IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.04.2023

\+ **W.P.(C) 13906/2022 & CM APPL. 42523/2022, CM APPL. 12945/2023**

NANU RAM GOYAL ..... Petitioner

Versus

COMMISSIONER OF CGST AND CENTRAL EXCISE, DELHI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mrs. Kavita Jha, Mr. Shammi Kapoor, Mr. Sandeep Gupta, Ms. Prachi Jain and Mr. Vishal Kumar, Advs.

For the Respondents : Mr. R. Ramachandran, Senior Standing Counsel for R-1 and 2.

Ms. Archana Sharma, Senior Advocate with Ms. Poonam, GP for UOI / R-3.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that the respondents be restrained from pursuing the proceedings or taking any further action in respect of the show cause notice dated

27.02.2009 (hereafter **'the impugned show cause notice'**) issued by respondent no.1 – Commissioner of CGST & Central Excise, Goods and Service Tax Commissionerate, Delhi. The petitioner also impugns a letter dated 02.08.2022 (hereafter **'the impugned letter'**) calling upon the petitioner for a personal hearing, and prays that the respondents be restrained from proceeding in any manner pursuant to the impugned letter.

2. The petitioner claims that any such proceedings are barred by limitation as the respondents had failed to conclude the proceedings within a reasonable period from the date of issuance of the impugned show cause notice. The respondents claim that the proceedings pursuant to the impugned show cause notice were kept in abeyance as the matter was placed in a 'Call Book' in terms of the Circulars issued by the Central Board of Excise & Customs (hereafter **'the CBEC'**) from time to time.

3. The question that arises for consideration in the present petition is – whether the respondents can continue the proceedings for adjudication of the impugned show cause notice, after the lapse of almost thirteen years?

Factual Context

4. The petitioner is a partnership firm registered under the Indian Partnership Act, 1932 and engaged in the business of executing civil construction works. The petitioner claims that it executes contracts for civil works awarded by authorities, institutions and other entities

including the Central Government and the State Governments. The petitioner was awarded the contract for construction of residential flats by the Housing Board Haryana, Gurugram (hereafter **'the HBH'**).

5. On 28.07.2005, the petitioner commenced work in respect of the contracts entered with the HBH for construction of 256 residential flats, in Sector 43, Gurugram, Haryana (hereafter '**the Project**'). The petitioner submits that as on date, the Project stands completed.

6. On 02.07.2008, an investigation was initiated against the petitioner by the Anti-Evasion Branch of respondent no.1 regarding non-registration of the petitioner with the Service Tax Department and the non-payment of service tax.

7. According to respondent no.1, the petitioner was liable to pay service tax for rendering taxable services pertaining to 'Construction of Complex Service' under Section 65(105)(zzzh) of the Finance Act, 1994 (hereafter **'the Act'**).

8. Respondent no.1 issued the impugned show cause notice calling upon the petitioner to show cause as to why service tax amounting to ₹2,15,58,190/- (Rupees Two Crores Fifteen Lac Fifty-Eight Thousand One Hundred Ninety); Education cess amounting to ₹4,31,164/- (Rupees Four Lac Thirty-one Thousand One Hundred Sixty-four); Secondary and Higher Education cess amounting to ₹1,01,570/- (Rupees One Lac One Thousand Five Hundred Seventy); and interest and penalties under Sections 76, 77 and 78 of the Act, should not be recovered from the petitioner. It was alleged in the impugned show

cause notice that during the period 16.06.2005 to 30.09.2008, the petitioner received a gross amount of ₹18,49,75,291/- (Rupees Eighteen Crores Forty-Nine Lac Seventy-Five Thousand Two Hundred Ninety One) for executing the construction works.

9. According to the respondents, the petitioner was not entitled to the benefit of abatement to the extent of 67% of the value of taxable service in terms of the notifications (Notification No.18/2005-ST dated 07.06.2005 and Notification No.1/2006-ST dated 01.03.2006), as the petitioner had received free supply of items from the HBH that were not included in the value of services.

10. The petitioner responded to the impugned show cause notice by a letter dated 09.10.2009 disputing the allegations made therein. The petitioner contended that it was not providing the taxable service as the contracts with the HBH were composite contracts in the nature of 'works contract'. The petitioner also claimed that the HBH was constituted by virtue of the Housing Board Haryana Act, 1971 (Act No.20 of 1971) for addressing the housing needs of the public; therefore, it was performing a statutory function and was not liable to pay service tax. The petitioner also contended that assuming the services rendered by the petitioner were taxable services, the benefit of the Notification No.18/2005-ST dated 07.06.2005 could not be denied to the petitioner. In addition, the petitioner claimed that the impugned show cause notice was beyond the period of limitation as prescribed under Section 73 of the Act. It also contested the computation of service tax and cess as stated in the impugned show cause notice.

11. On 16.06.2010, respondent no.1 issued notice, scheduling a hearing on 30.06.2010 at 13:00 hrs inviting the petitioner to present its submissions. The petitioner could not appear on the said date and the proceedings were rescheduled to 02.07.2010. The petitioner appeared on the said date and advanced submissions in support of his contention.

12. The petitioner did not hear from the respondents thereafter till it received a notice dated 02.08.2022. The petitioner claims that since it did not hear from respondent no.1, it assumed that respondent no.1 had accepted its contentions and closed the proceedings.

13. Respondent no.1 claims that in terms of the CBEC Circular No. 719/35/2003-CX dated 26.05.2003, it had immediately after the hearing held on 02.07.2010, placed the matter in the 'Call Book' with the approval of the Commissioner.

14. Respondent no.1 resurrected the proceedings by issuing the impugned letter dated 02.08.2022 informing the petitioner that a personal hearing was scheduled on 10.08.2022 at 11:00 AM and calling upon him to appear for representing the case either personally or through an authorized representative along with written submissions, if any. Respondent no.1 also cautioned the petitioner that if it did not attend the hearing, the case would be decided on the basis of the evidence available on record. The petitioner immediately on receipt of this letter, sent a letter requesting that the hearing be deferred on the ground that Mr. Nanu Ram Goyal (who was of an advance age of 73 years) was suffering from multiple disorders.

15. Thereafter, the petitioner filed the present petition, assailing the impugned letter and recommencement of the proceedings in respect of the impugned show cause notice.

Reasons & Conclusion

16. As noticed at the outset, the principal controversy to be addressed is whether the respondents are precluded from proceeding with the impugned show cause notice on the ground of inordinate delay.

17. Section 73 of the Act, as in force at the material time, did not stipulate any time period. However, by virtue of the Finance (No.2) Act, 2014, sub-section (4B) was introduced in Section 73 of the Act which stipulates that where it is possible to pass an order, the Central Excise Officer would determine the amount of service tax within a period of one year in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A), and within a period of six months from the date of notice in cases falling under Section 73(1) of the Act.

18. Sub-section (4B) of Section 73 of the Finance (No.2) Act, 2014, as introduced with effect from 06.08.2014, reads as under:

> "(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 falling under 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)".

19. It is settled law that where there is no period stipulated for exercising jurisdiction, the same must be done within a reasonable period. In ***Government of India v. Citedal Fine Pharmaceuticals, Madras & Ors.***[1], the Supreme Court had observed as under:

> "6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

20. In a later decision in ***State of Punjab & Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd.***[2], the Supreme Court had reiterated the aforesaid principle in the following words:

> "18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

[1] **(1989) 3 SCC 483**
[2] **(2007) 11 SCC 363**

21. As noted above, Section 73 of the Act, as in force at the material time, did not stipulate any period within which the show cause notice was required to be adjudicated. It merely stipulated the period within which the show cause notice was required to be issued. However, there is no cavil that the authority conferred with the jurisdiction is required to exercise the same within a reasonable period. The learned counsel for the respondents did not controvert the aforesaid principle; he contended that the question as to what is a reasonable period is required to be ascertained with reference to the facts in a given case. And, in the present case, the reasonable period was required to be determined considering the 'Call Book' procedure. Respondent no. 1 had resumed the proceedings immediately after finding that the matter was no longer required to be kept in abeyance (in the 'Call Book').

22. The respondents state that respondent no.1 had placed the matter in the 'Call Book' in terms of the CBEC Circular dated 26.05.2003 (Circular No.719/35/2003–CX). The aforementioned Circular indicates that it had reiterated the instructions issued in the earlier Circular No. 53/1990-CX dated 06.09.1990 and Circular No. 162/73/1995-CX dated 14.12.1995; furthermore, directing that the Chief Commissioner should monitor the progress of disposal of the 'Call Book' cases to ascertain whether the 'Call Book' cases have been reviewed by the Commissioner of Central Excise; whether any appreciable progress has been noticed; and there are any avoidable delays.

23. CBEC had issued Circular No.53/1990-CX dated 06.09.1990 stating that *"if a current case has reached a stage where no action can*

or need be taken to expedite its disposal for at least 6 months (e.g. cases held up in law courts), it may be transferred to the Call Book with the approval of the competent authority". The Circular No. 162/73/1995-CX dated 14.12.1995, also noted that the Commissioner Customs and Central Excise, Delhi had requested for inclusion of certain other categories of cases that could be placed under the said 'Call Book', namely, "(i) Cases in which the Department has gone in appeal to the appropriate authority; (ii) Cases where injunction has been issued by Supreme Court / High Court / CEGAT, etc; (iii) Cases where audit objections are contested; (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book".

24. According to the respondents, the procedure of placing a case in the 'Call Book' is well accepted. In the present case, respondent no. 1 had done so, as the issue involved in the impugned show cause notice was pending consideration before the Supreme Court in ***Commissioner of Central Excise & Service Tax, Karnataka v. M/s Sobha Developers Limited***[3] which was decided on 17.01.2017.

25. The question whether the procedure of placing matters in the 'Call Book' is permissible is a contentious one. The Gujarat High Court in ***Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India***[4] had observed as under:

[3] **Civil Appeal Nos.9819-9820/2010**
[4] **2017 SCC OnLine Guj 2609**

> "35…In the opinion of this Court, instructions to consign a case to the call book are relatable to the adjudicatory process, and do not provide for any incidental or supplemental matters, consistent with the Act or the rules. Neither the Act nor the rules, in any manner empower the C.B.E.& C. to issue instructions to any adjudicatory authority in relation to matters pending for adjudication before it."

26. The Gujarat High Court further observed that the concept of the 'Call Book' neither relates to uniformity in the classification of excisable goods nor to the levy of duties of excise on such goods, which were matters in respect of which the CBEC was empowered to issue circulars under Section 37B of the Excise Act, 1944. Thus, the concept of the 'Call Book' could not be traced to Section 37B of the Excise Act, 1944 or any other provisions of the said Act. The Gujarat High Court reiterated the aforesaid view in ***Shree Shakambari Silk Mills v. Union of India***[5].

27. This Court is informed that the question as to the validity of the 'Call Book' procedure is pending consideration before the Supreme Court in a batch of matters. It is stated that the Revenue had preferred an appeal against the decision of the Gujarat High Court in ***Siddhi Vinayak Syntex Pvt. Ltd*** [4], however, the said appeal was disposed of by an order dated 18.02.2022[6] on account of the low tax effect albeit with a clarification that if the assessee chose to raise any grounds regarding the 'Call Book' regime, the assessee would have to await the outcome of the proceedings pending in the Supreme Court.

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[5] **2017 SCC OnLine Guj 2496**
[6] ***Union of India v M/s Siddhi Vinayak Syntex Pvt. Ltd*.: SLP(C) No. 18214 of 2017**

28. In the facts of the present case, it is not necessary for this Court to examine the validity of the procedure of placing the matter in the 'Call Book' as it is apparent that there is a gross delay on the part of respondent no.1 and there are no justified reasons for the same.

29. As noted above, it is the case of the respondents that the petitioner's case was placed in the 'Call Book' as the Revenue had preferred an appeal in the case of ***M/s Sobha Developers Limited*** [3] The said appeal was disposed of on 17.01.2017 and the respondents had not taken any steps for concluding the proceedings for more than four and a half years thereafter.

30. As noticed above, the impugned letter seeking to recommence the proceedings was issued on 02.08.2022. There are no justifiable reasons to condone the said delay after the reason for placing the matter in abeyance – pendency of the appeal in the case of ***M/s Sobha Developers Limited*** [3] – had ceased to exist.

31. It is also relevant to note that the questions sought to be raised by the Revenue in the case of ***M/s Sobha Developers Limited*** [3] were covered by an earlier decision of the Supreme Court in ***Commissioner of Central Excise & Customs, Kerala v. Larsen and Toubro Ltd.*** [7]. In that case, the Supreme Court had authoritatively held that prior to the enactment of the Finance Act, 2007 – by virtue of which Section 65(105)(zzzza) of the Act was introduced and Section 67 of the Act was amended – a composite contract was not taxable. The order dated

[7] **(2016) 1 SCC 170**

17.01.2017 passed by the Supreme Court dismissing the Revenue's appeal in ***M/s Sobha Developers Limited***[3] clearly indicates that the Revenue was seeking reconsideration of the decision in ***Larsen and Toubro Ltd.***[7]

32. Thus, this Court finds it difficult to accept that it was not possible to adjudicate the impugned show cause notice as the controversy involved in the impugned show cause notice was pending consideration before the Supreme Court in ***M/s Sobha Developers Limited***[3]. The Supreme Court had already decided the issue regarding levy of service tax on composite contracts in ***Larsen and Toubro Ltd.***[7]

33. However, as stated above, even if it is assumed that it was permissible for the respondents to keep the adjudication of the impugned show cause notice in abeyance, pending the decision of the Supreme Court in ***M/s Sobha Developers Limited***[3], the inordinate delay after the decision was rendered by the Supreme Court cannot be countenanced.

34. It is also relevant to note that the petitioner was provided no information that the impugned show cause notice has been placed in the 'Call Book'. Even if it is accepted that it is permissible for the respondents to place the matter in the 'Call Book' – which this Court does not – it was necessary for the respondents to have communicated the said fact to the petitioner. There are a series of decisions rendered by the Bombay High Court restraining the respondents from continuing with the proceedings in cases where the matters were placed in the 'Call

Book' without any information to the assessee. It is apposite to refer to a few of those decisions.

35. In ***Sanghvi Reconditioners Pvt. Ltd. v. Union of India through the Secretary, Department of Revenue & Ors.***[8], the Court had observed that the larger public interest requires that the Revenue and its officials adjudicate the show cause notice expeditiously and within a reasonable time. The Court had further observed that *"the term 'reasonable time' is flexible enough and would depend upon the facts and circumstances of each case".* However, there was no justification for not adjudicating the notice for more than fifteen years after its issuance. The Court had also highlighted that it is necessary for the Revenue to inform the assessee that the show cause notice has been kept in abeyance, otherwise there would be no necessity for the assessee to preserve the record for the inordinately long period. In a latter decision in ***Parle International Limited v. Union of India & Ors.***[9], the Bombay High Court had observed as under:

> "26……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."

36. In ***ATA Freight Line (I) Pvt. Ltd. v. Union of India & Ors.***[10], the Bombay High Court – in somewhat similar circumstances where the

[8] **2017 SCC OnLine Bom 9781**
[9] **2020 SCC OnLine Bom 8678**
[10] **2022 SCC OnLine Bom 648**

show cause notice had been kept in abeyance for more than seven to eleven years – allowed the petition. The Bombay High Court also noticed that if the petitioner was informed about the show cause notice being kept in the 'Call Book', the petitioner would have applied for an appropriate relief by filing for appropriate proceedings. It was not expected for the assessee to preserve evidence and records for a long period of time. It is material to note that the Revenue had filed a Special Leave Petition[11] before the Supreme Court, which was dismissed by an order dated 10.02.2023. The said order reads as under:

> "Delay condoned.
>
> Having heard learned counsel for the parties at length, we do not find any good ground to interfere with the impugned judgment and order passed by the High Court. Accordingly, the Special Leave Petition is dismissed.
>
> Pending application(s), if any, stand disposed of."

37. It is apparent from the above that the Supreme Court had considered the matter but had found no grounds to interfere with the judgment of the Bombay High Court.

38. In view of the above, we conclude that the proceedings pursuant to the impugned show cause notice are inordinately delayed and it is now impermissible for the respondents to continue the same. The respondents are, accordingly, interdicted from taking any action or

[11] ***Union Of India & Ors. v ATA Freight Line (I) Pvt. Ltd.*: SLP(C) Diary No.828/2023**

continuing any proceedings pursuant to the impugned show cause notice.

39. The petition is allowed in the aforesaid terms. All pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

APRIL 18, 2023
'gsr'