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

WRIT PETITION LODGING NO.11860 OF 2021

1] Rachana Garments Pvt. Ltd.]
a Private Limited Company incorporated]
under the Indian Companies Act, 1956]
and having its Registered Office at]
Santosh Building, 33, Marole Cooperative]
Industrial Estate, Off. M. V. Road,]
Andheri (East), Mumbai – 400059]
]
2] Dinesh Kumar Bhartiya]
Director of M/s. Rachana Garments Pvt.]
Ltd. residing at B-51, Mamta, ASM]
Marg, Worli, Mumbai – 400025.]..... Petitioners.

Versus

1] Commissioner of Customs (Preventive)]
New Custom House, Ballard Estate]
Mumbai – 400001]
]
2] Commissioner of Customs (Exports)]
New Custom House, Ballard Estate]
Mumbai – 400001]
]
3] Union of India, through the Joint-]
Secretary, Ministry of Law & Justice,]
Branch Secretariat, Aayakar Bhavan]
Annexe, M. K. Road, Mumbai – 400020]..... Respondents.

Mr. D. B. Shroff, Senior Advocate a/w Mr. Prakash Shah, Mr. Anil Balani and Mr. Jas Sanghavi i/by Mr. Devraj Kansara for Petitioners.
Mr. Amit Singh for Respondent No.1.

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Ms. Maya Majumdar for Respondent No.2

CORAM : K. R. SHRIRAM & A.S. DOCTOR, JJ.

DATED : 04th AUGUST 2022

ORAL JUDGMENT : (PER K. R. SHRIRAM, J)

1. By consent of learned counsel for parties, Petition is taken up for final hearing at admission stage.

2. Petitioner No.1 was engaged in the business of imports and exports at the relevant time. Petitioner No.2 is the director of Petitioner No.1. At the relevant time, Petitioner No.2 was a partner in M/s. Rachana Enterprises, a family Partnership firm. Some time in March 1999, Petitioner No.1 got incorporated and took over the business of M/s. Rachana Enterprises. The shareholders and directors of Petitioner No.1 are also family members of Petitioner No.2. (Petitioner No.1 and Petitioner No.2) are hereinafter referred to as “Petitioners”).

3. Petitioners are challenging a show cause notice dated 27/06/1997 issued by Respondent No.1 on the ground that (a) Respondent No.1 did not have jurisdiction to demand duty under Section 28 of the Customs Act, 1962; and (b) the show cause notice, not having been adjudicated by Respondent No.2 and/or his predecessors for a period of 24 years, although Petitioners have filed replies and attended personal hearing, has become stale and has to be quashed and set aside. Mr. Shroff pressed this second ground only and did not make any submission on the first.

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4. M/s. Rachana Enterprises was actively engaged in the business of exports and imports during the period of 1993-1995 and was holding a valid Import Export Code (IEC) issued by the Director General of Foreign Trade (DGFT). M/s. Rachana Enterprises had exported various consignments of Polyester/Viscose Fabrics under Duty Exemption Entitlement Scheme/Advance Licenses. All these shipments and the documents relating to the shipments were scrutinized and examined and after satisfying that the same conform to and were as per declaration made in the documents and were satisfying all the conditions of the DEEC Scheme, were allowed to be exported by the Proper Officers of Customs exercising powers under the Customs Act, 1962 ("the said Act"). The export remittances in full were realized through Banking Channels.

Thereafter Petitioner and the transferee imported various inputs against 18 Advance Licenses which were issued by the DGFT against the exports made by Petitioners.

5. On 13/05/1994, the Central Excise Collectorate searched the premises of M/s. Rachana Enterprises and seized certain documents. On 02/08/1995, the Additional Director General of Anti Evasion searched the premises of M/s. Rachana Enterprises and recovered certain documents. In August 1995, the officers of Respondent No.1, i.e., Commissioner of Customs (Preventive) commenced inquiries into the exports imports of M/s. Rachana

Enterprises and its transferees. During the course of investigation, Petitioners were made to pay an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) sometime in

August 1995 though there was no demand notice or any other demand pending against Petitioners. According to Petitioners this deposit of Rs.30,00,000/- (Rupees Thirty Lakhs only) made M/s. Rachana Enterprises go out of business since then.

6. Petitioners were served with the show cause notice dated 27/06/1997 under Section 28 of the said Act after about two years of commencement of investigation. In the show cause notice it is alleged that the quantities of Poly Filament Yarn (PFY) were inflated in the export promotion copies of the Shipping Bills. The notice relied upon SASMIRA test report received to the effect that the fabrics exported contained lesser quantity of PFY than that claimed by Petitioners in the exports documents. Therefore the notice demanded duty with interest on imports of PFY and other items. Fines and penalties were also proposed.

7. Petitioners replied to the show cause notice by Reply dated 07/07/1997 disputing the test report of SASMIRA. Petitioners also requested for re-test. Petitioners also applied for certain documents which, we are informed till date has not been supplied.

8. By a letter dated 04/01/2010, i.e., almost 13 years after the show cause notice was issued, Petitioners requested Respondents to return the documents which were seized from their premises but not relied upon in the show cause notice. Petitioners once again requested for a re-test. Petitioners submitted that re-test was necessary

because reliance has been placed on test report issued in 1996 for the export that was made in 1993. Petitioners also

requested for leave to cross examine certain persons on whose statements/reports reliance had been placed in the show cause notice. Petitioner made further detailed submissions to Respondents, and according to petitioners, they made out a case that import and export are untainted. This was followed by further communication from Petitioners to Respondents. Finally by a letter dated 25/06/2012, i.e., 15 years after the show cause notice was issued and reply to show cause notice was filed, Petitioners were informed by the office of Commissioner of Customs (EP) that DGCEI had been requested to look into the release of the records of Petitioners that were taken over by Respondents on 02/08/1995. In the meanwhile, Petitioners attended personal hearing on 16/12/2009. Thereafter, Petitioners attended personal hearing on 06/09/2012 and later again on 13/08/2020. By a letter dated 17/08/2020 Petitioners placed on record the submissions made at the personal hearing. It was submitted by Petitioners during personal hearings and in its record of what transpired during personal hearing that there was no justification for indefinitely continuing such proceedings. Petitioners submitted that it causes mental agony and harassment each time the department wakes up after a gap of a few years, and it was not possible to locate old documents and present the case before a new adjudicating authority afresh. Petitioners also submitted that there defense is seriously compromised, crippled and weakened. A copy of the written submissions is annexed to the petition.

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9. Petitioners thereafter were given to understand that the show cause notice was assigned to another adjudicating authority. It is at that stage Petitioners approached this court.

10. Mr.Shroff, appearing for Petitioners, submits that it is settled law that Respondents cannot deal with the matter in such a casual and cavalier manner. Adjudication has dragged for 24 years without any fault of Petitioners. Petitioners attended every hearing when intimation was served on them, but the authorities who heard the matter did not decide the case and failed to pass any adjudication order. Mr.Shroff submits that even though there is no limitation period prescribed for adjudicating a case after the show cause notice is issued, the basic and fundamental requirement is that it must be done and completed in a reasonable period of time. Due to lapse or inaction of Respondents, Petitioners defense is seriously compromised and crippled due to passage of 24 long years. Mr.Shroff submits that even the consultant who was originally appointed in 1997 had died, and Petitioner No.2, who was active partner of M/s. Rachana Enterprises, has suffered serious ailments and to make Petitioner No.2 to go though agony and participate in the proceedings indefinitely cannot be accepted. Mr.Shroff submits that delay is unconscionable and delay has been only for the reasons that could be attributed to Respondents.

11. Mr.Shroff submitted that 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 finality is reached. A period of 25 years, as in the present case, certainly cannot be construed to be a reasonable period and it defeats the very purpose of issuance of show cause notice. A party to whom the show cause notice is issued must know where it stands after issuance of show cause notice and submission of reply, and even after attending personal hearing. A party cannot be faulted for taking the view that its reply submitted during the personal hearing has been accepted and the authorities have given a quietus to the matter. Mr. Shroff submits that such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice and hence is unfair and cannot be sustained. Sudden resurrection of the show cause notice after 25 years cannot be justified.

12. Mr.Shroff, in support of his submissions, relies upon the following judgments:-

1] Premier Ltd. vs. Union of India[1]
2] Union of India vs. Premier Ltd.[2]
3] Raymond Ltd. vs. Union of India[3]
4] Parle International Ltd. vs. Union of India[4]
5] Sanghvi Reconditioners Pvt. Ltd. vs Union of India[5]
6] Reliance Transport and Travel Pvt.Ltd. vs. Union of India, The Principal Commissioner of Central Goods and Service Tax, Mumbai[6]

[1] 2017 (354) E.L.T.365 (Bom.)
[2] 2018 (360) E.L.T. A181 (S.C.)
[3] 2019 (368) E.L.T. 481 (Bom.)
[4] 2021 (375) E.L.T. 633 (Bom.)
[5] 2018 (12) G.S.T.L. 290 (Bom.)
[6] 2022 (3) TMI 1169 Bombay High Court

7] The Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST & Cx. Div-IX, Mumbai Central GST Commissioner[1]

8] Sushitex Exports (India) Ltd. & ors. vs. The Union of India & Anr.[2]

9] Rapid Enterprises Pvt. Ltd and Anr. vs. Union of India and Anr.[9]

10] ATA Freight Line (I) Pvt. Ltd. vs. Union of India and Ors.[3]

13. Ms.Majumdar, appearing for Respondent No.2, relying upon the affidavit in reply of one Mr.Ayush Goel – Deputy Commissioner of Customs, affirmed on 18/11/2021, submits that the cause for delay was due to the matter being kept on call book for long due to administrative reason and since the case involves numerous noticees and one or the other kept on seeking adjournment, the adjudication got delayed. Ms.Majumdar also submitted that the time when the show cause notice was issued there was no statutory timelimit prescribed for adjudication. Ms.Majumdar also submits that due to case of M/s. Gaurav Impex in Civil Appeal No.85/2007 that was pending in the Apex Court, Petitioners' case was transferred to call book first in November 2012 and was retrieved from the call book on or about 07/05/2015. Ms. Majumdar submits that since the said case of M/s. Gaurav Impex was still pending, Petitioners' case was once again transferred to call book on 26/09/2017, and only in or about March 2020, after the Apex Court disposed the case of M/s. Gaurav Impex, Petitioners' case was removed from call book after approval of competent authority.

[1] 2022 (2) TMI 783 Bombay High Court
[2] 2022 (1) TMI 777 Bombay High Court 9 2022 (7) TMI 766 Bombay High Court.
[3] 2022 (3) TMI 1162 Bombay High Court.

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Ms. Majumdar submitted that Apex Court has decided that it would be importer who would be liable. To that Mr.Shroff responded that Petitioners were neither importers nor exporters but were only holders of advance licenses which had been transferred to a third party, and if at all anyone was liable, then it would be the said third party.

14. Ms.Majumdar, in fairness, agreed that Petitioners were never kept informed about the show cause notice being kept in call book and the reasons for keeping it in the call book. Ms. Majumdar, in fairness, stated that as no intimation of keeping show cause notice in the call book was given, the occasion to give any reason for it being kept in call book to Petitioners also did not arise.

15. Though Mr. Shroff relied upon 10 judgments, we will refer to only three of those judgments. In Premier Ltd. (supra) paragraphs 10 to 13 read as under :-

> "10. The second aspect which requires elaboration is, if the understanding of the Revenue is that it has to wait endlessly for the assessee to appear and make submissions, it is not the assessee's right to delay the matter. There is no vested right in prolonging the proceedings and none can claim that the law permits this course. Adjournments may be sought frequently but they are not to be granted liberally. That gives impression that the Revenue is not interested in proceeding with the matter, or rather has a vested interest in assisting the assessee. In the case of Sangram Singh Vs. Election Tribunal, Kotah and Another, reported in AIR 1955 SC 425, the Hon'ble Supreme Court was required to explain as to what is an ex parte order.
>
> 11. Therefore, once the assessee is given sufficient opportunityto remain present, to argue his case, either by himself or with the assistance of an Advocate, then, the Revenue would be justified, if the assessee is prolonging the matter and deliberately, to pass orders in his absence. These orders can be then passed on merits and none can complain that he was not aware of or was denied the opportunity to defend himself. The principles of natural justice are

not codified. They only contemplate that opportunity to defend has to be granted in the event an adverse order having civil consequences has to be passed. Therefore, the quasi-judicial authorities should realise that they need not be friendly or liberal with the assessee and to such an extent as would give an opportunity to the assessee to complain that the Show Cause Notice having been issued decades back, it cannot be adjudicated.

12. In the present case, we find that the petitioners' argumentis that it is impossible for them to remember what was the issue and some decades back, what are the records on which it is based and how it is to be presented. Possibly all the records with them are destroyed or the units having been rearranged, it is impossible for them to re-trace the records for want of staff and resources. In the circumstances, we do not think that the petitioners should be denied the relief.

13. We make the rule absolute by quashing the impugnedShow Cause Notice. We declare that it cannot be adjudicated any longer. There will be no order as to costs."

Special Leave Petition against this judgment was dismissed by Apex Curt (Union of India vs. Premier Ltd. (supra).

16. Paragraphs 6 and 7 of Raymond Ltd. (supra) read as under:-

"6.We specifically asked Mr. Jetly, Learned Counsel appearing for the Revenue, whether any intimation was given to the petitioners either in 2001 or in 2013 that the show cause notices are being kept in the call book and the reason for it i.e. awaiting a final decision in the CERA audit objection and/or the decision of the Apex Court in the appeal filed by the Revenue from the order of the Tribunal in case of petitioners' Indore and Bhopal Units. Mr. Jetly very fairly states that no intimation of keeping the show cause notices in the call book was given. Thus, the occasion to give any reasons for it being kept in the call book to the petitioner did not arise.

7. In the aforesaid facts, the issue that arises for our consideration is whether in the present facts, commencement of adjudication proceedings after a long delay of 14 to 17 years is justified when the party in all these years has not been put to notice that the proceedings were kept in abeyance. In fact, this Court, in the case of Bhagwandas Tolani (supra) decided as far back as 1982, has held that even if there is no time limit provided in the statute for adjudication proceeding, yet it is not permissible to commence adjudication proceeding after a long period of 10/15/20 years, particularly when the delay is not on account of any default on the part of the answering party. It further held that re-opening of an adjudication proceeding after a long time would cause serious

prejudice to the parties, as in the meantime, the relevant records may have been misplaced, the persons who were in charge of the affairs relating to issue raised in the show cause notice may no longer be available. Further, in Cambata Industries Pvt. Ltd. v. Additional Dir. of Enforcement, Mumbai (2010) 254 E.L.T. 269 (Bom.), this Court held that in absence of any fault on the part of the petitioners, it is not open to the Revenue to re-open proceedings after long delay without justifiable reasons. In Hindustan Lever Limited V/ s. Union of India, 2011 (264) E.L.T. 173 (Bom.) , this Court has observed as under :-

" 15. .....

The weight of the judicial pronouncements lean in favour of quashing the proceedings, if there has been an undue delay in deciding the same. See Government of India v. The Citedal Fine Pharmaceuticals, Madras and Ors., 1989 (42) E.L.T. 515 (S.C.) and the judgment of the Division Benches of this Court in Bhagwandas S. Tolani v. B.C. Aggarwal and Ors. reported in 1983 (12) E.L.T. 44 (Bom.) and Universal Generics Pvt. Ltd. v. Union of India reported in 1993 (68) E.L.T. 27 (Bom.). The underlying principle laid down in the said judgments is that in absence of any period of limitation, it is required that every Authority is to exercise the power within a reasonable period."

17. Paragraph 23 of Parle International Ltd. (supra) reads 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 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."

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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 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.

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20. Ms. Majumdar also submitted that Petitioners had already replied to the show cause notice and had also attended the personal hearings and Respondents should be granted liberty to conclude the proceedings. To this, in our view, it will be apposite to reproduce paragraphs 15 and 16 in Sushitex Exports (India) Ltd. (supra) and, it reads as under :-

> "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.

21. We respectfully agree with the view expressed by a division bench of this Court in Sushitex Exports (India) Ltd. (supra). After 25 years, Petitioners, having approached this Court impugning the show cause notice, cannot be made to 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. Had Petitioners not invoked the jurisdiction of this Court, the show cause notice would have continued to gather dust.

22. In the circumstances, we are inclined to allow the Petition.

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23. Mr. Shroff requests that Respondents should be directed to refund the amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) that Petitioners had deposited in August 1995 together with interest thereon at 12% p.a. from the date of deposit up to the date of refund.

Ms. Majumdar certainly opposes refund being granted or any interest being granted on refund.

24. In our view, for reasons made out by us, not only the impugned show cause notice should be quashed, Petitioners are also certainly entitled to refund of amount of Rs.30,00,000/- (Rupees Thirty Lakhs only).

25. Mr. Shroff relies upon paragraphs 20, 21 and 22 of Sushitex Exports (India) Ltd. (supra) read with clarificatory order dated 04/02/2022 passed in the said matter to justify that Petitioners are entitled to interest at 12% p.a. from the date of deposit by Petitioners. Paragraphs 20, 21, 22 as clarified by order dated 04/02/2022 (bold portion in Para-22) read as under :-

> 20.Mr. Shroff has placed before us several decisions to buttress his contention that the Courts have proceeded to award interest @ 12% per annum. Reference in this connection may be made to the decisions of the Supreme Court in Kuil Fireworks Industries v. Collector of Central Excise & another, reported in (1997) 8 SCC 109, and Commissioner of Central Excise, Hyderabad v. ITC Ltd., reported in (2005) 13 SCC 689, wherein interest @ 12% per annum was awarded.
>
> 21.In Alok Shanker Pandey vs. Union of India, reported in (2007) 3 SCC 545, it has been observed as follows:

> "9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period.
>
> Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B."
>
> 22. Following the aforesaid decisions, we direct that the sum of Rs.2 crore which the petitioners were required to deposit in course of investigation shall be returned with interest @ 12% per annum from the date of deposit by the Petitioners.. Let such return be effected with interest within two months of receipt of a certified copy of this order by the respondents."

26. We therefore dispose the Petition in terms of prayer clauses (a) and (c) which read thus :-

> "(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 dated 27.6.1997
> (Exhibit - 'B' hereto).
>
> (c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents to refund the amount of Rs.30 lakhs collected from the Petitioners with interest @12% p.a. from the date of deposit upto the date of refund."

27. Refund to be made with accumulated interest within eight weeks of the receipt of certified copy of this order.

28. Certified copy expedited.

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[A.S. DOCTOR, J] [K. R. SHRIRAM, J]