IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12394 OF 2023

Shahaji Bhanudas Bhad,
having his office at
J-179, MIDC, Bhosari, Pune – 411026. ...Petitioner

Versus

1. The Union of India,
Through the Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
New Delhi – 110 001.

2. The Principal Commissioner Central GST,
Pune 1 Commissionerate
Having his office at 2nd Floor,
E-Wing, GST Bhavan, 41-A, Sasson road,
Nr. Wadia College, Pune – 411 001. ...Respondents

Mr. Prakash Shah i/b. M/s. PDS Legal for Petitioner.

Ms. P. S. Cardoza a/w. Ms. Kavita Shukla for Respondents.

CORAM : K. R. SHRIRAM,
JITENDRA JAIN, J.J.

DATED : 3rd SEPTEMBER 2024

JUDGMENT: (Per Jitendra Jain, J.)

1. **Rule**. Rule made returnable forthwith. By consent of the parties, heard finally, since pleadings are complete.

2. By this petition under Article 226 of the Constitution of India, Petitioner seeks to challenge a show cause notice dated 5th May 2017

issued by Respondent No.2 whereby Respondents are seeking to add the value of bought out goods procured and supplied directly to the customers of Petitioner to the assessable value of the goods manufactured in the factory of Petitioner. These goods admittedly do not enter Petitioner's factory. It is also undisputed that suppliers have paid excise duty and Petitioner has not claimed any duty credit on these goods.

3. On 5th May 2017, the impugned show cause notice was issued by Respondent No.2 calling upon Petitioner to show cause why differential Central Excise Duty should not be demanded and recovered by enhancing assessable value on account of supply of bought out items which were directly supplied by the suppliers of Petitioner to the site of Petitioner's customers. Petitioner was also called upon to show cause why interest should not be charged on the differential Excise Duty demand and penalty should not be imposed under Section 11AC of the Central Excise Act, 1944.

4. Under a cover of letter dated 1st July 2017, Petitioner complied with the aforesaid show cause notice by filing reply running into more than 400 pages giving all the documents and submissions as to why the show cause notice should be dropped.

5. On 18th September 2017, Petitioner attended personal hearing before Respondent No.2 and made submissions for dropping of the

show cause notice. Petitioner also filed additional submissions, pursuant to the personal hearing, under a cover of letter dated 10th October 2017, which too consisted of almost 500 pages.

6. However, from 10th October 2017 till 4th September 2023, for a period of almost 6 years, the impugned show cause notice was not adjudicated. On 4th September 2023, out of the blue, Petitioner was informed by the Superintendent (Adj) of CGST, Pune-I Commissionerate that a personal hearing was fixed before Respondent No.2 on 26th September 2023. On 25th September 2023, i.e., one day before the personal hearing, Petitioner filed additional submissions contending that the proceedings are required to be dropped on ground of delay in not adjudicating the impugned show cause notice. Petitioner also contended that the issue on merits is no longer *res-integra* in view of the order and judgment dated 7th July 2023 passed by the Supreme Court in Civil Appeal No.5700 of 2019 in the case of Petitioner itself which reads as under:-

> *"Having regard to the fact that for the subsequent period, the Department has taken a stand that the bought-out items are not entered in the factory and the Assessee has not claimed credit on them, there is no case for adding their value in the assessable value and hence no proceeding need be initiated in the form of a show cause notice, we find that for the previous period, in respect of which this appeal arises, the stand of the Department cannot be contrary to what has been statedth above. Hence, we do not find any merit in the appeal. The Civil Appeal is dismissed.*
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> *Pending application(s) shall stand disposed of."*

7. On 26th September 2023, Petitioner sought adjournment of the hearing scheduled on that day and the same was granted, and the hearing was re-fixed on 13th October 2023. Meanwhile, Petitioner approached this Court by way of present petition challenging the impugned show cause notice primarily on the ground of delay in adjudicating the show cause notice and also that the issue is now covered by the decision of the Supreme Court dated 7th July 2023 in the case of Petitioner itself. This Court by an order dated 9th October 2023 was pleased to stay further proceedings by Respondent No.2.

8. Respondent Nos.1 and 2 have filed an Affidavit of one Sanjay Mahendru affirmed on 30th November 2023 opposing the petition. Respondents in their Affidavit, with respect to delay in adjudication have stated that no order was passed pursuant to the impugned show cause notice on account of change in the overall functioning of the department involving redrawing of jurisdiction and control by the State Government and the Central Government due to implementation of GST and the show cause notice could not be adjudicated due to oversight. Relevant extract of paragraph 6 of the Affidavit-in-reply reads as under:-

> *".....*
> *Unfortunately however no order came to be passed in the SCN due to the fact that the department was going through a complete overhaul due to implementation of GST which entailed a sea change in the overall functioning involving redrawing of jurisdictions and control by two different authorities i.e. the state*

> *government and the central government. I say that in all this upheaval in reorganization and the transfer and change of officers to and from different Commissionerates the order concluding the SCN remained to be passed. This happened due to oversight which is a real possibility and the petitioner cannot use this as an excuse for not responding to the show cause notice only on the ground that for 6 years nothing was done. ……."*

9. Respondent No.2 in the aforesaid Affidavit has also touched upon the merits of the case and supported the issuance of show cause notice. However, in the said Affidavit, there is no rebuttal to the averments made by Petitioner that the issue is now covered by the order and judgment of the Hon'ble Supreme Court in Civil Appeal No.5700 of 2019 dated 7th July 2023 in the case of Petitioner itself.

10. Admittedly, there is no dispute that the show cause notice dated 5th May 2017 was not adjudicated for a period of almost 6 years and it is only in September 2023 to revive the said show cause notice that a personal hearing came to be fixed on 26th September 2023. The only explanation given by Respondents for delay in adjudication is the change in the functioning of the jurisdiction on account of implementation of GST, which justification is reproduced above.

11. In our view, this justification cannot be accepted for more than one reason; firstly, after the show cause notice was issued on 5th May 2017, Petitioner filed a detailed reply of more than 400 pages on 1st July 2017. A personal hearing also took place on 18th September

2017 before Respondent No.2 and pursuant to the personal hearing, Petitioner filed further additional submissions running into 500 pages on 10th October 2017. This shows that the office of Respondents was functioning post introduction of GST, i.e., post 1st July 2017. Therefore, the justification given in the reply of Respondent No.2 for not adjudicating the show cause notice on account of revamping of jurisdiction cannot be accepted. The reason given is general in nature and in any case, if the reason was true then the functioning of the department during the period of implementation of GST ought to have come a stand still which is not the case because the department was functioning as evident by the fact of the proceedings which Petitioner attended in September and October 2017. In our view, therefore, the general bald reason given without any evidence with respect to the present impugned show cause notice cannot be accepted. Also it is not the case of Revenue that post July 2017 no order in case of any assessee could be passed because of GST implementation. This itself falsifies Respondent's justification. On the contrary, Respondents have admitted that it was due to oversight that the show cause notice could not be adjudicated. In our view, for such a negligence, the delay in adjudication cannot be condoned, moreso because on merits, Respondents have not controverted that the issue stands covered by the decision of the Supreme Court in Civil Appeal No.5700 of 2019 dated 7th July 2023 in Petitioner's own case. Therefore, in our view, relegating

Petitioner to attend the show cause notice would be unfair, unreasonable and gross abuse of the power. Respondents have not filed any evidence in support of paragraph 6 of their affidavit to show even *prima-facie* that the show cause notice could not be adjudicated because of overall in functioning of department on account of implementation of GST.

12. The issue of delay in adjudication of the show cause notice had come up before this Court in series of judgments to which either one of us was a party. This Court has, in a detailed judgment, in ***Coventry Estate Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise & Anr.***[1] quashed such show cause notice. The relevant paragraphs of the said decision reads as under:-

> *"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 issance 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 prejudical 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.*

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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 casuing irreparable harm and prejudice to the noticee. A protracted adminsitrative delay would not only prejudically 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 egregions delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgement 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 dilationes abhorret", i.e., law abhors delay.

21. In such context as to how the Courts have dealt with similar situations can be seen from some of the significant decisions on the issue. In Sushitex Exports (India) Ltd. (supra), a Division Bench of this Court was dealing with a case in which a show cause notice was issued on 30 April, 1997, which was not adjudicated till the petitioners filed the writ petition in the year 2020. In such context, the Court while allowing the petition, observed that the law is well settled that when a power is conferred to achieve a particular object, such power has to be exercised reasonally, rationally and with objectivity. It was observed that it would amount to an arbitrary exercise of power if proceedings initiated in 1997 are not taken to their logical conclusion even after a period of over two decades. The Court agreed with the view taken in Parle International Ltd. (supra) that the proceedings should be concluded within a reasonable period, and if the proceedings that are not concluded within a reasonable period, the Court

considering such facts, may not allow the proceedings to be carried any further. Referring to the contentions on behalf of the respondent that the respondent should be granted the liberty to conclude the proceedings, it was observed that except for the petitioners who had approached the Court to have the impugned show-cause notice set aside invoking the writ jurisdiction of the Court of this Court, the show cause notice would have continued to gather dust. The Court observed that the petitioners, in such circumstances, cannot possibly be worse off in seeking a constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings, which was most likely to work out prejudice to them. The following are the observations as made by the Court:

> *"15. We are also not persuaded, at this distance of time, to agree with Mr. Jetly that the respondents should be granted liberty to conclude the proceedings. It is the petitioners who have approached the Court to have the impugned show-cause notice set aside. Had the petitioners not invoked the writ jurisdiction of this Court, the show-cause notice would have continued to gather dust. The petitioners, in such circumstances, cannot possibly be worse off for seeking a Constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings which, because of the inordinate delay in its conclusion, is most likely to work out prejudice to them.*
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> *16. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. The State action in this case is such that arbitrariness is writ large, thereby incurring the wrath of such article. It is a settled principle of law that when there is violation of a Fundamental Right, no prejudice even is required to be demonstrated."*

22. In ***Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate, 2022 (382) E.L.T. 206 (Bom.)****, a co-ordinate Bench of this Court observed on the prejudice which would be caused to the assessee if for a long period the show cause notice is not adjudicated. It was held that belated hearing of the show cause notice would amount to violation of principles of natural justice. Following are the observations of the Court:*

> *"10. It is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the show-cause notice. The respondent having issued the show cause notice, it is their duty to take the said show-cause notice to its logical conclusion by adjudicating upon the said show-cause notice*

within a reasonable period of time. In view of the gross delay on the part of the respondent, the petitioner cannot be ade to suffer. The law laid down by the Division Bench of this Court in the case of Parle International Limited (supra), applies to the facts of this case. We do not propose to take any different view in the matter. Hearing of show-cause notice belatedly is in violation of natural justice."

23. In ***ATA Freight Line (I) Pvt. Ltd. (supra)****, a Division Bench of this Court considering the decisions in Parle International Ltd. (supra), Bhagwandas S. Tolani vs. B.C. Aggarwal & Ors., 1983 (12) E.L.T. 44 (Bom.) and Reliance Industries Ltd. (supra) held that a show cause notice issued a decade back should not be allowed to be adjudicated by the Revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. The relevant observations of the Court are required to be noted, which reads thus:*

"24. This Court in case of Parle International Ltd. (supra) after considering the identical facts and after adverting to the judgment in cases of Bhagwandas S. Tolani (supra), Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra) held that that a show cause notice issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. Larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. It is held that keeping the show-cause notice in the dormant list or the call book, such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. This Court was accordingly pleased to quash and set aside the show cause notices which were pending quite some time.

25. In case of Sushitex Exports India Ltd. (supra), Division Bench of this Court was pleased to quash and set aside the show cause notices which remained pending for adjudication from 1997. This Court considered the fact that though the petitioner therein was called for hearing in the year 2006, no final order was passed immediately after hearing was granted to the petitioner. It is held that the respondents seem to have slipped into deep slumber thereafter. This Court while quashing and setting aside the show cause notices which were not decided after long delay was pleased to grant consequential relief to the petitioner therein by directing the respondents to return the amounts paid by the petitioner under protest during the course of investigation with interest @ 12% p.a."

13. Similar view is taken in series of judgments, same of which are as under:-

1. *Godrej & Boycee Mfg. Co. Ltd. Vs. Union of India & Ors., reported in 2022 (9) TMI 318 (Bom.);*
2. *ICICI Home Finance Company Ltd. Vs. Union of India & Pr. CGST & CX Mumbai, reported in 2024 (6) TMI 682 (Bom);*
3. *EPL Ltd. Vs. The Union of India & Ors., reported in 2023 (9) TMI 15 (Bom);*
4. *UPL Limited Vs. The Union of India & Ors., reported in 2023 (8) TMI 1152 (Bom).*

14. Respondents have not been able to distinguish the above decisions.

15. We, therefore, have no hesitation in exercising our jurisdiction under Article 226 of the Constitution of India to allow the petition in terms of prayer clause (a) which reads as under:-

> *"(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 impugned Show Cause Notice No.01/P-II/C.Ex./AE/COMMR/2017-18 dated 05.05.2017 issued by the then Commissioner of Central Excise, Pune-II and pending adjudication before the learned Principal Commissioner, Central GST, Pune 1 Commissionerate;"*

16. Rule is made absolute in above terms. Petition disposed.

[JITENDRA JAIN, J.] [K. R. SHRIRAM, J.]