IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3873-2021
Date of Decision:-09.02.2023

M/s Dexterirty Projects Pvt. Ltd. ….Petitioner

Vs.

Union of India and ors. ….Respondents

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

Present:- Mr. R.K. Phillips, Advocate
for the petitioner

Mr. Sourabh Goel, Sr. Standing counsel
for the respondents.

Ritu Bahri, J.

The petitioner has approached this Court by filing the present writ petition for issuance of writ in the nature of certiorari for quashing show cause notice dated 17.08.2015 with the consequential relief of refund of entire amount of tax so deposited during investigation of the case i.e Rs.1,26,46,061/- (including Rs.54,75,724/-) (Annexure P-1) and notices of personal hearing dated 21.08.2020 (P-2) and 21.09.2020 (P-3) issued by respondent No. 3 and 08.12.2020 (P-5).

The facts as stated in the petition are that petitioner is engaged in the provision of Works Contract Service, Business Support Service and Manpower/Supply Agency service and is registered having service Tax Registration No. AAECR8650CSD001.

Respondent No. 4 on information, searched the premises of the petitioner and found that the petitioner had neither discharged the due service tax liability nor filed ST-E return for the period 01.04.2013 to 30.09.2013, which was required to be filed on or before 25.10.2013. The petitioner filed ST-3 return for the period 01.04.2013 to 30.09.2013 on 12.03.2014 and deposited service tax amounting to Rs.1,26,46,061/- for the period 2013-2014.

A show cause notice dated 17.08.2015 was issued to the petitioner proposing a demand of service tax amounting to Rs.1,36,15,534/- and appropriation amount of Rs.1,26,46,601/- already deposited by the petitioner along with interest under Section 75 of the Finance Act, 1994 (for short 'Act 1994) and penalties under both Section 78 (I) of Act 1994 and Section 77 of Act 1994 read with Rule 7 of Service Tax Rules, 1994 (for short 'Rules 1994').

Thereafter, petitioner was issued notices of personal hearing dated 21.08.2020 (P-2) and 21.09.2020 (P-3) and 08.12.2020 (P-5).

Petitioner is challenging the above notices on the grounds mentioned below"-

> *(i) The adjudication proceeding has become time barred in view of the limitation period of one year for adjudication from the date of the show cause notice as provided under clause (b) of sub-section (4B) of Section 73 of the Finance Act, 1994 (Annexure P-6);*
>
> *(ii) The inordinate delay of more than 5 years in adjudication proceeding has been barred by limitation even if in the indirect tax statute the time limitation has not been provided, it is settled law laid down by the Hon'ble Supreme Court that the reasonable period of limitation for adjudication is five years."*

At the very outset, learned counsel for the petitioner has referred to clause (b) of sub Section 4-B of Section 73 of Act 1994, which reads as under:-

> *"Section 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded*
>
> *(1) xxx xxx xxx*
> *(a) xxx xxx xxx*
> *(b) xxx xxx xxx*
> *(c) xxx xxx xxx*
> *(d) xxx xxx xxx*
> *(e) xxx xxx xxx*

(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)-

(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 one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)].”

In the present case, the petitioner was issued shows cause notice on 17.08.2015 and thereafter, after a gap of 05 years, he was called for personal hearing, vide notices of personal hearing dated 21.08.2020 (P-2) and 21.09.2020 (P-3) and 08.12.2020 (P-5). The petitioner gave reply to the notice for personal hearing dated 21.09.2020, vide letter dated 05.10.2020 (P-4).

Learned counsel is relying upon judgment of Hon’ble the Supreme Court of India in a case of ***State of Punjab vs. Bhatinda District Co-op Milk P. Union Ltd, 2007 (217) E.L.T325 (S.C),*** judgment of Hon’ble Delhi High Court in a case of ***Sunder System Pvt. Ltd vs. Union of India, 2020 (33) G.S.T.L 621 (Del.),*** judgment of Hon’ble Gujarat High Court in a case of ***Serve Pharmaceuticals vs. Union of India, 2019 (366) E.L.T 49 (Guj),*** judgment of Hon’ble Bombay High Court in a case of ***Raymon Ltd vs. Union of India, 2019 (368) E.L.T 481 (Bom) and*** judgment of this Court in a case of ***Harkaran Dass Vedpal vs. Union of India, 2019 (368) E.L.T 546 (P&H).***

On the other hand, learned counsel for the respondent referred to reply dated 27.10.2022 Annexure R-1 which shows that on different dates, the petitioner was called for personal hearing right from 03.10.2016. Copy of Annexure R-1 reads as under:-

Sr. No.	Date of issue of letter of personal hearing	Date at which the petitioner was to be appeared	Remarks (if any)
1.	19.09.2016	03.10.2016	
2	06.04.2017	11.04.2017	
3	17.04.2017	26.04.2017	
4	22.08.2017	31.08.2017	Returned back undelivered with remarks left
5	01.09.2017	19.09.2017	Returned back undelivered with remarks left
6	11.09.2017	29.09.2017	Returned back undelivered with remarks left
7	19.09.2017	29.09.2017	
8	04.10.2018	15.10.2018	
9	13.12.2018	27.12.2018	
10	16.01.2019	24.01.2019	Returned back undelivered with remarks left
11	21.02.2019	28.02.2019	
12	15.07.2019	24.07.2019	
13	30.07.2019	07.08.2019	
14	21.08.2020	28.08.2020	
15	21.09.2020	08.10.2020	
16	08.12.2020	14.12.2020	
17	15.12.2020	24.12.2020	

Learned counsel for the respondent has thus submitted that the petitioner was trying to mislead the department, as the petitioner vide its letter dated 25.08.2015 had acknowledged the fact that show cause notice dated 17.08.2015 has been issued to him and had requested for release of seized documents.

In the reply, it has been further stated that as regards the petitioner letter dated 07.10.2016 to Supdt on 17.10.2016 regarding change of address, it has been sated that Supdt(Anti Evasion) is neither the Investigating Agency (DGCEI) nor the Adjudicating Authority in the instant case. The petitioner intentionally did not inform the new address to the Investigating Agency or Adjudicating Autnority to delay the decision in the matter on his own. The petitioner had no intention to settle the dispute on merits and thus, he did not file reply.

Learned counsel for the respondent while referred to clause (b) of Section 4B of Section 73 of Act 1994 submits that the Finance Act does not provide for mandatory time limit of 01 year for determination of the amount of service tax due.

Heard.

In the present case, notice of motion was issued on 18.02.2021 and it was ordered that proceedings may go no but final order shall not be passed by the competent authority.

Reference at this stage can be made to Annexure R-1 which shows that since 31.08.2017, the notice issued to the petitioner has been received back with the remarks ‘Undelivered’.

Thus, the question for consideration in the present petition would be that if notices could not be served upon the petitioner w.e.f 31.08.2017, then the proceedings of recovery can be kept pending.

This aspect has been examined by various Courts and reference at this stage can be made to ***Bhatinda District Co-op Milk P. Union Ltd’s case (supra)*** wherein the question was ‘what should be the reasonable period for reopening an order of assessment under the Punjab General Sales Tax Act’. The appeal was dismissed and it was held that when no period of limitation is prescribed, statutory authority must exercise its jurisdiction within reasonable period. in para No. 21 and 22, it was observed as under:-

> *21.Our attention has been drawn to a decision in Commissioner of Sales Tax, Orissa & Anr. v. M/s. Halari Store etc. ((1997) 7 SCC 715] wherein this Court, while considering the provisions of Orissa Sales Tax Act, 1948 and the Rules framed thereunder, held:*

> *But, the same is not the position where the Commissioner decides to exercise his suo motu revisional I power to revise an appellate order. Significantly the words "on his own motion occurring in the enactment are conspicuously present in the proviso the legislature has excluded the revisional jurisdiction of the Commissioner of Sales Tax to revise an appellate order if invoked at the instance of a dealer or a person when such dealer or person has a remedy by way of an appeal. As noticed earlier, the limitation on the suo motu power of the Commissioner as to revise an appellate order has not been expressly provided in the proviso. In the absence of any expressed provisions, no limitation on suo motu power of the Commissioner to revise an appellate order can be implied. We accordingly hold that the provisions of proviso to sub-section (4)(a) of Section 23 of the Act do not prohibit the Commissioner to exercise suo motu revisional power to revise an appellate, order."*

22. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us hereto before, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4-9-2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5 ½ years."

Sub Section 4B of Section 73 of Act 1994 came up for consideration before Hon'ble Delhi High Court in ***Sunder System Pvt. Ltd's case (supra)*** wherein in para No. 9 to 11, it has been observed as under:-

> 9. A Coordinate Bench of this Court in the case of National Building Co*nstruction Co. Ltd. v. Union of India, 2019 (20) G.S.T.L 515 (Del.) has held as under :-*
>
> > *"20......Sub-section (4B) to Section 73 of the Fin Act fixes the time or limitation period within which the Central Excise Officer has to adjudicate and decide the show cause notice. The time period fixed under Clause A or B is six months and one year, respectively. Limitation, period for passing of the adjudication order, described as Order-in- Original, starts from the date of notice under sub-section (1) to Section 73 of the Fin Act."*

10. This Court is also of the view that, even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings. [See: State of Punjab v. Bhatinda District Coop. Milk P Union Ltd., [(2007) 11 SCC 363 = 2007 (217) ELT 325 (SC) S.B. Gurbaksh Singh v. Union of India & Ors., 1976 (37) STC 425 Government of India v. The Citedal Fine Pharmaceuticals Madras, AIR 1989 SC 1771= 1989 (42) E.L.T. 515 (S.C.)]; J.M. Baxi & Co. v. GOI, 2016 (336) E.LT. 285 (Mad.)]

11. Keeping in view the aforesaid mandate of law as well as sub-section (4B) of Section 73 of the Finance Act, 1994, this Court is of the view that a statutory authority has to decide the show cause notice within the time prescribed wherever it is possible to do so."

In ***Serve Pharamceuticals's case (supra)***, the petitioner was challenging Order-in-Original on the ground that it was passed after a long delay of nearly eleven years of issuance of show cause notice dated 14.08.2006. The petition was allowed and it was observed as under:-

"*6. Having heard Learned Advocates for the respective parties, it is clear that though the show cause notice came to be issued in the present case in the year 2006 and it remained dormant for pretty long years without any adjudication, even after retrieving the case from the Call Book in the year 2009 the adjudication into the case did not conclude till 24-5-2018, the petitioner cannot be blamed for non-adjudication of the show cause notice as he had never requested to transfer it to the Call Book or he has never delayed any proceedings pending adjudication In short, the petitioner is not responsible for the delay in adjudication at all. As such, delay in adjudication is not at all even explained by the Department. There shall not be any hanging sword, without any justifiable reasons on the petitioner to adjudicate the show cause notice at the whims of the Department. It is well settled in number of decisions that the adjudication proceedings have to be culminated within a reasonable time and if it is not done so, they stand vitiated on the said ground.*

6.1 The Department has failed to put forth any justification or show any explanation for delay in adjudicating the show cause notice even after it had retrieved the case from the Call Book on 28- 9-2009 till the passing of the *order impugned in this petition. As such, it has to be adjudicated within reasonable time and in absence of any proper explanation thereof, it is unlawful and arbitrary as held by this Court in the case of Siddhi Vinayak Syntex Pvt. Ltd. (supra) and other decisions subsequent thereto. Hence, the show cause notice and the Order-in-Original passed pursuant thereto cannot be sustained.*

6.2 So far as issuance of notice for personal hearing as claimed in the affidavit-in-reply by respondent No. 2, though disputed by the petitioner having served by prescribed procedure is concerned, it is desirable that it is not probed further as the order impugned in this petition pursuant to the show cause notice is required to be quashed and set aside on the ground of delay in adjudication proceedings. Since the impugned order is quashed and set aside on the ground of delay in adjudication proceedings, the argument of alternative remedy raised by the respondent is rejected as the proceedings itself is vitiated for delay in adjudication proceedings. There is no need to relegate the petitioner to the alternative remedy as the order impugned is held to be unreasonable and arbitrary.

In the facts of the present case, even if details of Annexure R-1 is tobe taken into account, it is not in dispute that the petitioner was not served after 31.08.2017. So the respondents were required to finalise the show cause notice within a period of one year as per clause (b) of sub Section 4-B of Section 73 of Act 1994.

Applying the ratio of the above mentioned judgments to the facts of the present case, the writ petition is allowed and show cause notice dated 17.08.2015 is quashed on the ground of limitation.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.02.2023
G Arora

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