IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3070-2022
Date of decision: 14.03.2023

M/s Upkar International Pvt. Ltd.

.....Petitioner

Versus

Union of India and ors.

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Ajay Kalra, Senior Standing Counsel,
for the respondents..

***

Ritu Bahri, J.

Petitioner is seeking a writ in the nature of certiorari quashing the order dated 26.03.2021 (Annexure P-9) passed by respondent No. 4, adjudication order dated 25.07.2016 (P-5) and appeal order dated 21.02.2018 (P-6) whereby an amount of Rs.18,42,089/- is held to be recoverable in cash along with interest and penalty.

It is not in dispute that the above said orders have been passed, keeping in view the show cause notice dated 03.11.2010 (P-2). The impugned orders have been passed after a gap of almost 06 years, which is in contravention to the provisions of sub-section 11 of Section 11A of Central Excise Act.

Learned counsel for the petitioner has referred to judgment passed by this Court in ***CWP No.6157 of 2021, titled as Suraj Innovative Tehnologies vs. Commissioner, GST and Central Excise, Chd and anr.,*** decided on 28.02.2023 wherein also the show cause notice was issued on 24.02.2009 to the assessee and after a gap of 10 years, the respondent-department fixed the matter for personal hearing on 16.03.2021. The petitioner relied upon judgment of Hon'ble the Supreme Court of India in a case of ***State of Punjab vs. Bathinda District Co-op Milk P. Union Ltd, 2007 (217 E.L.TT 325)*** wherein it was held that the assessment order can be revised within a reasonable period of five years. The said judgment was further affirmed by Hon'ble the Supreme Court in **State of Punjab vs. Bathinda District Cooperative Milk Producers Union Ltd., 10 VST 180,** whereby it was opined that five years would be the reasonable period in the absence of any time period prescribed in the Act. However, the respondent-department argued that since the case of the petitioner was kept in call book, as per circular (R-1), the delay of 10 years cannot be taken as a ground to quash the show cause notice dated 24.02.2009 (P-1). This Court allowed the petition of the assessee.

He has referred to another judgment passed by the Gujarat High Court in ***Siddhi Vinayak Sintex Pvt. Ltd. vs. Union of India, 2017 (352) ELT 455***, whereby same view has been taken that delay in conclusion of proceedings pursuant to show cause notices after a long gap without proper explanation is unlawful and arbitrary.

Learned counsel for the petitioner, thereafter, referred to the judgment passed by this Court in ***M/s Shree Baba Exports through proprietor Ms. Jyotsna Agarwal vs. Commissioner, GST & Central Excise,***

Commissionerate, Chandigarh and another, CWP No.11860 of 2021 (decided on 15.03.2022), whereby decision given in ***M/s GPI Textiles Limited's case (supra)*** has been followed.

Learned counsel for the petitioner further informed that against the judgment passed in ***M/s Shree Baba Exports's case (supra)***, Special Leave to Appeal (C) No. 12376 of 2022 filed by the revenue has been dismissed by Hon'ble the Supreme Court vide order dated 29.07.2022. At this stage, learned counsel for the respondents has informed that SLP against the judgment passed in Siddhi Vinayak Sintex Pvt. Ltd.'s case (supra) is pending consideration before Hon'ble the Supreme Court. Learned counsel for the petitioner has not disputed the above said fact, however, he stated that no interim stay has been granted in the appeals, which are pending before Hon'ble the Supreme Court with respect to the matter under challenge.

Keeping in view the fact that in the present case as well, there is an inordinate delay of 06 years after issuance of show cause notice, the present petition is allowed in the same terms as in ***CWP No.6157 of 2021***. Accordingly, the impugned order dated 26.03.2021 (Annexure P-9) passed by respondent No. 4, adjudication order dated 25.07.2016 (P-5) and appeal order dated 21.02.2018 (P-6) are set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

14.03.2023
G Arora

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No