular, it is clearly stated that the Board's D.O.F.No.223/8/85-CX.6, dated 21-3-1985 had already stipulated a maximum period of 6 months from the date of issue of show cause notice within which the case is to be decided and as far as possible, this limit is to be adhered to. The said circular is in force as on today.

16. It is seen that instructions were also issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs on 17.09.2015, to streamline the process of adjudication since the High Court has passed orders on the aspect of delay in completing the adjudication and due to receipt of complaints from assesses from time to time. The instruction dated 17.09.2015 reads as follows:

"Sub : Streamlining the process of adjudication

It has come to the notice of the Board that Hon'ble High Court of Bombay in its judgment dated 15.07.2015 in the case of Lanvin



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Synthetics Pvt. Ltd. and another Vs Union of India in W.P.No.1536 of 2014 [2015-TIOL-1668-HC-MUM-CUS] has quashed the Show Cause Notice dated 13.03.1997 and prohibited the department from passing any adjudication order as the Show Cause Notice was not adjudicated for 17 long years as no records were available. The High Court in its orders at para 12 has observed:

"If law postulates early end to such proceedings and there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department."

2. The High Court in para 11 of said order has further quoted Hon'ble Supreme Court in the case of Citedal Fine Pharmaceuticals [2002-TIOL-680-SCCX] where the Apex Court was pleased to hold that in the absence of any period of limitation, it is settled law that every authority should exercise the power within a reasonable period.

3. It is painful to note that in spite of various monitoring mechanisms in existence, such occurrence could not be avoided. The matter has been viewed seriously and all the adjudicating authorities are directed to pass adjudication orders within time limits as prescribed, so that the above said instance is not repeated in future.

4. Further, I am directed to refer to Board letter F.No.275/17/2015-CX.8A dated 11.03.2015 (copy available on CBEC website), on the subject of 'Steps needed to be taken to improve tax administration', wherein the need for passing the adjudication order within the specified time has been emphasised.

5. All the Commissioners should also explore to possibility of scanning and digitization of all papers connected with adjudication and litigation matters.

6. Any other suggestion in this regard may be forwarded to this office.

7. The above should be brought to the notice of the field



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formations under your charge for scrupulous compliance."

17. By virtue of the aforesaid circular, the respondents had viewed the matter seriously and therefore, instructed all the adjudicating authorities to pass adjudication orders within the time limit as prescribed so that the above said mistake will not repeat in future.

18. In the present case, the reasons provided by the respondents was that the present matter was kept in the call book and therefore, there was a delay in completing the adjudication process. On this aspect, a Division Bench of the Bombay High Court in the case in ***Raymond Ltd. v. Union of India [2019 (368) ELT 481 (Bom.)]*** has passed a detailed order and the relevant portions are extracted hereunder:

"6. We specifically asked Mr. Jetly, Learned Counsel appearing for the Revenue, whether any intimation was given to the petitioners either in 2001 or in 2013 that the show cause notices are being kept in the call book and the reason for it i.e. awaiting a final decision in the CERA audit objection and / or the decision of the Apex Court in the appeal filed by the Revenue from the order of the Tribunal in case of petitioners' Indore and Bhopal Unit. Mr. Jetly very fairly states that no intimation of keeping the show cause notices in the call book was given. Thus, the occasion to give any reasons for it being kept in the call book to the petitioner did not arise.

7. In the aforesaid facts, the issue that arises for our



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consideration is whether in the present facts, commencement of adjudication proceedings after a long delay of 14 to 17 years is justified when the party in all these years has not been put to notice that the proceedings were kept in abeyance. In fact, this Court, in the case of Bhagwandas Tolani (Supra) decided as far back as 1982, has held that even if there is no time limit provided in the statute for adjudication proceeding, yet it is not permissible to commence adjudication proceeding after a long period of 10/15/20 years, particularly when the delay is not on account of any default on the part of the answering party. It further held that reopening of an adjudication proceeding after a long time would cause serious prejudice to the parties, as in the meantime, the relevant records may have been misplaced, the persons who were in charge of the affairs relating to issue raised in the show cause notice may no longer be available. Further, in ***Cambata Industries Pvt. Ltd. v. Additional Dir. of Enforcement, Mumbai, (2010) 254 ELT 269 (Bom.)***, this Court held that in absence of any fault on the part of the petitioners, it is not open to the Revenue to re-open proceedings after long delay without justifiable reasons. In ***Hindustan Lever Limited v. Union of India (2011) 264 ELT 173 (Bom.)***, this Court has observed as under:-

“15.

The weight of the judicial pronouncements lean in favour of quashing the proceedings, if there has been an undue delay in deciding the same. See *Government of India v. The Citedal Fine Pharmaceuticals, Madras and Ors.*, 1989 (42) E.L.T. 515 (S.C.) and the judgment of the Division Benches of this Court in *Bhagwandas S. Tolani v. B.C. Aggarwal and Ors.* reported in 1983 (12) ELT 44 (Bom.) and *Universal Generics Pvt. Ltd. v. Union of India* reported in 1993 (68) ELT 27 (Bom.). The underlying principle laid down in the said judgments is that in absence of any period of limitation, it is required that every Authority is to exercise the power within a reasonable period.”

8. Further, this Court in the case of *M/s.Sanghvi Reconditioners (supra)* had occasion to consider an identical submission as made before us by the Revenue i.e. show cause notices had been kept in the call book as an identical challenge in



case of another assessee was pending in the Hon'ble Supreme Court. This defence on the part of the Revenue was negated by the Court. This on the ground that accepting such a stand on behalf of the Revenue would defeat the rule of law itself. In fact, the Court noted as under :-

“Secondly, we also omit totally from our consideration the complaint of the petitioner that in a matter as old as of 1999, if now the adjudication has to be held, it will be impossible for them to trace out all the records and equally, contact those officials who may not be in their service any longer. Thus, they would have no opportunity, much less reasonable and fair, to defend the proceedings. That is equally a balancing factor in the facts and circumstances of the present case.”

9. In the present facts, it is the case of the petitioner that because of long delay, papers and proceedings relevant to meet the show cause notice are not available. Thus, seriously hampering the petitioners to appropriately meet the show cause notice. This delay in taking up the adjudication of the show cause notice (in the absence of any fault on the part of the party complaining) is a facet of breach of principles of natural justice. It impinges on procedural fairness, in the absence of the party being put to notice that the show cause notices will be taken up for consideration, after some event and / or time, when it is not heard in a reasonable time. In the absence of the above, particularly as in this case, long delay has resulted in papers being misplaced. The reasonable period may vary for case to case. However, when the notices are being kept in abeyance (by keeping them in the call book as in this case), the Revenue should keep the parties informed of the same. This serves two fold purpose One it puts the party to notice that the show cause notice is still alive and is only kept in abeyance. Therefore, the party can then safeguard its evidence, till the show cause notice is taken up for adjudication. Secondly, if the notices are being kept in the call book for some reason, the party gets an opportunity to point out to the Revenue that the reasons for keeping it in call book are not correct and the notices could be adjudicated upon immediately. This is the transparent manner in which the State administration must function.



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10. In fact, we note that the above manner of functioning is the objective of the State administration, as our attention has been drawn to the C.B.E. & C. Circular No.1053/2/2017-CX., dated 10/03/2017. In paragraph 9.4 of the above circular of C.B.E. & C. has directed the officers of the department to formally communicate to the party that the notices which have been issued to them, are being transferred to the call book. This would be expected of the State even in the absence of the above circular; the circular only states the obvious. In this case, the show cause notices were kept in the call book not at the instance of petitioner, but by the Revenue of its own accord. After having kept it in the call book, no intimation/communication was sent by the Commissioner pointing out that the show cause notices had been kept in the call book. Thus, bringing it to the notice of the petitioners that the show cause notices are still alive and would be subject to adjudication after the show cause notices are retrieved from the call book on the dispute which led to keeping it in the call book being resolved. This, admittedly has not been done by the Revenue in this case.

11. Therefore, it was reasonable for the petitioners to proceed on the basis that the department was not interested in prosecuting the show cause notices and had abandoned it. These proceedings are now being commenced after such a long gap, after having led the petitioner to reasonably expect that the proceedings are dropped. Therefore, even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the showcause notices are not available with the petitioners."

19. In the present case, admittedly no intimation was provided to the petitioner with regard to keeping the call book and even in that case also, the Act provides time limit of six months to pass orders. However, in



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the present case, citing the internal circular issued by the respondents to keep the matters in the call book, the respondents have failed to adhere to the time limit provided in the statute. The circular is beyond the scope of the provisions of the Act and notifications provided therein. Therefore, keeping the call book without intimation to the petitioner and beyond the scope of the Act is unacceptable. Hence, by citing the said reason, the respondent department cannot keep the matter pending for a period of 12 years and thus, the present proceedings is clearly barred by limitation.

20. This Court, in *M/s.Steel Authority of India Limited v. Office of the Assistant Commissioner of GST [2022 (11) TMI 1393]*, has held as follows:

"29. The Gujarat High Court in the case of Siddhi Vinayak Syntex Pvt. Ltd. Vs. Union of India, [(2017) 352 ELT 455], considered the case of delay ranging up to 15 years in that case and had set aside all SCNs as being unreasonably and unduly belated. The Bench has also expressed the view that the concept of the call book, created by the Central Board of Excise and Customs, and transfer of pending cases to the call book, is contrary to the statutory mandate. Such transfer provides for an extrastatutory period of limitation, impermissible and contrary to law."

21. In view of the above and the law laid down by various Courts



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as well as this Court, this Court is of the considered view that present proceedings could not be allowed to continue after a period of 12 years, particularly, when there is no mistake on the part of the petitioner. Adjudication of proceedings after a long period would cause serious prejudice to the parties. Hence, this Court holds that the present proceedings is barred by limitation and is unjustifiable.

For the aforesaid reasons, this Writ Petition is allowed and the Show Cause Notice dated 09.03.2011 issued by the first respondent, is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

22.11.2023

Index: Yes/No
Speaking Order/Non-speaking Order
Neutral Citation: Yes/No
gm

KRISHNAN RAMASAMY, J

gm

To



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- 1.The Office of the Commissioner of GST & CE,
GST Bhawan, No.1, Foulkes Compound,
Anaimedu, Salem - 636 001.
- 2.The Office of the Assistant Commissioner of GST & CE,
106, 3rd Floor, Varalakshmi Orchid,
Ramakrishna Road, Salem - 636 007.
- 3.The Office of the Superintendent of Central Excise,
Salem III Range,
No.15, 1st Floor, Rajaramnagar Main Road,
Sahadevapuram, Salem - 636 007.
- 4.The Central Board of Indirect Taxes and Customs,
Department of Revenue, Ministry of Finance,
Government of India (Through its Chairman),
North Block, New Delhi - 110 002.

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