

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO.4339 OF 2024

Mahindra and Mahindra Ltd.)
Having its registered office)
Tractor Division, Akurli Road,)
Kandivali East, Mumbai Suburban)
Mumbai – 400 101.)
through its Authorised Representative)
Mr. Ravi Poojary) .. Petitioner

Versus

1. Union of India)
Through the Secretary,)
Department of Revenue,)
Ministry of Finance,)
North Block, New Delhi- 110 001.)

2. Office of Commissioner of Customs(Export)
New Customs House,)
Ballard Estate,)
Mumbai – 400 001.)

3. Deputy Commissioner of Customs)
DEEC (M. CELL))
New Customs House,)
Ballard Estate,)
Mumbai – 400 001.)

4. Additional Director General)
of Foreign Trade,)
C. G. O., New Building,)
South East Wing, Marine Lines,)
Mumbai – 400 020.) .. Respondents

Mr. Bharat Raichandani a/w Mr. Jasmine Dixit i/by UBR Legal for the petitioner.

Mr. Karan Adik for respondent nos.1 to 3.

Mr. J. B. Mishra a/w Mr. Ashutosh Mishra a/w Mr. Vikas Salgia for DGFT-respondent no.4.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**
DATE : 19 November 2024

Oral Order :-

1. Rule. Rule is made returnable immediately at the request and with the consent of the parties.

2. By this petition under Article 226 of the Constitution of India, the petitioners are challenging the notice dated 15 December 2022 issued by respondent no.2 seeking to recover duty foregone under Section 143 of the Customs Act, 1962, for non-submission of the Export Obligation Discharge Certificate against Advance Authorization No.31000796, dated 23 September 1996.

3. Mr Raichandani, learned counsel for the petitioner, submits that the impugned notice is issued to recover the duty for the non-submission of the Export Obligation Discharge Certificate dated 23 September 1996. It is his submission that the impugned proceedings are hopelessly barred by delay inasmuch as the proceedings are initiated after almost 26 years. It is his submission that although there is no limitation provided under the Customs Act, the proceedings ought to have been taken within a reasonable period and a period of 26 years cannot be treated as a reasonable period in the facts and circumstances of the case. Mr. Raichandani relied upon the Supreme Court's decision in the case of ***Union of India vs. Citi Bank***¹ in support of his submission.

¹ 2022 (382) E.L.T. 293 (S.C.)

4. Mr. Adik, learned counsel for the respondents submits that under Section 143 of the Customs Act, no time limit is provided for enforcement of the bond executed. Therefore, the impugned notice is not barred by limitation. Thus, he submits that the present petition is devoid of any merit on the grounds of limitation. He made no other submission on behalf of the respondents.

5. We have heard the learned counsel for the petitioner and the learned counsel for the respondents.

6. Admittedly, there is no dispute that no time limit is provided under Section 143 of the Customs Act for recovery of duty foregone. However, it is a settled position that where the Act is silent on the limitation, the proceedings have to be initiated within a reasonable period, and the said reasonable period has to be ascertained based on a holistic reading of the Scheme of the Act. In the instant case, admittedly, the impugned notice is issued for non-submission of Export Obligation Discharge Certificate dated 23 September 1996, after almost 26 years.

7. In our view, on a reading of the Customs Act, the reasonable period for initiating any proceedings for recovery of dues can certainly not be 26 years, even where a bond may have been executed. Section 28 of the Customs Act, and that too, in a case where suppression or fraud is alleged, provides a time limit of 5 years. This period gives a clue and could, therefore, provide guidance in determining a reasonable time when the legislature offers no specific time limit. In this case, there are no allegations of any fraud or suppression. Therefore, there is nothing reasonable in seeking to make recoveries after 26 years. Not even an attempt is made to explain this inordinate delay.

7. Mr. Adik also could not point out that the proceedings initiated after 26 years can be considered reasonable. Therefore, in our view, the proceedings commenced by the impugned notice dated 15 December 2022 are barred by inordinate and wholly unexplained delay.

8. Mr. Raichandani is justified in relying on the Supreme Court's decision in the case of *Union of India Vs. Citi Bank (supra)*, where the show cause notice under FERA issued almost a decade after the transaction date, was quashed on the grounds of delay in initiating the proceedings. The Co-ordinate Bench of this Court in the case of *Coventry Estates Pvt. Ltd. Vs. The Joint Commissioner, CGST and Central Excise & Anr.*² has analyzed this issue of delayed adjudication and quashed the notices where the adjudication was proposed after a gross delay. This Bench has subsequently and consistently followed the decision.

9. Given the above, respectfully following the decision of the Supreme Court and the Co-ordinate Bench, the impugned notice dated 15 December 2022 is quashed and set aside.

10. Rule is made absolute in the above terms. Accordingly, this petition is disposed of.

(Jitendra Jain, J.)

(M. S. Sonak, J.)

² Writ Petition No.4082 of 2022 vide order dated 25 July 2023