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

WRIT PETITION (L) NO. 9641 OF 2020

Sushitex Exports (India) Ltd. & Ors. .. Petitioners

Vs.

The Union of India & Anr. .. Respondents

Mr. D. B. Shroff, Senior Advocate a/w Mr. Rahul P. Jain i/by Alpha Chambers for petitioners.
Mr. Pradeep Jetly, Senior Advocate a/w Mr. J. B. Mishra for respondents.

C0RAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.

RESERVED ON: DECEMBER 23, 2021
PRONOUNCED: JANUARY 14, 2022.

JUDGMENT: [Per Dipankar Datta, CJ.]

1. The first petitioner is a company incorporated under the Companies Act, 1956. It, *inter alia*, carries on business of exporting fabrics. The second and the third petitioners are the Directors of the first petitioner (hereafter "the Company", for short). It is claimed by them that there has been a change of their names/surnames from Harish Chander Tuteja and Dinesh Chander Tuteja to Harish Arya and Dinesh Arya, respectively. To that effect, they have annexed Government of Maharashtra Gazette Notification dated 30th December 1999, Exhibit-`A' to the writ petition.

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2. A show-cause notice dated 30th April 1997 (Ext. 'C' to the writ petition) was issued to the Company under section 124 read with section 28 of the Customs Act, 1962 (hereafter "the Act", for short). It was alleged therein that the Company had indulged in fraudulent export of polyester fabrics and duty-free import of Polyester Filament Yarn and other items under D.E.E.C. Scheme in contravention of the provisions of the Act. In course of investigation preceding such show-cause notice, a raid had been conducted at the premises of the Company on 9th August 1995. The second and the third petitioners having been arrested, it is alleged by them that they were compelled to pay an amount of Rs.68 lakh on 10th August 1995. It is further alleged that only after such payment, the Department agreed not to oppose their prayers for bail and consequently, the second and the third petitioners were released on bail by an order dated 10th August 1995 of the Additional Chief Metropolitan Magistrate, Mumbai. On subsequent occasions too, the petitioners claim to have further been forced to pay Rs.32 lakh and Rs.1 crore. The said show-cause notice, *inter alia*, sought to recover the sum of Rs.2 crore, which the petitioners allege they were compelled to deposit, and adjust the same against the total demand of Rs.4,99,53,772/- mentioned in the show cause notice.

3. The grievance voiced by the petitioners in this writ petition dated 15th December 2020 is that the show-cause notice has not been adjudicated during the 23 years of its existence; accordingly, a prayer has been made to set aside such notice as well as the proceedings that followed and for a

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direction on the respondents to return to the petitioners the said sum of Rs.2 crore deposited under protest during the investigation together with accrued interest at the prime lending rate prevalent in 1995-1996, in accordance with law.

4. The writ petition refers to several decisions of this Court in support of the contention that proceedings having once been initiated, the same ought to be concluded within a reasonable period and what would be a 'reasonable period' ought to depend on the facts of each case.

5. Appearing in support of the writ petition, Mr. Shroff, learned senior counsel contended that the proceedings have remained pending for close to two decades and a half, and by no stretch of imagination can pendency for such unreasonably long period be regarded as a reasonable period.

6. Mr. Shroff relied on the decision of a coordinate Bench of this Court dated 26th November 2020 in Writ Petition No.12904 of 2019 (**Parle International Limited v. Union of India and Others**). There, the Bench upon consideration of several precedents held that a period of 13 years for revival of the show-cause notice impugned therein could not be termed as a 'reasonable period' and, accordingly, observed as under:

> "27. In any view of the matter when the commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of show-cause notices and submission of reply is held to be untenable in law, any consequential decision or order based on such delayed adjudication would also be rendered invalid.
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> 28. Thus, having regard to the discussions made above and taking an overall view of the matter we have

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> no hesitation to hold that respondents were not justified in commencing adjudication proceeding 13 years after issuance of the show-cause notices dated 01.06.2006 and 28.11.2006. Such adjudication proceeding is therefore, held to be invalid. Consequently, impugned order-in-original dated 11.11.2019 issued by respondent No.3 would also stand interfered with. It is accordingly set aside and quashed.
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> 29. The petition is allowed as above. However, there shall be no order as to costs."

7. Mr. Shroff submitted that when a period of 13 years was not considered reasonable, close to two decades and a half cannot also be considered reasonable. Accordingly, it is contended by him that since the proceedings have not been taken to its logical conclusion within a reasonable period of time, the petitioners are entitled to relief as claimed.

8. An affidavit-in-reply of the respondents is on record, affirmed on 16th February 2021. Paragraph 9 of the affidavit reveals that *"nothing is found on records as to why the Show Cause Notice is pending for adjudication"*; however, according to the deponent, one of the reasons for such pendency could be want of verification from the DGFT, Mumbai with regard to cancellation of the licenses. It has also been pleaded therein that the respondents noticed the Import Export Code (IEC No.0391165275) of the Company being under suspension and that these aspects having been ascertained from the DDFT, Mumbai, a request has been made to provide the present status of the impugned license on 15th January 2021, 19th January 2021 and 28th January 2021.

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9. Paragraphs 10 and 11 reveal what, according to the respondents, prevented them from adjudicating the show-cause notice. Contents of the said paragraphs read as follows:

> *"10. I say that the case was initially investigated by the officers of Special Investigation Cell of Preventive Commissionerate which later on got merged with the Special Investigation & Intelligence Branch (Exports) which was also under the control of the Commissioner of Customs (Preventive), Mumbai. On completion of investigation, the Show Cause Notice was issued by the Commissioner of Customs (Preventive) and same was answerable to the Commissioner of Customs (Preventive) only. In July 1997, Commissionerate of Customs (Export Promotion) was created which looked after the adjudication proceedings of the said Show Cause Notice as the issue involved related to misuse of export incentive scheme. Thereafter, due to further rearrangement and re-organisation of the Customs Zones at Mumbai, Export Promotion Commissionerate was further divided into Export-I & Export-II Commissionerate with realignment of work of then Export Promotion Commissionerate between them. These said two Commissionerates were again merged into one Export Commissionerate in the year 2018. The Special Investigation & Intelligence Branch (SIIB), Export, is now under the Export Commissioner. During this whole process of re-organisation the file might have been inadvertently lost sight of and did not exist in the pendency list of the pending adjudication cases. As per the records available, it appears that from 2006, the Petitioners do not seem to have approached the department with any representation to adjudicate the impugned Show Cause Notice. This seems unusual and anomalous that while Department proceedings for adjudication were not pursued for reasons given above, the Petitioner also not even once as per available records, has approached the department to request for adjudication of the case.*
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> *11. I say that the Show Cause Notice was issued on 30.04.1997 and thereafter the adjudication proceedings*

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> *were initiated. Due to restructuring of the departments, the case was inadvertently lost sight of and the case could not be adjudicated further till date. The Hon'ble Court may take note that the Petitioners themselves have accepted the crimes and voluntarily deposited the amount of Rs. 2 crores against their duty liability under the provisions of the Customs Act, 1962."*

10. Taking advantage of a typographical error in prayer clause (d) of the writ petition, which has since been corrected by the petitioners by amending the said clause, the respondents have pleaded eagerness to adjudicate the impugned show-cause notice within such time and on such terms and conditions, as may be imposed by this Court.

11. Mr. Pradeep Jetly, learned senior counsel appearing for the respondents, relied upon the aforesaid affidavit-in-reply to contend that although the proceedings arising from the show-cause notice have not been taken to its logical conclusion by the time the writ petition was instituted, the respondents may be granted liberty to conclude the proceedings upon consideration of the reasons assigned in the affidavit-in-reply.

12. We have heard learned senior counsel appearing for the parties. We have perused the pleadings on record and considered the decision cited by Mr. Shroff.

13. Having noted the so-called reasons assigned in the affidavit-in-reply of the respondents for not concluding the proceedings arising out of the impugned show-cause notice, we find absolutely no justification to hold that the respondents have acted in the manner law requires them to act.

14. It is not in dispute that after the show-cause notice was issued on 30th April 1997, the petitioners were called upon for

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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

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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.

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.

17. Having bestowed due consideration to all relevant aspects, we are constrained to set aside the show-cause

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notice dated 30th April 1997 and all proceedings following the same. It is ordered accordingly.

18. What remains is the consequential relief for returning Rs.2 crore, which the petitioners claim to have paid under protest. According to Mr. Jetly, the claim is in the nature of a money claim and cannot be entertained by the writ Court.

19. We are once again not persuaded to agree with Mr. Jetly, since the relief for return of Rs.2 crore is not claimed as the principal relief in the writ petition but as a consequential relief to the principal relief of setting aside the impugned show-cause notice.

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.

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> 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. Let such return be effected with interest within two months of receipt of a certified copy of this order by the respondents.

23. The writ petition stands allowed. However, the parties shall bear their own costs.

(M. S. KARNIK, J.) **(CHIEF JUSTICE)**