Maria S.

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

WRIT PETITION NO.3793 OF 2024

1. M/s. Esjaypee Impex Pvt. Ltd.
Through its Managing Director, Mr
Mahendrakumar P. Parmar and
having its registered place of
business at 128, Central Facility
Building, APMC Market, Vashi,
Navi Mumbai-400 703.

2. Shri Mahendrakumar P. Parmar,
Managing Director of
M/s. Esjaypee Impex Pvt. Ltd.,
186, Goving Appa Naicken Street,
George Town, Chennai-600 001. **... Petitioners**

Versus

1. The Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
No.137 North Block,
New Delhi-110 001.

2. Additional Director General,
Directorate of Revenue
Intelligence, Mumbai Zonal Unit,
13, Sir Vithaldas Thackersay Marg,
New Marine Lines,
Mumbai-400 020.

3. Commissioner of Customs
(Import-I), 2nd Floor, New Customs

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House, Ballard Estate,
Mumbai-400 001. **... Respondents.**

Mr Pratyushprava Saha I/by Khaitan & co. for Petitioners.

Ms Niyati Mankad along with Mr. Akash Singh for the Respondents.

CORAM: M. S. SONAK &
ASHWIN D. BHOBE, JJ.

Reserved on: 25st OCTOBER 2024
Pronounced on: 11th NOVEMBER 2024

JUDGMENT: (Per Ashwin D. Bhobe, J)

1. Heard learned Counsel for the parties.

2. Rule. The Rule is made returnable immediately at the request of the parties and with the consent of learned counsel for the parties.

3. By the present Petition, the Petitioners have sought the following reliefs:

> "a) issue a writ of Certiorari or a writ of prohibition or any other appropriate writ to call the records and prohibit adjudication of Show Cause Notice No.F. No. DRI/MZU/D/ 25/2001 dated September 2003 and Personal Hearing Notice F No. S/10-19/2002 Adj.Part-IlI dated 19.06.2024:
>
> b) issue a writ of Certiorari or a writ of prohibition or any other appropriate writ to quash the Personal Hearing Notice F No. S/10-19/2002 Adj. Part-111 dated 19.06.2024:
>
> c) issue a writ of prohibition or any other

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appropriate writ, restraining the Respondent No. 3 to proceed to adjudicate the Show Cause Notice No. F. No.DRI/MZU/D/25/ 2001 dated September 2003:

d) Till disposal of petition, grant a stay against adjudication of Show Cause Notice No. F. No.DRI/MZU/D/25/2001 dated September 2003:"

4. Case of the Petitioners:

Petitioners, by the present Petition, challenge the Show Cause Notice issued vide File No. DRI/MZU/D/25/Esjaypee/2001 dated 24.09.2003 ('the impugned SCN') and Personal hearing Notice bearing F No.S/10-19/2002 Adj. Part-III dated 19.06.2024 ('PH Notice dated 19.06.2024').

The case as set out by the Petitioners in the Petition, inter alia, is that the Petitioner No.1 is a private limited company whereas the Petitioner No.2 is the Director; that the Respondent No.2 in its investigation alleged undervaluation of import of cloves of foreign origin, declared value of which was lower than prevailing international prices; that during the investigation, the office and residential premises of one Shri Bhumish Shah working as an Indenting Agent were searched and Indian currency as well as some incriminating documents were seized; that Shri Bhumish Shah deposed before the Respondent No.2 stating that he had acted on behalf of the Petitioners in respect of import of spices and that the consignments of cloves were regularly under-declared and

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differential amounts were paid by the importers; that the Respondent No.2 recorded statement of Petitioner No.2 to inquire about import of Star Aniseed; that the Petitioners lodged a letter dated 23.08.2001 with Respondent No.2 confirming that the value declared by the Petitioners in import consignment specified in the letter to be true and correct and that was actually the price at which the Customs had assessed the consignment based on landing cost and based on value declared; that the trend of questioning on 13.08.2001 was predominantly focused on forcing the Petitioners to confess that there has been undervaluation; that on the basis of the investigation, the impugned SCN was issued to said Bhumish Shah and the Petitioners, proposing to reject the declared value, confiscation under Section 111(d) and (m) of the Customs Act; demand of differential custom duty as well as penalty under Section 112(a) and 114A of the Customs Act on the Petitioners; that vide Notification No.37/2003 CUS (NT) dated 03.06.2003 the impugned SCN was assigned to the Commissioner of Customs (Adjudication) for adjudication;

That during the course of adjudication/hearing, the Petitioners sought copies of certain documents to enable them to file detailed submission; that without supplying the documents as sought by the Petitioners, the Respondent No.3 passed the Order-in-Original ('OIO'), No. 160/2007/CAC/CC/KS dated 30.11.2007, rejecting the declared value of the imported goods and ordered for

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confiscation; that the Respondent No.3 also confirmed differential duty and imposed penalty on the Petitioners; the Petitioners preferred an Appeal bearing No. S/522 to 524/08/CSTB/C-11 against OIO before the Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench ('the learned Tribunal');

The learned Tribunal, after hearing the parties, was pleased to dispose of the said Appeal vide order dated 10.09.2008, holding that the OIO was passed in violation of principles of natural justice and, on such conclusion, set aside the OIO and remanded the matter to the Respondent No.3 to pass an order within a period of 6 months from the date of receipt after granting an opportunity of personal hearing to the Petitioners; that the Respondent No.3 failed to comply with the directions of the learned Tribunal;

That Respondent No.3 after a lapse of more than 16 years from the date of order of the learned Tribunal (order dated 10.09.2008 passed in Appeal No.A/522 to 524/08/CSTB/C-II) and more than 24 years from the date of import, issued a personal hearing notice dated 27.05.2024 to the Petitioners fixing appearance on 19.06.2024; that the Petitioners sought for an adjournment requesting relevant papers to examine the legality of the personal hearing notice; that upon the request, the Respondent No.3 furnished documents most of which were handwritten and illegible.

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It is the Petitioners' case that the personal hearing notice issued in respect of the impugned SCN has caused irretrievable prejudice to the Petitioners, as the same is issued after an inordinate lapse of time and upon the issue becoming stale. Based on the case set out in the Petition, the Petitioners seek the aforementioned reliefs.

5. This Court, vide order dated 21.08.2024, after making prima facie observations concerning the delay in disposal of the impugned SCN, passed an interim order which reads as follows:

> *"1 This petition is filed in peculiar circumstances by which petitioner is seeking effectively a stop work notice on the show cause notice issued on 24th September 2003. According to petitioner, the adjudication proceedings have become stale due to efflux of time.*
>
> *2 An earlier order had been passed disposing the show cause notice against which petitioner had filed an appeal before the CESTAT. It was petitioner's case that the order-in-original is passed without following principles of natural justice. The CESTAT had set aside the order-in-original and remanded the matter to Adjudicating Authority with a direction to dispose the matter within six months from the date of receipt of reply to the show cause notice after granting a personal hearing. Petitioner states that respondents not only failed to adhere to the time line given by the CESTAT but out of blue had issued a notice dated 27th May 2024 calling upon petitioner to attend personal hearing on 19th June 2024 at 15.30 hrs. Counsel states that the delay in adjudicating proceedings is causing prejudice to petitioner as none of the documents are traceable.*

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3 Counsel states now the next date of personal hearing is on 26th August 2024.

4 Mr. Kantharia states that respondents will be filing an affidavit in reply to oppose the petition and orally he also submits that petitioner did not even file reply to the show cause notice as directed in the order of the CESTAT.

5 Matter requires consideration and therefore, we pass following directions :-

(i) Affidavit in reply to be filed and copy served upon petitioner on or before 6th September 2024.

(ii) Rejoinder, if any, to be filed and copy served by 20th September 2024.

(iii) Petition be listed on 30th September 2024.

(iv) Until 31st October 2024, adjudication proceedings shall not be proceeded with."

6. Case of Respondent No.2:

Respondent No.2 has filed a reply dated 05.09.2024. The case of Respondent No.2 as set out in the reply, inter alia, is that the notices dated 25.07.2024, 19.06.2024 and 08.08.2024 for personal hearing are for *de novo* adjudication of the impugned SCN and that the Petitioners would be offered just and proper opportunity of hearing by following the principles of natural justice; that in the event the Adjudicating Authority passing an adverse order, the Petitioners would have an alternate remedy of filing the statutory appeal before the Appellate Authority;

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That the Petitioners have intentionally evaded the Customs duty by way of undervaluation with the help of Indenting Agent; that though the learned Tribunal vide order dated 10.09.2008 remanded the matter for fresh adjudication to the Adjudicating Authority to be completed within 6 months of receiving the orders, the Petitioners who were Appellants therein being under the directions to file their response upon inspection of the documents within a period of 4 weeks, failed to do so, and, as such, according to the Respondent No.2, the Petitioners acted contrary to the directives issued by the learned Tribunal;

That the Respondent No.2 at page 124 of the paper-book in the list of dates and events has made reference to the dates from the time of issuance of the impugned SCN dated 24.09.2003 till 08.08.2024, (i.e. the date on which the letter was issued to the Petitioners calling upon the Petitioners to attend the personal hearing fixed on 26.08.2024); that according to the Respondent No.2, the CESTAT order was never received and that the Chief Commissioner's Office recently learnt of the pending adjudication; and thereafter vide letter dated 13.11.2014 the Assistant Director, DRI, Mumbai was requested to make the requisite documents available to the party for inspection;

That Mr Bhumish Shah attended the office on 27.11.2014 and informed that he had not asked for relied documents; that notice dated 04.12.2014 fixing the personal hearing on

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22.12.2014 was duly served on the Petitioner No.2 and Bhumish Shah; that Advocate for Shri Bhumish Shah appeared and filed reply vide letter dated 22.12.2014;

That the Respondent No.2 has referred to various notifications in the context of transfer of the proceedings in view of the change in the jurisdiction of the Commission; that the Respondent No.2 has relied on CBIC instructions No.276/104/2016-CX.8A(Pt) by which all the Commissioners were called upon to transfer all the show cause notices issued prior to 06.07.2011 and the notice which were pending adjudication to the Call Book, till disposal of the matter before the Hon'ble Supreme Court; that vide Office Memorandum bearing No.437/143/2009-CUS-IV notices issued prior to 08.07.2011 were directed to be removed from the Call Book and action plan be drawn; that as the case of the Petitioners, i.e. the Show Cause Notice dated 24.09.2003 being a part of the main case of Shri Bhumish Shah and as the main case of Shri Bhumish Shah was kept in Call Book, even the case of the Petitioners was kept in the Call Book;

That reference is made to further CBIC instructions concerning the matters in the context of Call Book; that on 17.05.2024, DRI informed that the case file of Petitioner No.1 was reconstructed and the matter was taken up for adjudication; that on 27.05.2024 personal hearing notice was issued fixing the date of appearance on 19.06.2024; that by

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letter dated 19.06.2024, the Petitioners were informed that the personal hearing was fixed on 09.07.2024.

Respondent No.2 contends that the Petitioners, having not complied with the order of the learned Tribunal, the Petitioners by this Petition are attempting to take advantage of their own wrong. Respondent No.2 has relied on the provisions of Section 28(9) of the Finance Act, 2018 which came into effect on 29.03.2018, to support their case with reference to the limitation for disposal of show cause notices; that Respondent No.2 referred to the judgments of the Hon'ble Supreme Court. After that, Respondent No.2 has dealt with the Petitioners' contentions on merits. Based on the case set out in the reply, the Respondents prayed for the dismissal of the Petition.

Submissions:

7. Mr Pratyushprava Saha, learned Counsel appearing for the Petitioners at the outset, submits that the Petitioners restrict their challenge to the personal hearing notice, i.e. PH Notice dated 19.06.2024 and the impugned SCN only in respect of the ground of inordinate delay in disposal of the show cause notice. Other challenges thrown in the petition were not pressed or urged by Mr Pratyushprava Saha.

8. Mr Saha submits that the adjudication of the impugned SCN is delayed by 24 years from the date of import and 16 years from the date of the order dated 30.11.2007 passed by

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the learned Tribunal in Case No. A/522 to524/08/CSTB/C-II. It is the submissions of Mr Saha that due to the excessive lapse of time and the issue becoming stale, the Petitioners have lost all records pertaining to the matter. That continuation of such proceedings would cause irretrievable prejudice to the Petitioners.

9. Mr Saha further submits that the Petitioners were not given any intimation of the show cause notice being kept in the Call Book and the reason, if any, for it. Mr Saha further contends that Respondent No.2 was required to abide by the directions issued by the learned Tribunal and to dispose of/pass an order within a period of 6 months. According to Mr Saha, interference by this Court in its extraordinary jurisdiction is warranted and prayed that the impugned SCN be quashed, and the Petition be allowed.

10. Mr Singh and Ms Niyati Mankad learned Counsel appearing for the Respondents have drawn our attention to the list of dates and events at paragraph 5 of the affidavit-in-reply dated 05.09.2024 to submit that the contention of the Petitioners that there is a delay of 24 years for adjudication would not be correct as, according to them, the Respondent No.2 vide letter dated 13.11.2014 had called upon the Petitioners to take inspection of the documents and that the Petitioners, in response to the notice, had appeared and filed reply.

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11. They submitted that the delay, if any, in the disposal of the matter was because of the various instructions/CBIC instructions wherein the matters were assigned to the Call Book. They took us through the list of events referring to multiple orders in the said list, supporting their contention that there was no delay. They submitted that the adjudication was affected by the spread of the COVID-19 pandemic during the 2019 Pandemic period, and according to them, the period from 15.03.2020 to 28.02.2022 would have to be excluded. Reliance is placed on the order passed by the Hon'ble Supreme Court in Writ Petition (C)/3/2020, read with Miscellaneous Civil Application No.665 of 2021 and Miscellaneous Civil Application No.21 of 2022.

12. They also contended that the Petitioners could not take advantage of their own wrong inasmuch as non-compliance of the directives passed by the learned Tribunal in its order dated 10.09.2008, submitted that no indulgence be shown to the Petitioners and the petition be dismissed.

13. The Petitioners have filed their rejoinder affirmed on 20.09.2024 in response to the reply filed by Respondent No.2. The Petitioners, in their rejoinder, have inter alia contended that on account of a gap of almost 23 years in the disposal of the transaction, it would be impossible for someone to recall events truthfully after 23 years; that the opportunity of personal hearing on 04.12.2014 was a futile exercise; that the personal hearing notice challenged in the Petition is issued as

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per Section 28 of the Customs Act as it stood post 2018; that the Respondents were party to the proceedings before the Tribunal and therefore, submissions on non-receipt of the order dated 10.09.2008 would be baseless;

14. The Counsel for the Petitioners also emphasised that the order of the Tribunal was dictated in the open Court and also published in the leading Case Reporter; that the Petitioners had not disputed the jurisdiction of the DRI and, therefore, reliance placed by the Respondents in the case of ***Mangali Impex Ltd., v/s. Union of India***[1] or ***Canon India Pvt. Ltd. V/s. Commissioner of Customs***[2] was misplaced; that the circulars/instructions and or reliance placed by the Respondents on CBIC instructions were misplaced as the same were issued as on 29.06.2016, whereas the order of the Tribunal is dated 10.09.2008; that the chronology referred by the Respondents did not state that the Petitioners were intimated of the impugned SCN being kept in call book.

15. From the facts, circumstances and contentions raised in the present Petition, the question for determination before us is whether the delay in disposal/adjudication of the proceedings by Respondent No.3 is inordinate and unexplained; as such, delayed adjudication would be just, proper and legal.

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1 2016 (335) E.L.T. 605 (Delhi)

2 2021 (376) E.L.T. 3(S.C.)

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16. The records of the present case bear out that the impugned SCN was issued on 24.09.2003. OIO was passed by Respondent No.3 on 30.11.2007. Vide order dated 10.09.2008, the learned Tribunal remanded the matter to Respondent No.3. The learned Tribunal in its order dated 10.09.2008, had afforded an opportunity to the Petitioners to approach the Adjudicating Authority within four weeks from the date of the said order, seeking inspection of documents if the Petitioners wanted to. The Adjudicating Authority was directed to grant inspection of such documents to the Petitioners within two weeks of such request being made. Further, the Petitioners were directed to file their reply to the impugned SCN within four weeks of such inspection being granted to them. The learned Tribunal had after that fixed an outer limit of six months from the date of the receipt of the order for the Adjudicating Authority to decide the matter after granting a personal hearing to the Petitioners. There was no ambiguity about the Tribunal's directions, and there is no convincing explanation why such directions were breached by Respondent No. 3. At least by May -June 2009, the SCN should have been disposed of.

17. Apparently, the Respondent kept the impugned SCN in the Call Book on 27.11.2017 (List of documents, Sr. No.15 on page 134.) Vide letter dated 04.12.2014 (Exhibit 4 to the reply) Appraiser (Adj) notified the Petitioners of the matter being fixed before the Additional Director General (ADJ) for a

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personal hearing on 22.12.2014. The Petitioners vide letter dated 22.12.2014 (Exhibit 5 to the reply) acknowledged receipt of the letter dated 30.11.2014. From 2014 till 27.05.2024, the proceedings of the impugned SCN were not taken up. It was only on 27.05.2024 (Exhibit -F to the Petition) that the Petitioners were notified of the personal hearing fixed on 19.06.2024. The Petitioners approached this Court by the above-said Petition on 08.07.2024 (as per the date mentioned on the memo of Petition). Again, there is no record of the Petitioners ever being intimated about transferring the matter to the call book.

18. Thus, the records would indicate that Respondent No.3 was under directions to dispose of the proceedings within 6 months from the date of receipt of the order dated 10.09.2008 passed in Case No.A/522 to 524/08/CSTB/C-II. The Respondents have contended that though the learned Tribunal had issued the directions, the directions were also to the Petitioners to approach the Adjudicating Authority within four weeks from 10.09.2008 to seek inspection of the documents and after that, within four weeks of such inspection being made, to file their reply. According to the Respondents, the Petitioners have not complied with the directions. According to the Respondents, the Petitioners cannot make a grievance of the Respondents having not adhered to directions contained in the order dated 10.09.2008.

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19. We cannot accept such contention on behalf of the Respondents because the learned Tribunal fixed the directions for disposal of the adjudicating proceedings with the outer limit of six months. The Petitioners were only granted an opportunity to seek or inspect the documents should they so desire. If the Petitioners allegedly chose not to exercise this option or avail of this opportunity, that did not offer Respondent no. 3 any valid excuse to defy the Tribunal's direction to dispose of the SCN within six months or at least a reasonable time after that. In such circumstances, even if the Petitioners failed to avail the opportunity of inspection and/or filing of reply, the Adjudicating Authority was obliged to dispose of the proceedings within the time frame.

20. The Tribunal's order dated 10.09.2008 does not indicate that the absence or failure of the Petitioners to either inspect the records or to file the reply within the time fixed would absolve the Adjudicating Authority of disposing the matter within the time fixed explicitly in the order dated 10.09.2008. Nothing prevented the Adjudicating Authority from proceeding with the adjudication within the time directed by the learned Tribunal. The timeline indicated may not be sacrosanct, rendering the proceedings beyond such timeline without jurisdiction. But this does not mean that a timeframe of six months could be, without any compelling reasons, extended to almost six years, as is the case in hand. The matter was sought to be revived after nearly 15 to 16 years.

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The prejudice is quite inherent in such inordinate and unexplained delay.

21. The Hon'ble Supreme Court in the case of ***Union of India And Others v/s. Kamlakshi Finance Corporation*** (supra), has held as follows:-

> *"It is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws."*

22. At any rate, in the event of any difficulty, it was always open to the Adjudicating Authority to apply for an extension of time or seek clarification from the learned Tribunal. Records do not indicate the Respondents/Adjudicating Authority having taken recourse to the same. Respondent No.2, relying on the letter dated 13.11.2014 at Exhibit 2, contended that the CESTAT order was never received. The

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Chief Commissioner's Office learned about the pendency of the proceedings much later.

23. The above contention cannot be accepted because the Respondents were parties to the proceedings bearing Case No.S/522 to 524/08/CSTB/C-II as evident from the order dated 10.10.2008, which is at Exhibit-E page 93 to 98 of the paper-book. The fact that the order was dictated in open Court is also not contested. We, therefore, find that the delay from 10.09.2008 till the year 2014 is inordinate and there is no justification much less any legally tenable explanation on the part of the Respondents for non-compliance of the directions contained in the order dated 10.09.2008 passed by the learned Tribunal.

24. For the period from the year 2014 till the issuance of the PH Notice dated 19.06.2024, the Respondents, in their affidavit-in-reply, have attempted to refer to various notifications/circulars and, based on the same, have made attempts to justify the delay for disposal of the proceedings. A brief reference to the said notification would indicate that the same pertains to the change in the jurisdiction of the Commissioner to transferring the pending adjudication to the call book and directions issued to the Commissioner to take up the matters for adjudication. In our view, the said notifications/instructions do not meet the test of an acceptable explanation to justify such an inordinate delay in

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adjudication of the proceedings, more so when the said proceedings were time-bound.

25. Even otherwise, the records do not indicate that the time taken and or inaction on the part of the Respondents/Adjudicating Authority to dispose of the proceedings can be attributed to the Petitioners. The Respondents do not allege any malice on the part of the Petitioners in the context of the disposal of the proceedings.

26. In the case of ***Coventry Estates Pvt Ltd v/s. Joint Commissioner of CGST and Central Excise,***[3] this Court in paragraphs 18, 19, 20 and 21 has held as under:-

> *"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****.*
>
> *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***

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3 2023 (8) TMI 352- Bombay High Court.

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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 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 fulfilment 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 April 30, 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 reasonably, 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

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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.*
>
> *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."***

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27. In the case of ***Eastern Agencies Aromatics (P) Ltd v/s. Union of India and Others.***[4]**,** this Court in paragraphs 15 and 16 has held as under:-

> *"15.We have perused the consistent view taken by this Court, that the concerned Authority is under an obligation to adjudicate upon the show cause with expediency. In our view, unreasonable and unjustified delay in adjudication of the show cause notice is in contravention of procedural fairness and is violative of principles of natural justice.*
>
> *16. We find sufficient merit in the submissions made on behalf of the Petitioner that delay in adjudication of the show cause notice constitutes breach of principle of natural justice. In the present case, show cause notice issued in the year 2013 was replied by the Petitioner well within time in the year 2014 itself. The Petitioner has specifically pleaded that the previous Director of the Petitioner, who was looking after the day to day management including the import of goods expired on 19th May 2019 and that no other person was aware about the proceedings of the show cause notice.* ***There is no dispute that the Petitioner was never intimated with respect to adjudication on the show cause notice or the same being kept in the call book. Learned counsel for the Petitioner is right in contending that the Petitioner is gravely prejudiced as the Respondents never informed the Petitioner about the show cause notice being kept in the call book and that due to passage of time the relevant papers may not be available and it will not be possible to defend the show cause notice.*** *Petitioner is also right in contending that even otherwise pendency of proceedings was not in respect of the Petitioner. Hence it is obvious that revival of show cause notice will seriously prejudice the Petitioner."*

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4 2022 (13) TMI 323-Bombay

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28. The reply dated 05.09.2024 filed by the Respondent No.2 refers the impugned SCN of the Petitioners being assigned/kept in Call Book on 27.11.2017. Though there is a reference to the impugned SCN being transferred to the Call Book, the reply filed by the Respondent No.2 does not indicate the Petitioners being notified or intimation being given to the Petitioners to the effect that the impugned SCNs are being kept in Call Book. Therefore, the provision of Section 28(9) of the Customs Act or at least the principle therein could have been considered breached, though we do not propose to base our decision on this factor.

29. In the case of ***Rachana Garments Pvt. Ltd. Vs Commissioner of Customs (Preventive), Mumbai***[5] by relying on the judgment in the case of ***Sanghvi Reconditioners Pvt. Ltd. V/s. Union of India***[6] this Court made the following observations in paragraphs 18 and 19:

> *"18. Therefore, it has been reiterated that where show cause notices were issued but adjudicating order has not been passed for such a long period, in this case almost 25 years, such show cause notices cannot be kept pending.* ***Such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. The action, which is unfair, and in violation of principles of natural justice cannot be sustained. Various judicial pronouncements have taken a view that the weight of judicial pronouncements leaned in favour of quashing the proceedings if there had been an undue delay in***

5 Mumbai (2022) 1 Centax 190 (Bom.)

6 2018 (12) G.S.T.L.290(Bom.)

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> *deciding the same. In the absence of any period of limitation it is incumbent upon every authority to exercise the power of adjudication post issuance of show cause notice within reasonable period.*
>
> 19. *As held by this Court in Sanghvi Reconditioners Pvt. Ltd. (supra), that was relied upon by Mr. Shroff, when the revenue keeps the show cause notice in call book, then it should inform the parties about the same. It serves two purposes, i.e., (a) it puts the party to notice that the show cause notice is still alive and is only kept in abeyance which would enable the party concerned to safeguard the evidence till the show cause notice is taken up for adjudication; and (b) if the notices are kept in call book, the parties get an opportunity to point out to the revenue that the reasons for keeping it in call book are not correct and that the notices should be adjudicated promptly. Thus informing the parties about keeping the show cause notice in call book would advance the cause of transparency in revenue administration.*

30. In the case of ***Parle International Ltd. V/s. Union of India***[7] this Court in paragraph 23 has held as under:-

> *'23. In the present case, it is evident that the delay in adjudication of the show-cause notices could not be attributed to the petitioner. The delay occurred at the hands of the respondents. For the reasons mentioned, respondents have kept the show-cause notices in the call book but without informing the petitioner. Upon thorough consideration of the matter, we are of the view that such delayed adjudication after more than a decade, defeats the very purpose of issuing show-cause notice. When a show-cause notice is issued to a party, it is expected that the same would be taken to its logical consequence within a reasonable period so that a finality is reached. A period of 13 years as in the present case certainly cannot be construed to be a*

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7 a 2021 (375) E.L.T. 633 (Bom.)

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reasonable period. Petitioner cannot be faulted for taking the view that respondents had decided not to proceed with the show-cause notices. An assessee or a dealer or a taxable person must know where it stands after issuance of show-cause notice and submission of reply. If for more than 10 years thereafter there is no response from the departmental authorities, it cannot be faulted for taking the view that its reply had been accepted and the authorities have given a quietus to the matter. As has been rightly held by this Court in Raymond Limited (supra), such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained. Sudden resurrection of the show-cause notices after 13 years, therefore, cannot be justified.'

31. In the case of ***Reliance Transport and Travel Pvt. Ltd. V/s. The Union of India***[8]**,** in paragraph 19 this Court has held as under: -

'19. It is held that the respondent having issued the show- cause notice, it is their duty to take the 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 gross delay on the part of the respondent, the petitioner cannot be made to suffer. This Court accordingly was pleased to quash and set aside dated 16th September 2005 in that matter. The principles of law laid down by this Court in the above referred judgment would apply to the facts of this case. We are respectfully bound by the principles of law laid down by this Court in the said judgment. We do not propose to take a different view in the matter.'

32. This Court in the case of ***Raymond Ltd., v/s. Union of***

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8 2022 (62) G.S.T.L. 33 (Bom.)

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India at, paragraph 11 has held as under: -

> `*11.Therefore, it was reasonable for the petitioners to proceed on the basis that the department was not interested in prosecuting the show cause notices and had abandoned it. These proceedings are now being commenced after such a long gap, after having led the petitioner to reasonably expect that the proceedings are dropped. Therefore, even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the show cause notices are not available with the petitioners.'*

33. The Petitioners in the present Petition have set up a case that if the present proceedings are taken up, then irretrievable prejudice will be caused to the Petitioners as vital evidence may be lost/not traceable. We find that an inordinate delay in the conclusion of show cause notice will surely prejudice to the Petitioners. This is independent of the observations in *Sushitex (Supra)* and other precedents referred to above in matters of breach of Article 14; there is no question of establishing any superadded prejudice.

34. In ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others***[9], the Hon'ble Supreme Court explained that the concept of liberal approach

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9 (2013) 12 SCC 649

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must encapsulate the conception of reasonableness and cannot be allowed a totally unfettered free play. The Court held that there is a distinction between inordinate delay and a delay of short duration or few days, for the former doctrine of prejudice is attracted. In contrast to the latter, it may not be attracted. The first warrants a strict approach, whereas the second calls for a liberal delineation.

35. This Court, in the case of ***Paresh H. Mehta v/s. The Union of India And Ors***[10]***,*** the Division Bench of this Court of which one of us was a Member (M. S. Sonak, J), after placing reliance on the cases of ***Coventry Estate Pvt Ltd., Eastern Agencies Aromatics (P) Ltd, ICICI Home Finance Co. Ltd., Bhushan Vohra, The Great Eastern Shipping Company Ltd*** held that when faced with a situation of inordinate and unexplained delay, the show cause notice must be quashed and cannot be allowed to proceed. We find that the inordinate delay in disposal of the adjudicating proceedings is unexplained and or the delay to which the justification sought to be offered is not satisfactory. Such delayed adjudication wholly attributable to the revenue would contravene procedural fairness that should inhere such matters and, thus, violates principles of natural justice. The principles of natural justice are now accepted as concomitants of the right to non-arbitrariness guaranteed by Article 14 of our Constitution. Any

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10 WP No.14213/2023 dated 24.10.2024 – Bombay High Court.

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action which is unfair and in violation of the principles of natural justice cannot be sustained.

36. Regarding the contentions of the Respondents that the period from 15.03.2020 till 28.02.2022 is required to be excluded, it will have to be rejected, as, in the present case, we have observed that the period to dispose of the show cause notice had commenced w.e.f. 10.09.2008. By the order dated 10.09.2008, the learned Tribunal had fixed a period of four weeks to the Petitioners to approach the Adjudicating Authority for inspection of documents (which would expire on 09.10.2008). The Adjudicating Authority was directed to grant such inspection to the Petitioners if such request was made within two weeks of such request. Considering that a request was made on 09.10.2008, the period would expire on 23.10.2008. The Petitioners were granted four weeks of such inspection to file their reply. Such period, if taken from 23.10.2008, would expire on 22.11.2008.

37. Thus, even in the eventuality above, the period of six months would be 22.05.2009. A bare reading of the orders passed from time to time by the Hon'ble Supreme Court in Writ Petition(C)/3/2020 read with Miscellaneous Civil Application No.665 of 2021 and Miscellaneous Civil Application No.21 of 2022 would indicate that the benefit of the period from 15.03.2020 till 28.02.2022 would not come to the benefit of the Respondents/Adjudicating Authority.

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38. The contention based on the COVID pandemic orders is misconceived. In ***Delhi Development Authority vs. Tejpal and Others***[11], the Hon'ble Supreme Court has held that the orders passed in Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10; Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452; Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231; Cognizance for Extension of Limitation, In re, (2021) 18 SCC 250; Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 were intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. Further, the Hon'ble Supreme Court held that the benefit of Cognizance for Extension of Limitation, In re case, can be availed by the appellants only in a case where the period of limitation expired between 15 March 2020 and 28 February 2022. Though this is not a case of breach of any prescribed period of limitation, the Supreme Court's observations would still apply. The delay was inordinate even before the Pandemic set in. Therefore, the Covid excuse would not apply in the gross facts of this case.

39. Another aspect that persuades us is that the reasons the Respondents gave for the delayed adjudication are unjustifiable, as Respondent No.2 in his affidavit dated 05.09.2024 in the list of dates and events at Sr. No.XIX at

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11 (2024) 7 SCC 433

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page 136 has submitted as follows:- "*17.05.2024: DRI informed about that the case file of M/s. Esjaypee Impex was reconstructed and the matter was taken up for adjudication.*" This suggests that the files were also not traceable with the Respondents for a long time, and the matter was sought to be revived only by reconstructing the files.

40. The Petitioners cannot be made to suffer for all this lethargy and callousness on the part of the revenue. If the sword of Damocles, in the form of the impugned SCN is kept hanging over the Petitioners for over 21 years, it would make it impossible for the Petitioners to plan their business or make provisions for any contingent liabilities. Such inordinate delay breaches fair procedures that should always inform the adjudication in fiscal matters. Prejudice, in the gross facts of this case, is evident.

41. For the reasons recorded hereinabove, we are satisfied that the inordinate delay/delayed adjudication was in contravention of procedural fairness and, thus, violative of principles of natural justice. The Adjudicating Authority should have adjudicated the impugned SCN within a reasonable time; failure to do so is bound to cause prejudice to the Petitioners. This Court has repeatedly quashed such inordinately delayed adjudications backed by no compelling explanations in the precedents referred to above.

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42. From the above facts and circumstances, we find that the impugned No.DRI/MZU/D/25/Esjaypee/2001 dated 24.09.2003 and Personal hearing Notice bearing F No. S/10-19/2002 Adj. Part-III dated 19.06.2024, are liable to be quashed and set aside.

43. Accordingly, for the above reasons, we quash and set aside the impugned Show Cause Notice No. DRI/MZU/D/25/Esjaypee/2001 dated 24.09.2003 and the Personal Hearing Notice bearing F No. S/10-19/2002 Adj. Part-III dated 19.06.2024 and restrain the Respondents from proceeding further in the matter.

44. The Rule is made absolute in the above terms without any costs. The Writ Petition is disposed of accordingly.

45. All concerned to act on an authenticated copy of this order.

ASHWIN D. BHOBE, J. **M. S. SONAK, J.**

ARUNA SANDEEP TALWALKAR

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