

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1313 OF 2021

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, 8th Floor,)
Senapati Bapat Marg, Elphinstone)
Road (W), Mumbai - 400 013.)...Petitioner

V/s.

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)
16th Satra Plaza, Palm Beach Road)
Sector 19D, Vashi, Navi Mumbai)
400 075.)...Respondents

Mr. Prasad Paranjape i/b. Lumiere Law Partners,
Advocate for the Petitioner.

Mr. Pradeep S. Jetly, Senior Advocate a/w. Mr. Ram
Ochani, Advocate for the Respondents.

**CORAM : NITIN JAMDAR AND
ABHAY AHUJA, JJ.**

DATE : 17 JANUARY 2023

JUDGMENT : (PER ABHAY AHUJA, J.)

The Petitioner, a Company incorporated as APL (India) Pvt. Ltd. under the Companies Act, 2013 which entity vide order dated 15 November 2017 of the National Company Law Tribunal, merged with CMA-CGM Agencies (India) Pvt. Ltd., is engaged *inter alia* in the business of providing services under the category of Steamer Agent service, Cargo Handling service, Business Support Service, GTA and Business Auxiliary service and has offices across India for providing the said services.

2 It is the case of the Petitioner that during the relevant period, various offices of the Petitioner were holding separate service tax registrations with their respective jurisdictional Commissionerate; accordingly,

the Delhi office of the Petitioner was holding Service Tax Registration No.AABCA2731NST002 under the jurisdiction of Range-12, Service Tax Division-II, Service Tax Commissionerate, New Delhi.

3 Pursuant to an audit conducted for the period 2004-05 to 2007-08, the Delhi office of the Petitioner was issued a Show Cause cum Demand Notice No.59 of 2009 dated 12 October 2009 (the “show cause cum demand notice”) by the Commissioner of Service Tax, Delhi, calling upon the Petitioner to show cause as to why :

“(i) Service tax amounting to Rs.5,07,70,296/-; Education Cess and Secondary High Education Cess amounting to Rs.14,02,755/-, as detailed in para 3 of the show cause notice, should not be demanded under Section 66, 67 and 68 of the Act and Rule 6 of the Service Tax Rules, 1994 (hereinafter referred to as the “Rules”) and recovered by invoking extended period of limitation as provided under proviso to sub-section (1) of Section 73 of the Act.

- (ii) *Service tax amounting to Rs. 48,22,124/-; Education Cess and Secondary Higher Education Cess amounting to Rs. 81,580/-, as detailed in para 4 of the show cause notice, should not be demanded under Section 66, 67 and 68 of the Act and Rule 6 of the Rules and recovered by invoking extended period of limitation as provided under proviso to sub-section (1) of Section 73 of the Act.*
- (iii) *Service tax amounting to Rs. 41,83,916/-; Education Cess and Secondary Higher Education Cess amounting to Rs. 54,721/-, as detailed in para 5 of the show cause notice, should not be demanded under Section 66, 67 and 68 of the Act and Rule 6 of the Rules read with Rule 2(1)(d)(iv) of the Rules and recovered from the Petitioner by invoking extended period of limitation as provided under proviso to sub-section (1) of Section 73 of the Act.*
- (iv) *The interest should not be charged and recovered from the Petitioner under Section 75 of the Act.*
- (v) *Penalty in terms of Section 76 of the Act should not be imposed upon the Petitioner for failure to pay Service tax as and when this payment became due.*
- (vi) *Penalty in terms of Section 77(2) of the Act should not be imposed upon the Petitioner for not filing proper return read with Section 70 of the Act; and*

(vii) Penalty in terms of Section 78 of the Act should not be imposed upon the Petitioner for suppressing/concealing the value of taxable service with the intent of evading payment of service tax.”

4 Vide letter dated 30 December 2009, the Petitioner filed its reply to the said show cause cum demand notice denying the allegations made therein.

5 Thereafter, pending adjudication of the said show cause cum demand notice, the Petitioner, in respect of its offices across India, obtained Centralized Service Tax Registration No.AABCA2731NST001 under the jurisdiction of the Respondent No.2, Commissioner, CGST and Central Excise, Navi Mumbai, with effect from 9 September 2010.

6 We have heard Mr. Paranjape, learned Counsel for the Petitioner and Mr. Jetly, learned Senior Counsel for the Respondents and with their able assistance we have

perused the papers and proceedings in the matter and considered the rival contentions.

7 Mr. Paranjape, learned Counsel for the Petitioner, submits that upon grant of centralized service tax registration, the Divisional Officer was obliged to send intimation to the respective jurisdictional Service Tax office-in-charge of the erstwhile branch to transfer the relevant records to its office for taking further action and to update the records, but despite the same, the files pertaining to the said show cause cum demand notice were not transferred to the Respondent No.2, and instead, the Petitioner was issued personal hearing notice dated 17 April 2013 by the Commissioner, Central Excise, Delhi-III.

8 Thereafter, vide letter dated 8 May 2013, the Petitioner informed the Commissioner of Central Excise, Delhi-III that the Petitioner had obtained centralized

registration under the jurisdiction of Respondent No.2 and requested to transfer the files to Respondent No.2. Mr. Paranjape submits that despite the same, Respondent No.2 neither took any steps to transfer the files nor to adjudicate the show cause cum demand notice.

9 Mr. Paranjape would submit that it is only in the year 2020 i.e. after a period of seven years from the date of communication of centralized registration, vide letter bearing No. F.No.V-Adj/CGST-NM/APL/ST/15-93/2017-18 dated 3 August 2020, 10 August 2020 and 24 August 2020, that the Petitioner was called for personal hearing in respect of the subject show cause cum demand notice, which were replied to vide emails dated 6 August 2020, 23 August 2020 and 8 September 2020 wherein Respondent No.2 was informed that due to substantial lapse of time from the issuance of the show cause cum demand notice and change in management as well as

office, there were significant challenges faced by the Petitioner in collating the relevant documents in support of its contention, and therefore, the Petitioner was in the process of seeking legal advice. Further, on account of the Covid-19 pandemic, most of its employees and staff were working from home and therefore adjournment was requested for by the Petitioner vide the said reply emails.

10 Thereafter, once again, vide letter bearing No.F.No.V-Adj/CGST-NM/APL/ST/15-93/2017-18 dated 9 September 2020, the hearing of the subject show cause cum demand notice was scheduled before the Respondent No.2 on 24 September 2020.

11 Mr. Paranjape would submit that the above notice of hearing was issued around eleven years after the date of the said show cause cum demand notice and failure to adjudicate despite the inordinate delay has rendered the

entire proceedings *ex-facie* invalid, illegal, untenable and unsustainable in law.

12 The learned Counsel refers to Section 73(4B) of the Finance Act, 1994 and submits that the said provision at the most prescribes a period of one year where it is possible to do so to complete the adjudication proceedings, but despite almost eleven years, the same has not been done, although it was possible to do so. Adjudication of the said show cause cum demand notice after an inordinate and unreasonable lapse of almost eleven years would severely prejudice the interest of the Petitioner, especially when the matter was not in the call book. He would submit that Petitioner could have, during this period, availed of amnesty schemes, which it has lost out on owing to the wait. Learned Counsel would submit that the adjudication proceedings should have culminated within a reasonable time and if it is not done, such proceedings being detrimental and

prejudicial to the interest of the Petitioner, stand vitiated. Learned Counsel draws the attention of this Court to the following decisions, where in similar cases, due to an inordinate delay in adjudication of a show cause notices, this Court holding the delay to be unreasonable, set aside the proceedings and has allowed the Petitions.

- i) **Parle International Ltd. vs. Union of India**¹
- ii) **Sushitex Exports (India) Ltd. vs. Union of India**²

13 Mr. Paranjape submits that, therefore, the Petitioner has approached this Court seeking the following 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 Cum Demand Notice No. 59/09 dated 12.10.2009 [Exhibit “A”], pending for adjudication before the Respondent No.2.”

1 2021 (375) E.L.T. 633 (Bom.)

2 2022 (380) E.L.T. 244 (Bom.)

14 On 8 October 2020, this Court had directed that no final order be passed by the Respondents pursuant to the show cause notice dated 12 October 2009 which order has been continued till date.

15 Mr. Jetly, learned Senior Counsel for the Respondents, would submit that the show cause cum demand notice dated 12 October 2009 came to be issued to the Petitioner pursuant to an audit conducted for the period 2004-05 to 2007-08 which was addressed to the Delhi Office of the Petitioner and which was acknowledged by the Petitioner. The learned Senior Counsel would also submit that, not only that, the Petitioner has, admittedly, filed a reply dated 30 December 2009 to the said show cause cum demand notice. He submits that it is only vide letter dated 8 May 2013 that the Petitioner informed the Commissioner of Central Excise, Delhi, that it had obtained centralized registration under the jurisdiction of the Respondent

No.2 and requested for transfer of the case files to the Respondent No.2.

16 Learned Senior Counsel, submits that the adjudication files relating to the Petitioner were received on 24 January 2019 after which the personal hearing letters dated 3 August 2020, 10 August 2020, 24 August 2020 and 9 September 2020 were issued to the Petitioner. However, Petitioner did not attend any personal hearings and sought adjournments vide emails dated 6 August 2020, 23 August 2020 and 8 September 2020 of the hearings which were scheduled on 7 August 2020, 8 September 2020 and 24 September 2020 at the office of the CGST, Navi Mumbai.

17 Learned Senior Counsel submits that previously after the issuance of the subject show cause cum demand notice by the erstwhile Service Tax Commissionerate, Delhi, the personal hearings were

fixed in Petitioner's case during the period from 12 September 2009 to 24 January 2019 vide letter C.No.IV(16)Hqrs./Adj./501/APL/ST/09 dated 15 August 2012, 17 April 2013, 29 July 2012, 24 February 2014, 8 April 2014 issued by the Delhi Commissionerate. He submits that Petitioner did not attend any personal hearings scheduled on 17 September 2012 to 21 September 2012, 6 May 2013 to 10 May 2013, 12 August 2013 to 14 August 2013, 17 March 2014 to 21 March 2014 and on 15 May 2015 which were fixed vide above said letters. He submits that although the CGST department had tried many times for conducting personal hearing, but the Petitioner had not attended any personal hearing and therefore the adjudication of the order is pending till date.

18 Mr. Jetly would submit that the decisions cited by the learned Counsel for the Petitioner are not on similar

facts. He submits that there is no inordinate delay in the present case and therefore the facts of this case do not fall within the four corners of the case law cited. He submits that, in any event, the argument that the Petitioner did not receive the notices for hearing or that the said letters are not annexed to the reply can always be considered by the Adjudicating Authority, and therefore, this Petition deserves to be dismissed.

19 It is not in dispute that pursuant to Trade Notice No.3/2011-S.T. issued by the Commissioner of Service Tax-I, Mumbai, upon grant of Centralized Service Tax Registration to the assessee, it was the duty of the Divisional Officer to send intimation to the respective jurisdictional Service Tax Office-in-charge of erstwhile branch office and to transfer the relevant records to its office for taking further action and to update the records.

20 The show cause cum demand notice in the instant case has been issued on 12 October 2009 and although the Petitioner had obtained Centralized Service Tax Registration under the jurisdiction of Respondent No.2 with effect from 9 September 2010, even though as per the Trade Notice, referred to above, after centralized registration, it was the duty of the Divisional Officer to send intimation and to transfer the relevant records for taking further action, the records, admittedly, came to be transferred only on 24 January 2019.

21 Not only that, even the Petitioner had, vide letter dated 8 May 2013, informed the Commissioner of Central Excise, Delhi-III that it had obtained Centralized registration under the jurisdiction of Respondent No.2 and requested to transfer the case files to Respondent No.2. But, despite all this, no steps were taken to transfer the files or to adjudicate the subject show cause cum demand notice for several years.

22 Further, although notices of hearing were issued to the Petitioner before its merger with CMA-CGM Agencies (India) Pvt. Ltd. on 15 November 2017 but no adjudication order was passed. It was only after the files relating to the Petitioner were received by the Respondent No.2 on 24 January 2019, that the Respondents woke up from their deep slumber to issue notices of personal hearing to the Petitioner dated 3 August 2020, 10 August 2020, 24 August 2020 and 9 September 2020.

23 It is also pertinent to note that when, vide order dated 15 November 2017 of the National Company Law Tribunal, APL (India) Pvt. Ltd. merged with CMA-CGM Agencies (India) Pvt. Ltd., there was a change in the management, staff and office of the Petitioner company, which is not disputed by the Respondents that the Respondents-authorities could have transferred the files

and issued the hearing notices to the Petitioner, which they failed to do until 2020.

24 This Court in the case of **Parle International Ltd. vs. Union of India (supra)** has observed that proceedings should be concluded within a reasonable period and proceedings that are not concluded within a reasonable period, which the Court on the facts of each case has to consider, may not be allowed to be proceeded further.

25 In **Sushitex Exports (India) Ltd. vs. Union of India (supra)** this Court while dealing with show cause notice which had not been adjudicated for a period of twenty-three years, finding absolutely no justification in the manner in which the Respondent-authorities had acted, observed in paragraph 14 as under :

“14 It is not in dispute that after the show-cause notice was issued on 30th April 1997, the petitioners were called upon for a hearing in the year 2006. At least, till 2006, it can be inferred

that the issue was live. However, why no final order was passed immediately after the hearing was granted to the petitioners is not disclosed in the affidavit-in-reply. The respondents seem to have slipped into deep slumber thereafter. While the respondents' right in law to initiate proceedings for violation of the provisions of the Act can never be disputed, at the same time they do not have the unfettered right to choose a time for its termination and conclude proceedings as per their convenience. Indeed, the words 'reasonable period' call for a flexible rather than a rigid construction having regard to the facts of each case, but the period in excess of two decades without the respondents sufficiently explaining as to what prevented them to conclude the proceedings has to be seen as unreasonable and the reasons assigned in the affidavit-in-reply as mere excuses for not adjudicating the show-cause notice according to law. 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 with the object in view. It would amount to an arbitrary exercise of power if proceedings initiated in 1997 are not taken to their logical conclusion for over two decades and then a prayer is made for its early conclusion, no sooner than the matter enters the portals of this Court. We agree with the decision in Parle International Limited (supra) to the extent it

lays down the law that the proceedings should be concluded within a reasonable period and that proceedings that are not concluded within a reasonable period, which the Court on the facts of each case has to consider, may not be allowed to be proceeded with further. On facts and in the circumstances, we are satisfied that the proceedings arising out of the impugned show-cause notice having remained dormant for about fourteen years since hearing was given to the petitioners, it should not be allowed to be carried forward further in the absence of a satisfactory explanation.”

26 In the facts of this case as well, the Respondents have not acted in the manner as required by law. True that, while the Respondents’ right in law to initiate proceedings for violation of the provisions of the Act can never be disputed, at the same time, they do not have the unfettered right to choose a time to conclude the said proceedings as per their own whims and fancies. Action on the part of a constituent of State has to be with responsibility and not caprice. The words “reasonable

period” call for a flexible rather than a rigid construction having regard to the facts of each case, but the period in excess of eleven years as claimed by the Petitioner or even seven years, if we were to consider the period from 8 May 2013, when the Petitioner informed the Respondent Authority that it had obtained Centralized Registration, without the Respondents sufficiently explaining as to what prevented them from concluding the proceedings except their own delay, in our view is nothing but unreasonable and the reasons stated in the affidavit-in-reply cannot be accepted.

27 In our view, Respondents having delayed the transfer of proceedings from Delhi to Mumbai and not even having bothered to themselves do the same upon the Centralized Registration by the Petitioner on 9 September 2010 and even after the Petitioner informed of the same on 8 May 2013, without any satisfactory

explanation for this delay, adjudication of the Show Cause cum Demand Notice No.59 of 2009 dated 12 October 2009, which ought to have been culminated within a reasonable time has not been done and adjudicating the same now after an inordinate and unreasonable lapse of time would be detrimental and cause severe prejudice to the Petitioner.

28 In the circumstances, we are of the opinion that the impugned show cause cum demand notice dated 12 October 2009 cannot be carried forward after such an inordinate delay.

29 In view of the above discussion, we quash and set aside the Show Cause cum Demand Notice No.59 of 2009 dated 12 October 2009 at Exhibit A pending adjudication before the Respondent No.2.

30 The Petition stands allowed in the above terms.

Parties to bear their own costs.

(ABHAY AHUJA, J.)

(NITIN JAMDAR, J.)