

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18398 of 2023

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M/s Kanak Automobiles Private Limited, a Company incorporated Under Companies Act, 1956 and having its registered Office at 66-D, S.K. Puri, Police Station-S.K. Puri District-Patna, through its Authorized Signatory and Director namely Vinit Kumar, Male aged about 47 Years, S/o Hari Narain, R/o Mohalla S.K. Puri, Police Station-S.K. Puri, District-Patna Pin-800001.

... .. Petitioner/s

Versus

1. The Union of India through Ministry of Finance, New Delhi-110001
2. Additional /Joint Commissioner, CGST & CX, Patna-I, Having its Office at 3rd Floor, Central Revenue Building (Annexe), Birchand Chand Patel Path, Patna, Bihar-800001
3. The Directorate General of GST Intelligence, Patna Zonal Unit, having its Office at Cybotech Tower, Near Pani Tanki, Boring Patliputra Road, Patliputra, Patna-800013

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhishek Anand, Advocate Mr. Abhishek Garg, Advocate Mr. Yash Gaiha, Advocate Ms. Kanupriya, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General Mr. Anshuman Singh, Sr. SC, CGST & CX

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2024

The petitioner is concerned with the delay in conclusion of proceedings under the Finance Act, 1994. The show-cause notice is dated 19.04.2021 and relates to the period October, 2015 to June, 2017 (Annexure-P-1). A further notice was issued for hearing, only as per Annexure-P-3 on 21.09.2023.



2. Learned counsel appearing for the petitioner points out from the Finance Act, 1994 that Section 73(1) speaks of a limitation of thirty months from the relevant date; which date is the due date of filing returns; falling on the 10th of the month succeeding. In the present case, the period is October, 2015 to June, 2017 and the relevant date would be 10th of July, 2017. The proceedings were issued not under Section 73(1) but under the proviso which substitutes the words 'thirty months' in sub-section (1) with the words 'five years'. The petitioner has no quarrel that the notice was issued within the limitation period, since the limitation was till 2022. However, the contention taken is that once proceedings are initiated; under sub-section (4B) of Section 73, the proceedings should be completed within one year.

3. The learned Additional Solicitor General alertly points out that there is no mandate under sub-section (4B) that the proceedings should be closed within one year, but it is only a caution to the Assessing Officer that wherever possible it should be completed within that period. When it is not a mandate, any reasonable period could be taken by the Assessing Officer and in the present case it is pointed out that the petitioner has been constantly seeking adjournment which led to the delay. Learned



ASG also relies on ***SLP (C) No. 20072/2021; Commissioner, GST and Central Excise v. M/s Swati Menthol and allied Chemicals Ltd. & Anr.***

4. As admitted by the petitioner, the show-cause notice was issued within time i.e. within the five-year period. We say that without looking into whether the requirement of a fraud, collusion, willful mis-statement, suppression of facts or contravention of any of the provisions of the Chapter or the rules made thereunder, arise in the case of the petitioner; especially since the petitioner admits the notice to be within time and does not controvert the allegations in the notice, on merits, in this writ petition, which is filed only on the ground of the further delay in conclusion of proceedings. Sub-section (4B), we agree with the learned ASG, only provides that wherever it is possible, the proceeding has to be completed within one year; which is not a statutory mandate as such. However, the expediency required, as projected in the above provision, which is the intention of the legislature, has to be understood in the true sense of its tenor and spirit.

5. We look at the facts which indicate that after issuance of the notice on 19.04.2021 the first notice issued for hearing is on 21.09.2023. As far as the pandemic, we notice that



the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation due to the pandemic situation, saved the limitation between 15.03.2020 till 28.02.2022. It was also directed that a proceeding which stood barred by limitation, could be initiated or concluded within ninety days from 01.03.2022. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. Hence the proceeding issued by the show cause notice should have been proceeded with in the one year period after 01.03.2022. In the present case, sub-section (4B) specifically provides for one year within which period it was intended that all possible steps should be taken to finalize the proceedings. The one year period, as provided in Section 73 (4B) expires on 27.02.2023.

6. The counter affidavit indicates that there is absolutely no proceedings taken within the one year period. In fact, the first notice, even according to the counter affidavit, was on 21.09.2023, as per Annexure-P-3, which was seven months after the period granted by the Hon'ble Supreme Court. The delay as projected in the counter affidavit is with respect to adjournments sought after 21.09.2023 which does not impress



upon us to find that every probable step was taken by the Assessing Officer and it was only due to the frequent adjournment requests that the proceedings were delayed.

7. We are of the opinion that looking at the true import and spirit of the provision, which required expediency on the part of the Assessing Officer, the same has not been scrupulously complied with, in the present case.

8. In so far as the decision in ***M/s Swati Menthol and allied Chemicals Ltd.*** (supra), we extract hereunder Paragraphs 9, 10 and 11:-

“9. We find that the proceedings which were commenced by virtue of the two show cause notices referred to above have not been concluded although over a decade has passed. Be that as it may, we find that submission made by learned Additional Solicitor General as to concluding the proceedings within the time frame to be fixed by this Court needs to be accepted.

10. In the circumstances, we set aside the impugned order and we remand the matter to the Commissioner of GST (adjudicating Authority) with a direction to conclude the proceedings within a period of eight weeks from 10.08.2023. Since the respondent(s) is/are represented by learned counsel, the respondent(s) is/are directed to appear before the concerned Authority on that date (10.08.2023) without expecting any separate notices to be issued by the said Authority to the respondent (s) herein.

11. It is needless to observe that the Authority which is seized of the matter shall give adequate opportunity to both sides and conclude



the proceedings within a period of eight weeks from 10.08.2023.”

9. On a reading of the cited order of the Hon’ble Supreme Court we see that, therein, there were two compelling considerations which weighed upon the Hon’ble Supreme Court to extend the period, despite passage of a decade from the issuance of the show cause notice. First, the fact of the respondent/assessee having frequently sought adjournments and failing to appear before the authority. Then, the proceedings were adjourned *sine die* only since the identical subject matter; which led to and formed the basis of the show cause notice, was pending consideration before the High Court of Jammu & Kashmir. The proceedings were resumed after the verdict of the said High Court. We find that the Hon’ble Supreme Court has exercised its jurisdiction on the peculiar facts and under Article 142 of the Constitution of India and such powers are not conferred on the High Courts to extend the statutory period provided.

10. Here, we agree that it is not an absolute mandate that the proceedings should be completed within one year from the notice; but it requires the statutory authority to take all possible steps, so to do and conclude the proceedings within an



year. No steps were taken in the entire one year period, which results in the frustration of the goal of expediency as required statutorily. We hence find that the proceedings cannot be continued.

11. The writ petition stands allowed.

12. Interlocutory Application(s), if any, shall stand closed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	09.04.2024
Transmission Date	

