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

WRIT PETITION NO. 4082 OF 2022

Coventry Estates Pvt. Ltd. … Petitioner

Versus

The Joint Commissioner CGST and Central Excise & Anr. …Respondents

Mr. Bharat Raichandani a/w. Mr. Prathamesh Gargate, Ms. Roshni Naik and Mr. Dharmesh Jain i/b. Anil Agarwal for the petitioner.
Mr. Karan Adik a/w. Mr. Satyaprakash Sharma for the respondents.

CORAM: G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATED: 25 July, 2023

ORAL JUDGMENT (Per G.S. Kulkarni, J.)

1. Rule made returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 and 227 of the Constitution has prayed for the following substantive reliefs:

> "*a) that the Hon'ble Court be pleased to issue a writ of mandamus, a writ in the nature of mandamus and/or any other appropriate writ, direction or order, striking down, quashing and setting aside the impugned show cause notice dated 16 March, 2012 issued by respondent no. 1, being "Exhibit A" to the petition, and all proceedings in respect thereof or arising therefrom;*
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> *b) pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to stay the effect of operation of the impugned show cause notice dated 16 March, 2012 issued by the respondent no. 1, being "Exhibit A" to the petition, and any*

adjudication, act or proceedings sought to be initiated by the respondents pursuant thereto."

3. The relevant facts are required to be noted: The petitioner, formerly known as S and H Services Pvt. Ltd., was engaged in the construction of a residential complex. For such work, the petitioner had entered into a contract with one Sunny Vista Pvt. Ltd. (for short "Sunny Vista") for undertaking construction of 10 towers and other works in a township called "Hiranandani Palace Gardens" in a Special Economic Zone. On 31 March, 2009, the petitioner addressed a letter to Sunny Vista Pvt. Ltd. specifying that as per the agreement Rs. 20 crores was to be paid by Sunny Vista as a deposit of refundable nature. The time of refund of such deposit was to be agreed mutually after three years. Accordingly, on 31 March, 2009, Sunny Vista deposited Rs.20 crores as agreed. On 21 October, 2009, the petitioner filed its Service Tax Return in Form ST-3 for the period October, 2008 to March, 2009 declaring the deposit of Rs.20 crores under exempt category, being the services provided to the Special Economic Zone being exempt.

4. On 28 September, 2010, summons was issued by the Superintendent (Anti Evasion) to the petitioner calling upon the petitioner to furnish balance sheet, receipt ledger, contracts, invoices, Agreement and details of amount received from Sunny Vista before the concerned officer on 1 October, 2010. After the receipt of said letter, the petitioner by its letter dated 1 October, 2010

sought time to compile and submit the documents. Such documents were submitted on 6 October, 2010. Thereafter, on 12 November, 2010, statement of Mr. Kamlesh Desai was recorded by the Superintendent (Anti Evasion) under Section 14 of the Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. On 28 January, 2011, the Superintendent (Anti Evasion) by his letter of even date sought further information/documents. Such documents were stated to be submitted by the petitioner on 25 March, 2011. Thereafter, again by letter dated 15 April, 2011, the Superintendent (Anti Evasion) requested for certain clarifications from the petitioner, which were provided by the petitioner on 26 April, 2011.

5. On 16 March, 2012, the impugned show cause notice was issued to the petitioner *inter alia* alleging that the petitioner was not discharging the service tax liability in respect of services provided by it. In the show cause notice, it was alleged that the service provided under the head 'Business Auxillary Services' was brought under the service tax net from 1 July, 2003 as per the provisions of Section 65(19) of the Finance Act, 1994. Setting out all the relevant details, it was alleged that the petitioner had contravened the provisions of sections 65, 66, 67 and 68 of the Finance Act, 1994 read with rules 4, 6 and 7 of the Service Tax Rules, 1994, inasmuch as, the petitioner had collected an advance for the services to be provided by it, but had intentionally failed to pay service tax along with education cess and higher education cess

amounting to Rs.1,86,76,337/- in terms of Sections 66 and 68 of the Finance Act, 1994, as also, the petitioner had failed to correctly declare the value of taxable services provided by it as per the requirement of Section 67 of the Finance Act. There were also other statements on violation of Section 65 of the Finance Act. The petitioner, hence, was called upon to show cause as to why service tax amounting to Rs.1,86,76,337/- including education cess, secondary & higher education cess, in respect of advance received by them should not be demanded and recovered from the petitioner under the provisions of sub-section (1) of Section 73 of Chapter V of the Finance Act, 1994, as also, as to why interest should not be demanded and penalty imposed.

6. On 24 January, 2013, the petitioner submitted a detailed reply to the show cause notice. After about 2 years from the date of issuance of the show cause notice, that is, on 18 April, 2015, S and H Services Pvt. Ltd. was merged with the petitioner under a scheme of amalgamation under the orders passed by this Court on 18 April, 2015, approving the merger, in the proceedings of Company Scheme Petition No. 25 of 2015 and connected proceedings.

7. It is the case of the petitioner that after a substantial passage of time of almost 10 years from the issuance of the show cause notice, a notice dated 29 December, 2021 was received by the petitioner from the adjudicating officer to attend a personal hearing on 10 January, 2022 at 1 p.m. The petitioner by its

letter dated 7 January, 2022 addressed to the Joint Commissioner, CGST & Central Excise, requested for an adjournment. The petitioner thereafter addressed a letter dated 4 February, 2022 to the adjudicating officer, contending that the show cause notice be dropped on the ground of inordinate delay. The petitioner has contended that despite the receipt of its letter dated 4 February, 2022, again a notice dated 11 February, 2022 was issued by the department to the petitioner calling upon the petitioner to remain present for hearing on 24 February, 2022. The petitioner replied to such notice by its letter dated 19 February, 2022 reiterating that the show cause notice be dropped on the ground of inordinate delay in adjudicating the show cause notice. To this effect, another letter was addressed by the petitioner on 23 February, 2022. Despite such repeated letters, another communication was issued by the department to the petitioner on 1 March, 2022 informing that a hearing on the show cause notice is fixed on 10 March, 2022. It is in these circumstances, the present petition was filed on 11 July, 2022.

8. The primary contention as canvassed by Mr. Raichandani, learned counsel for the petitioner is that there is no warrant for the adjudicating authority to adjudicate the show cause notice, after such long and unreasonable delay of more than 10 years, as the adjudication of the show cause notice after such inordinate delay is severely prejudicial to the rights of the petitioner. In support of such contention, Mr. Raichandani has drawn our attention to the

provisions of Section 73(4B) of the Finance Act, 1994, which according to him in clause (a) thereof provides a time frame for the Central Excise Officer to determine the amount of service tax due under sub-section (2), within six months from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (1) and as per the provisions of clause (b) of sub-section (4B), within one year from the date of notice where it is possible to do so in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A). Mr. Raichandani would submit that even otherwise the mandate of law, considering the provisions of sub-section (1) of Section 73 is to the effect that even the extended period under the proviso to sub-section (1) is of a period of five years in the event where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reasons as set out in clauses (a) to (e) under the said proviso, i.e., in cases of fraud, collusion or willful misstatement or suppression of facts etc. It is thus submitted that the mandate of law being clear that unless an exceptional reason is available on record, the adjudicating officer cannot neglect its obligation to adjudicate the show cause notice and thereby cause a prejudice to the assessee. It is hence submitted that by no stretch of imagination, in the absence of any justifiable reason, the show cause notice can be adjudicated after a long delay of 10 years. In support of such contention, Mr. Raichandani has placed reliance on the decision of a co-ordinate Bench of

this Court in **ATA Freight Line (I) Pvt. Ltd. vs. Union of India & Ors.**[1], against which Special Leave Petition (Civil) Diary No. 828 of 2023 filed by the Union of India came to be dismissed; in **CMA-CGM Agencies (India) Pvt. Ltd. vs. Union of India & Ors.**[2]; decision of this Court in **Shreenathji Logistics vs. Union of India & Ors.**[3]; in **Sushitex Exports (India) Ltd. & Ors. vs. Union of India & Anr.**[4]; in **Sanghvi Reconditioners Pvt. Ltd. vs. Union of India, through the Secretary, Department of Revenue & Ors.**[5]; in **Reliance Industries Ltd. vs. Union of India**[6] and in **Parle International Ltd. vs. Union of India**[7].

9. Mr. Raichandani would submit that all these decisions would show a consistent view being taken by the Court that the show cause notice cannot be adjudicated after inordinate delay and the same would be required to be dropped, accepting the well-settled principles of law, that not only the proceedings are required to be initiated within a reasonable period but they are required to be adjudicated within a reasonable period. It is his submission that in the present case, there is nothing to indicate that the delay in any manner could be justified by the department. It is thus his submission that the adjudicating authority was bound by the principles of law to adjudicate the

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1 Writ Petition No. 3671 of 2022
2 Writ Petition No. 1313 of 2021
3 Writ Petition No. 540 of 2020
4 2022 SCC Online Bom. 191
5 2017 SCC Online Bom 9781
6 2019 (368) E.L.T. 854 (Bom.)
7 2021 (375) E.L.T. 633 (Bom.)

show cause notice within a reasonable period and as the delay in the present case is patently inordinate, the proceedings of show cause notice would be required to be dropped. It is submitted that such adjudication would be unfair, unreasonable and violative of the fundamental rights guaranteed to the petitioner as held in the decisions as cited.

10. On the other hand, Mr. Adik, learned counsel for the respondents in opposing the reliefs prayed for in the petition, would submit that this is a case where the petitioner was ready and willing to appear before the adjudicating officer, when the hearing of the show cause notice was fixed on 10 January, 2022 as seen from the petitioner's letter dated 7 January, 2021, which was petitioner's letter of a simplicitor adjournment. It is hence his contention that the petitioner had acquiesced in accepting such belated adjudication, for such reason the petitioner cannot take a plea by approaching this Court, that there is inordinate delay in adjudication of the show cause notice and the same ought to be dropped. Mr. Adik has also drawn our attention to the reply affidavit as filed on behalf of the respondent to contend that respondents have justified such delay in adjudication of the show cause notice. In such context, he refers to paragraph 9 of the reply affidavit, in which the department states that the delay has occurred due to shifting of the Commissionerate and Re-Organization of the field formations and therefore the same would be a justifiable delay so as to adjudicate the show cause notice. Mr. Adik would also

submit that the petitioner is at liberty to raise all contentions including on the jurisdiction before the adjudicating officer in the adjudication of the show cause notice. In this context, reliance is placed on the decision of the co-ordinate Bench of this Court in case of **Oil and Natural Gas Corporation Limited vs. The Union of India & Ors.**[8]. Mr. Adik has also placed reliance on an order passed by the Supreme Court in **Commissioner, GST and Central Excise Commissionerate II & Ors. vs. M/s. Swati Menthol and Allied Chemicals Ltd. & Anr.**[9], to contend that on a similar plea being raised by the assessee, the Supreme Court had permitted adjudication of the show cause notice. Mr. Adik has also made submissions on merits of the show cause notice. It is, therefore, his submission that the petition deserves to be dismissed.

11. We have heard learned counsel for the parties. We have also perused the record.

12. At the outset, it needs to be observed that the show cause notice was issued to the petitioner on 16 March, 2012 and the same was replied by the petitioner by a detailed reply dated 24 January, 2013. After this, the legal status of the petitioner also underwent a change in view of the amalgamation order passed by this Court in the company proceedings,

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8 Writ Petition No. 1270 of 2021 dated 8 March, 2023

9 SLP(C) No. 20072 of 2021 dated 10 July, 2023

inasmuch as by an order dated 18 April, 2015 passed by this Court, the erstwhile S & H Services Pvt. Ltd. stood merged under the scheme of amalgamation with the petitioner. Admittedly, from the date of issuance of show cause notice from 16 March, 2012 and after a reply to the same was filed on 24 January, 2013, no notice was issued either to the erstwhile S & H Services Pvt. Ltd. or to the petitioner upto 29 December, 2021, which was almost for a period of 10 years, when the petitioner was called upon to remain present for a hearing on 10 January, 2022.

13. In these circumstances, there would be three questions which would arise for consideration. Firstly, would it be reasonable for a authority acting under Section 73 of the Finance Act, 1994 and more particularly considering the provisions of sub-section (4B) thereof, to keep the show cause notice in a cold storage for such a long period, and/or in other words, to keep hanging the sword of the show cause notice on the assessee. The second question would be whether the justification as furnished by the department is acceptable or a reasonable justification for the adjudicating officer not taking forward the show cause notice and more particularly when a reply to the same was submitted by the petitioner on 24 January, 2013 rendering all cooperation in the adjudication of the show cause notice on the part of the assessee. Thirdly, whether the law would permit adjudication of such a belated adjudication of the show cause notice.

14. Insofar as the first issue is concerned, we are required to note the provisions of Section 73(1) and Section 73(4B), which reads thus:

> *"73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded*
> *(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within eighteen months] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
>
> *PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-*
>
> *(a) fraud; or*
> *(b) collusion; or*
> *(c) wilful mis-statement; or*
> *(d) suppression of facts; or*
> *(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,*
>
> *by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "eighteen months", the words "five years" had been substituted.*
>
> *Explanation: Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of eighteen months or five years, as the case may be.*
>
> *(1A) Notwithstanding anything contained in sub-section (1), (except the period of eighteen months of serving the notice for recovery of service tax) the Central Excise Officer may serve, subsequent to any notice or notices served under that sub-section, a statement, containing the details of service tax not levied or paid or short levied or short paid or erroneously refunded for the subsequent period, on the person chargeable to service tax, then, service of such statement shall be deemed to be service of notice on such person, subject to the condition that the grounds relied upon for the subsequent period are same as are mentioned in the earlier notices.*
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> *(1B) Notwithstanding anything contained in sub-section (1), in a case where the amount of service tax payable has been self-assessed in the return furnished under sub-section (1) of section 70, but not paid either in full or in part, the same shall be recovered along with interest thereon in any of the modes specified in section 87, without service of notice under sub-section (1).*

> *(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)-*
>
> *(a) within six months from the date of notice where it is possible to do so, in respect of cases whose limitation is specified as eighteen months in sub-section (1);*
>
> *(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A).*
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> **(emphasis supplied)**

15. Considering the plain consequences, Section 73(4B)(a) and (b) would bring about, it would be an obligation on the Central Excise Officer to determine the amount of service tax due under sub-section (2), within six months from the date of notice or within a period of one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A). Thus, the statute itself prescribes for such period within which the service tax would be required to be determined. Sub-section (1) of Section 73 would also be relevant when it restricts the liability to service tax, to the period of five years under the situations falling below the proviso to sub-section (4) in cases of fraud, collusion, wilful mis-statement, suppression of facts, contravention of any of the provisions of Chapter V of the Finance Act, 1994.

16. We are thus of the opinion that there has to be a holistic approach and reading of the provisions of Section 73, when it concerns the obligation and repository of the power to be exercised by the concerned officer to recover service tax, in adjudicating any show cause notice, issued against an assessee

considering the *raison d'etre* of the provision. It is hence expected that the approach and expectation from the officer adjudicating the show cause notice would be to strictly adhere to the timelines prescribed by provisions of the Act, as there is a definite purpose and intention of the legislature to prescribe such time limits, either under Section 73(4B) of six months and one year respectively or of five years under Section 73(1).

17. In our opinion, in the facts of the present case, such requirement and obligation the law would mandate is completely overlooked by the officer responsible for adjudicating the show cause notice. We are not shown any provision, which in any manner would permit any authority to condone such inordinate delay on the part of the adjudicating officer to adjudicate show cause notice. There can be none, as the legislature has clearly intended to avoid uncertainty, which otherwise can emerge. Thus, what would become applicable are the settled principles of law as laid down in catena of judgments, that the period within which such adjudication should happen is as mandated by law and in any case it needs to be done within a reasonable period from the issance of the show cause notice. Further, whether such period is a reasonable period would depend upon the facts and circumstances of each case.

18. An inordinate delay is seriously prejudical to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show

cause notice, and that too keeping the same pending for such a long period itself is not what is conducive.

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 opinon that a substantial delay and inaction on the part of the department to adjudicate the show cause notice would seriously nullify the noticee's rights casuing irreparable harm and prejudice to the noticee. A protracted adminsitrative delay would not only prejudically affect but also defeat substantive rights of the noticee. In certain circumstances, even a short delay can be intolerable not only to the department but also to the noticee. In such cases, the measure and test of delay would be required to be considered in the facts of the case. This would however not mean that an egregions delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgement of a right of appeal, which the assessee may have. Thus, for all these reasons, delay in adjudication of show cause notice would amount to denying fairness, judiciousness, non-arbitrariness and fulfillment of an expectation of

meaningfully applying the principles of natural justice. We are also of the clear opinon that arbitrary and capricious administrative behaviour in adjducation 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 princples which are implicit in the latin maxim "*lex dilationes abhorret"*, i.e., law abhors delay.

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

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

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

22. In **Bombay Dyeing and Manufacturing Company Limited vs. Deputy Commissioner of CGST and CX, DIV-IX, Mumbai Central GST Commissionerate[10],** a co-ordinate Bench of this Court observed on the prejudice which would be caused to the assessee if for a long period the show

10 2022 (382) E.L.T. 206(Bom.)

cause notice is not adjudicated. It was held that belated hearing of the show cause notice would amount to violation of principles of natural justice. Following are the observations of the Court:

> *"10. It is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the show-cause notice. The respondent having issued the show cause notice, it is their duty to take the said show-cause notice to its logical conclusion by adjudicating upon the said show-cause notice within a reasonable period of time. In view of the gross delay on the part of the respondent, the petitioner cannot be ade to suffer. The law laid down by the Division Bench of this Court in the case of Parle International Limited (supra), applies to the facts of this case. We do not propose to take any different view in the matter. Hearing of show-cause notice belatedly is in violation of natural jusitce."*

23. In **ATA Freight Line (I) Pvt. Ltd.** *(supra),* a Division Bench of this Court considering the decisions in *Parle International Ltd. (supra), Bhagwandas S. Tolani vs. B.C. Aggarwal & Ors.*[11] and *Reliance Industries Ltd. (supra)* held that a show cause notice issued a decade back should not be allowed to be adjudicated by the Revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings. The relevant observations of the Court are required to be noted, which reads thus:

> *"24. This Court in case of Parle International Ltd. (supra) after considering the identical facts and after adverting to the judgment in cases of Bhagwandas S. Tolani (supra), Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra) held that that a showcause notice issued a decade back should not be allowed to be adjudicated upon by the revenue merely because there is no period of limitation prescribed in the statute to complete such proceedings.*

11 1983 (12) E.L.T. 44 (Bom.)

Larger public interest requires that revenue should adjudicate the show-cause notice expeditiously and within a reasonable period. It is held that keeping the show-cause notice in the dormant list or the call book, such a plea cannot be allowed or condoned by the writ court to justify inordinate delay at the hands of the revenue. This Court was accordingly pleased to quash and set aside the show cause notices which were pending quite some time.

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

26. This Court in case of The Bombay Dyeing and Manufacturing Company Limited Vs. Deputy Commissioner of CGST & CX (supra) after adverting to the judgment in cases of Parle International Ltd. Vs. Union of India (supra) and Reliance Industries Ltd. Vs. Union of India (supra) has held that when a show cause notice is issued to a party, it is expected that the same would be taken to its logical conclusion within a reasonable period so that a finality is reached. If the respondent would have informed the petitioner about the said Show-Cause Notice having been kept in call book in the year 2005 itself, the Petitioner would have immediately applied for appropriate reliefs by filing the appropriate proceedings. It is held that it is not expected from the assessee to preserve the evidence/record intact for such a long period to be produced at the time of hearing of the Show Cause Notice.

27. 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.

> *28…..*
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> *29. In our view, since the respondents were totally responsible for gross delay in adjudicating the show cause notices issued by the respondents causing prejudice and hardship to the petitioner and have transferred the show cause notices to call book and kept in abeyance without communication to the petitioner for more than 7 to 11 years, the respondents cannot be allowed to raise alternate remedy at this stage. Be that as it may, no order has been passed by the respondents on the said show cause notices. The question of filing any appeal by the petitioner therefore did not arise."*

24. A Special Leave Petition filed by the Union of India against the decision the Division Bench in *ATA Freight Line (I) Pvt. Ltd.* also came to be rejected by the Supreme Court by order dated 10 February, 2023, being proceedings of SLP (C) Diary No. 828/2023.

25. Now coming to the respondents justification on such inordinate delay as set out in the reply affidavit, in not adjudicating the show cause notice, it is far from convincing, looked from any angle. Merely for the reason that there was shifting of the Commissionerates and Re-Organisation of its office would be no reason to abdicate and/or not comply with the obligations under the Act to promptly and/or expeditiously adjudicate the show cause notice, to be taken to its logical conclusion. We do not accept such reasons to be any justification much less any lawful justification. In fact accepting such justification would amount to defeating the statutory provisions.

26. We are also not inclined to accept the contention of Mr. Adik that the department be permitted to adjudicate the show cause notice, by referring to

the order dated 10 July, 2023 passed by the Supreme Court in the case of *Commissioner, GST and Central Excise, Commissionerate II (supra).* In our opinion, the directions as made in such order are required to be read in the facts and circumstances of the case before the Court. It also cannot be said that any concrete proposition of law has been laid down in the said order to the effect that even if there exists a gross, unjustifiable and inordinate delay in adjudication of the show cause notice, the Revenue could nonetheless proceed to adjudicate the same. Mr. Adik would also fairly submit that such position in law cannot be derived from such decision. Also the judgment of a co-ordinate Bench of this Court in case of **Oil and Natural Gas Corporation Limited** (supra) would not assist the revenue, inasmuch as the said decision has not considered the views expressed in the different decisions, which we have noted hereinabove, as the same is rendered purely in the facts and circumstances as set out in paragraphs 8 and 9 of the said judgment.

27. In the light of the above discussion, we are inclined to allow this petition and the same is allowed in terms of prayer clause (a).

28. Rule is accordingly made absolute. No costs.

(JITENDRA JAIN, J.) (G. S. KULKARNI , J.)