

S.R.JOSHI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE CIVIL JURISDICTION**

**WRIT PETITION NO.10348 OF 2023**

CMA-CGM Agencies (India) Pvt. Ltd.,  
(formerly known as APL (India) Pvt. Ltd.),  
a company incorporated under the Companies  
Act, 2013, and having its Corporate Office at  
Indiabulls, Finance Centre, Tower-3, 8<sup>th</sup> Floor,  
Senapati Bapat Marg, Elphinstone Road (East),  
Mumbai 400 013.

... Petitioner

*Versus*

**SMITA  
RAJNIKANT  
JOSHI**

- 1 The Union of India Ministry of Finance,  
through the Secretary, Department of Revenue,  
North Block, New Delhi 110 001
- 2 Commissioner, CGST & C.Ex.,  
Navi Mumbai, having its office at  
16<sup>th</sup> Floor, Satra Plaza, Palm Beach  
Road, Sector 19D, Vashi,  
Navi Mumbai 400 075.

... Respondents

Mr. Prasad Paranjape with Mr. Kumar Harshvardhan, Ms. Dhruvi Shah i/b. Lumiere Law Partners, for the Petitioner.  
Mr. Ram Ochani, for the Respondents.

**CORAM: G. S. KULKARNI &  
FIRDOSH P. POONIWALLA, JJ.**  
**DATED: 6<sup>th</sup> FEBRUARY, 2024**

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**ORAL JUDGEMENT (Per FIRDOSH P. POONIWALLA, J.)**

**RULE.** Rule made returnable forthwith and heard finally by consent of the parties.

2           This Writ Petition has been filed under Article 226 of the Constitution of India seeking the following final relief:-

*“(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 to quash and set aside the Show Cause Notice No. (i) 408/2009 dated 18.09.2009; (ii) Show Cause Notice No.153/2010 and 12.04.2010; (iii) Show Cause Notice No.91/2011 dated 01.04.2011; and (iv) Show Cause Notice No.466 of 2011 dated 14.10.2011, pending for adjudication before the Respondent No.2, due to inordinate delay of almost 11 years in its adjudication.”*

3           The Petitioner which was formerly known as APL (India) Pvt. Ltd., acts as a “*steamer agent*” for APL Co. PTE Limited, Singapore. The Petitioner provides various services to APL Co. PTE Limited, Singapore for which the Petitioner receives commission computed on the basis of net ocean freight earned by APL Co. PTE Limited, Singapore on import and export of cargo. The Petitioner provides these services from its offices across India, including Chennai and Mumbai.

4           During the relevant period various offices of the Petitioner were holding separate service tax registrations with their respective jurisdictional Commissionerate. Accordingly, the Chennai office of the Petitioner was holding Service Tax Registration No.AABCA273INST003 under the jurisdiction of the Commissioner of Service Tax, Chennai.

5           An Internal Audit was conducted of the records of the Petitioner by the Internal Audit Group of the Service Tax Commissionerate, Chennai. During the course of the Internal Audit, the Audit Team took the view that the Ocean Freight and other allied charges were liable to service tax. It was

alleged that the Petitioner had short-paid service tax by not including the Ocean Freight and other allied charges in the value of taxable service.

6 Pursuant to the said audit, the Petitioner was issued four show cause notices by the Commissioner of Service Tax, Chennai. The details whereof are as under:-

| S.No. | Show Cause Notice No.                           | Period                          | Service Tax (Rs.) |
|-------|-------------------------------------------------|---------------------------------|-------------------|
| 1     | Show Cause Notice No. 408/2009 dated 18.09.2009 | May 2006 to October 2008        | 23,69,43,418      |
| 2     | Show Cause Notice No.153/2010 dated 12.04.2010  | November 2009 to September 2009 | 4,94,55,365       |
| 3     | Show Cause Notice No.91/2011 dated 01.04.2011   | October 2009 to March 2010      | 3,14,51,000       |
| 4     | Show Cause Notice No.466/2011 dated 14.10.2011  | April 2010 to March 2011        | 7,87,55,455       |

The aforesaid show cause notices further demanded penalty and interest from the Petitioner.

7 By its letters dated 15<sup>th</sup> September, 2010, 4<sup>th</sup> June, 2011 and 30<sup>th</sup> November, 2011, the Petitioner filed its reply to show cause notices dated 28<sup>th</sup> September, 2009, 1<sup>st</sup> April, 2011 and 14<sup>th</sup> October, 2011 respectively, denying each and every allegation made therein. Further, it is the case of the Petitioner that, from its records, it is not able to trace the copy of the show cause notice dated 12<sup>th</sup> April, 2010 or any reply filed in response thereto.

8 Thereafter, the Petitioner, in exercise of the option provided under Rule 4(2) of the Service Tax Rules, 1994, in respect of all its offices across India, obtained Centralized Service Tax Registration No. AABCA273 INST001 under the jurisdiction of Respondent No.2. In view of the Petitioner having obtained centralized service tax registration, vide Corrigendum dated 16<sup>th</sup> November, 2011, *inter alia*, the show cause notices

were made answerable to the Commissioner, Service Tax-II, Mumbai Commissionerate.

9 Pursuant to the transfer of the file from Chennai to Mumbai, vide letter dated 24<sup>th</sup> December, 2012, the Petitioner was granted a personal hearing on 11<sup>th</sup> January, 2013 in respect of the show cause notices by the Commissioner, Service Tax (Adj.) Mumbai, which got adjourned.

10 In the meanwhile, in terms of the Order dated 15<sup>th</sup> November, 2017 passed by the National Company Law Tribunal, APL (India) Pvt. Ltd., merged with the Petitioner.

11 It is the case of the Petitioner that, from 2013 to 2020, Respondent No.2 did not take any steps for adjudication of the show cause notices.

12 Subsequently, by letters dated 4<sup>th</sup> December, 2020 and 31<sup>st</sup> December, 2020, the Petitioner was granted personal hearing in respect of the show cause notices issued by the Respondent No.2 on the dates mentioned therein. By e-mails dated 15<sup>th</sup> December, 2020 and 11<sup>th</sup> January, 2021, the Petitioner informed Respondent No.2 that, due to substantial lapse of time from issuance of the show cause notices, and change in management as well as office of the Petitioner, the Petitioner was facing significant challenges in collating the relevant documents required by it in support of its contention.

13 Thereafter, by a letter dated 14<sup>th</sup> January, 2021, the show cause notices were again scheduled for hearing on 27<sup>th</sup> January, 2021.

14 It is the submission of the Petitioner that the inordinate delay of almost 11 years in adjudication of the show cause notices renders the entire proceedings initiated thereunder *ex-facie* invalid, illegal, in violation of the

principles of natural justice, without the authority of law and/or otherwise untenable and unsustainable in law.

15 In response to the Petition, Respondent Nos. 1 & 2 have filed an Affidavit-in-Reply in September, 2021. In the said Affidavit-in-Reply, it is contended that, in addition to what was stated by the Petitioner, a personal hearing was once again fixed on 7<sup>th</sup> February, 2013, which was not attended by the Petitioner. Thereafter, by a letter dated 5<sup>th</sup> February, 2013, another personal hearing was fixed on 6<sup>th</sup> March, 2013. The same was attended by the Petitioner, who once again sought adjournment and requested for more time. Further, by a letter dated 23<sup>rd</sup> July, 2015, another personal hearing was fixed on 4<sup>th</sup> August, 2015, and, on this occasion also, the Petitioner did not attend the personal hearing. Moreover, another personal hearing was fixed on 18<sup>th</sup> September, 2017 by a letter dated 1<sup>st</sup> September, 2017 issued by the adjudication Section of CGST & Central Excise, Navi Mumbai Commissionerate but the same was returned with the postal remark “*left*”. Therefore, it is the case of the Respondent that further attempts were made for adjudicating the show cause notices.

16 In response to the said Affidavit-in-Reply filed on behalf of Respondent Nos. 1 & 2, the Petitioner has filed an Affidavit-in-Rejoinder dated 27<sup>th</sup> October, 2023. In the said Affidavit-in-Rejoinder, the Petitioner has contended that the letters dated 23<sup>rd</sup> July, 2015 and 1<sup>st</sup> September, 2017 had not been enclosed with the Affidavit-in-Reply and have put the Respondents to the strict proof to produce both these letters. The Petitioner has, thus, not accepted receipt of these two letters calling for a personal hearing.

17 We have heard the learned Counsel for the parties and perused the documents on record. In our view, the Respondents have not explained as to

why, after issuing the show cause notices in 2009, 2010 and 2011, they could not complete the adjudication for a period of more than 12 years. It is the case of the Petitioner that, from 2013 to 2020, Respondent No.2 did not take any steps for adjudication of the show cause notices. In response thereto, the Respondents have referred to letters being issued in 2015 and in 2017. Despite the Petitioner putting the Respondents to the strict proof of proving that these letters had been issued to the Petitioner, the Respondents have not produced the said letters nor proved that the Petitioner had received those letters. In the absence of any such proof having been furnished by the Respondents, we would have to accept the statement in the Petition that, from 2013 to 2020, Respondent No.2 did not take any steps for adjudication of the said show cause notices.

18 Further, even if it is accepted that the Respondents had issued the said letters in 2015 and 2017, even then, the Respondents have failed to give any explanation as to why they cannot complete the adjudication in respect of the said show cause notices which had been issued in the year 2009, 2010 and 2011 till the filing of the Petition.

19 Further, the Respondents were not prevented from completing the adjudication proceedings *ex-parte* if the Petitioner, as alleged by the Respondents, did not attend the so called personal hearing granted by the Petitioner in 2015 and 2017. No explanation has been given by the Respondents for the inordinate delay in adjudication of the show cause notices.

20 In our view, the delay in completion of the adjudication of the show cause notices for a period of almost 12 years cannot be attributed to the Petitioner. Further, in the absence of any explanation from the Respondents

for the said delay, the impugned show cause notices are required to be quashed and set aside.

21 In this context, we may usefully refer to the decision of this Court in **Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.** in Writ Petition No.4082 of 2022. In such decision, considering the relevant provisions of the Finance Act 1994, and the principles of law as laid down in several decisions in regard to the delayed adjudication of the show cause notice namely in the decisions in *Sushitex Exports (India) Ltd. Vs. Union of India & Ors.*<sup>1</sup>, *Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate*<sup>2</sup> and *ATA Freight Line (I) Pvt. Ltd. Vs. Union of India & Ors.*<sup>3</sup> the Court made the following observations :-

*14. Insofar as the first issue is concerned, we are required to note the provisions of Section 73(1) and Section 73(4B), which reads thus:*

*“73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded*

*(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 whose limitation is specified as eighteen months in 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).*

*15. Considering the plain consequences, Section 73(4B)(a) and (b)*

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<sup>1</sup>2022 SCC Online Bom. 191

<sup>2</sup>2022 (382) E.L.T. 206 (Bom.)

<sup>3</sup>Writ Petition No.3671 of 2022

would bring about, it would be an obligation on the Central Excise Officer to determine the amount of service tax due under sub-section (2), within six months from the date of notice or within a period of 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). Thus, the statute itself prescribes for such period within which the service tax would be required to be determined. Sub-section (1) of Section 73 would also be relevant when it restricts the liability to service tax, to the period of five years under the situations falling below the proviso to sub-section (4) in cases of fraud, collusion, willful mis-statement, suppression of facts, contravention of any of the provisions of Chapter V of the Finance Act, 1994.

16. We are thus of the opinion that there has to be a holistic approach and reading of the provisions of Section 73, when it concerns the obligation and repository of the power to be exercised by the concerned officer to recover service tax, in adjudicating any show cause notice, issued against an assessee considering the *raison d'être* of the provision. It is hence expected that the approach and expectation from the officer adjudicating the show cause notice would be to strictly adhere to the timelines prescribed by provisions of the Act, as there is a definite purpose and intention of the legislature to prescribe such time limits, either under Section 73(4B) of six months and one year respectively or of five years under Section 73(1).

17. In our opinion, in the facts of the present case, such requirement and obligation the law would mandate is completely overlooked by the officer responsible for adjudicating the show cause notice. We are not shown any provision, which in any manner would permit any authority to condone such inordinate delay on the part of the adjudicating officer to adjudicate show cause notice. There can be none, as the legislature has clearly intended to avoid uncertainty, which otherwise can emerge. Thus, what would become applicable are the settled principles of law as laid down in catena of judgments, that the period within which such adjudication should happen is as mandated by law and in any case it needs to be done within a reasonable period from the issuance of the show cause notice. Further, whether such period is a reasonable period would depend upon the facts and circumstances of each case.

18. *An inordinate delay is seriously prejudicial to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show cause notice, and that too keeping the same pending for such a long period itself is not what is conducive.*

19. *It is well said that time and tide wait for none. It cannot be overlooked that the pendency of show cause notice not only weighs against the legal rights and interest of the assessee, but also, in a given situation, it may adversely affect the interest of the revenue, if prompt adjudication of the show cause notice is not undertaken, the reason being a lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication.*

20. *We are also of the clear opinion that a substantial delay and inaction on the part of the department to adjudicate the show cause notice would seriously nullify the noticee's rights causing irreparable harm and prejudice to the noticee. A protracted administrative delay would not only prejudicially affect but also defeat substantive rights of the noticee. In certain circumstances, even a short delay can be intolerable not only to the department but also to the noticee. In such cases, the measure and test of delay would be required to be considered in the facts of the case. This would however not mean that an egregious delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgment of a right of appeal, which the assessee may have. Thus, for all these reasons, delay in adjudication of show cause notice would amount to denying fairness, judiciousness, non-arbitrariness and fulfillment of an expectation of meaningfully applying the principles of natural justice. We are also of the clear opinion that arbitrary and capricious administrative behaviour in adjudication of show cause notice would be an antithesis to the norms of a lawful, fair and effective quasi judicial adjudication. In our opinion, these are also the principles which are implicit in the latin maxim "lex dilaciones abhorret", i.e., law abhors delay.*

21. ....

25. ....

26. *We are also not inclined to accept the contention of Mr. Adik that the department be permitted to adjudicate the show cause*

*notice, by referring to the order dated 10 July, 2023 passed by the Supreme Court in the case of Commissioner, GST and Central Excise, Commissionerate II (supra). In our opinion, the directions as made in such order are required to be read in the facts and circumstances of the case before the Court. It also cannot be said that any concrete proposition of law has been laid down in the said order to the effect that even if there exists a gross, unjustifiable and inordinate delay in adjudication of the show cause notice, the Revenue could nonetheless proceed to adjudicate the same. Mr. Adik would also fairly submit that such position in law cannot be derived from such decision. Also the judgment of a co-ordinate Bench of this Court in case of Oil and Natural Gas Corporation Limited (supra) would not assist the revenue, inasmuch as the said decision has not considered the views expressed in the different decisions, which we have noted hereinabove, as the same is rendered purely in the facts and circumstances as set out in paragraphs 8 and 9 of the said judgment.*

*27. In the light of the above discussion, we are inclined to allow this petition and the same is allowed in terms of prayer clause (a).”*

22 Further, the above observations are applicable to the facts of the present case as it cannot be expected that, oblivious to the above position in law, as also the mandate of Section 73 (4B) of the Finance Act, 1994, the adjudicating officer would nonetheless proceed to adjudicate the show cause notices.

23 The Petitioner is also justified in relying upon the decision of the Coordinate Bench of this Court in Writ Petition No.468 of 2021 dated 21<sup>st</sup> August, 2023, (of which, one of us, G.S. Kulkarni, J, was a member) in its own case, where on similar facts, the show cause notices were quashed on the ground of delay in adjudication of the show cause notices.

24 For the aforesaid reasons, we are inclined to allow this Petition. Accordingly, the Petition is allowed in terms of prayer clause (a) thereof.

25 Rule is made absolute in the aforesaid terms.

26           Writ Petition is disposed of.

27           In the facts and circumstances of the case, there will be no order as  
to costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI , J.)