

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

WRIT PETITION NO.3671 OF 2021

ATA Freight Line (I) Pvt. Ltd.)
having office at)
707/708, B-Wing)
Everest Chambers)
Andheri-Kurla Link Road,)
Andheri (East), Mumbai – 400 059.)
Marol Naka,)
Through its Authorised Representative)
Mr.Pradeep P. Oak) .. Petitioner

Versus

1. Union of India)
represented by the Secretary)
Department of Revenue)
Ministry of Finance)
North Block,)
New Delhi – 110 001.)

2. Commissioner of CGST & Central Excise))
Mumbai East Commissionerate)
9th Floor, Lotus Info Centre)
J.B. Marg, Near Parel Station,)
Mumbai – 400 012.)

3. Commissioner of Service Tax-I)
4th Floor, Kendriya Utpad Shukla)
Bhavan, Bandra Kurla Complex,)

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Bandra (East), Mumbai 400 054.)

4. Additional Commissioner)

Service Tax- Mumbai – I,)

5th Floor, New Central Excise Building)

Maharshi Karve Road, Churchgate)

Mumbai – 400 020.) .. Respondents

Mr.Bharat Raichandani a/w Mr.Mahesh Raichandani, Mr.Rishabh Jain i/
by M/s.UBR Legal for the petitioner.

Mr.Jitendra B. Mishra a/w Mr.Ram Ochani for the respondents.

CORAM : **R.D. DHANUKA &
S.M. MODAK, JJ.**

RESERVED ON : **28th February 2022**

PRONOUNCED ON : **24th March 2022**

Judgment :- (per R.D.Dhanuka, J.)

. Rule. Rule made returnable forthwith. Learned counsel for the respondents waives service. By consent of parties, petition is heard finally

2. By this petition filed under article 226 of the Constitution of India, the petitioner prays for quashing the impugned Show Cause Notices i.e. Show Cause Notice No.197/Commr/2011-12 dated 21st October 2011, Centralised Show Cause Notice No.541/Commr/2012-13 dated 8th October 2012, Centralised Show Cause Notice No.69/ADC/2013-14 dated 30th September 2013, Centralised Show

Cause Notice No.1446/Commr/2014-15 dated 14th October 2014 and Show Cause Notice No.Commr/ST-V/68/2016 dated 16th March 2016 issued by the respondent nos.2, 3 & 4 (Exhibit “A1(Colly)” and impugned letter dated 12th April 2021 & 3rd July 2021 (Exhibit “A2(Colly)”).

3. The petitioner has prayed for a declaration that the impugned show cause notices are void and bad-in-law in view of non-adjudication after a lapse of nearly 10 years from the date of issuance of first show cause notice. Some of the relevant facts for deciding this petition are as under:-

4. It is the case of the petitioner that during the period between 2006 and 2015, the petitioner was engaged in the activity of buying and selling space in vessel. The petitioner recovered the expenses from its clients to facilitate export/import of goods for providing cargo handling/ freight service incurred expenses. During the period between 21st October 2011 and 16th March 2016, the respondent no.2 issued the following show cause notices :-

- (i) Show Cause Notice dated 21st October 2011 (for the period 2006-07 to 2010-11);
- (ii) Centralised Show Cause Notice dated 8th October 2012 (for the period 2011-12);

(iii) *Centralised Show Cause Notice No.69/ADC/2013-14 dated 30th September 2013 (for the period 2012-13);*

(iv) *Centralised Show Cause Notice No.1446/Commr/2014-15 dated 14th October 2014 (for the period 2013-14); &*

(v) *Show Cause Notice No.Commr/ST-V/68/2016 dated 16th March 2016 (for the period 2014-15).*

5. The petitioner filed a detailed reply to those show cause notices inter alia refuting all the allegations levelled therein. It is the case of the petitioner that no further communication was received from the end of the department in response to the reply filed by the petitioner on 9th November 2012, 12th July 2013, 5th October 2016 and 5th October 2016 respectively to those five show cause notices for various purposes.

6. It is the case of the petitioner that since no further communication was received from the respondents, the petitioner was under bonafide belief that the submissions made by them had been accepted. On 23rd February 2021, the petitioner addressed a letter to the respondent no.2 inter alia seeking a copy of closure report, if any.

7. On 12th April 2021, the respondent no.2 informed the petitioner that the impugned show cause notices had been put in call book. The petitioner was not informed about any such decision taken by the

respondent no.2 thereby putting the show cause notice in call book till 23rd February 2021. On 29th April 2021, the petitioner sought clarifications from the respondent no.2 in response to the said letter dated 12th April 2021. There was no response to the said letter from the respondents. On 22nd May 2021, the petitioner sent a reminder to the respondents.

8. On 3rd/ 7th June 2021, the respondent no.2 informed the petitioner that files were transferred to call book as per Circular issued by the Central Board of Excise and Customs which had been revised from time to time. The petitioner therefore, filed this petition impugning the said show cause notice on various grounds.

9. Mr.Raichandani, learned counsel for the petitioner invited our attention to the copies of the show cause notices issued by the respondent no.2 and also the correspondence exchanged between the parties. It is submitted that before 12th April 2021, the respondent no.2 never informed to the petitioner that those 5 show cause notices which were pending since 2011, 2012, 2013, 2014 and 2016 were transferred to call book. The petitioner had not received any other communication from the respondents at any point of time.

10. Learned counsel for the petitioner invited our attention to the

affidavit-in-reply filed by the respondents and more particularly paragraphs 6.1 and 6.1.4 of the said affidavit dated 21st February 2022 and submits that the so called decision of the respondent no.2 to transfer the show cause notices to call book was never communicated to the petitioner earlier. He submits that the terms and conditions of the Circular dated 10th March 2017 relied upon by the respondents in the affidavit were also not satisfied.

11. Learned counsel placed reliance on the following judgments:-

(i) *Parle International Ltd. Vs. Union of India, 2021 (375) E.L.T. 633 (Bom.);*

(ii) *Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India, 2018 (12) G.S.T.L. 290 (Bom.);*

(iii) *Sushitex Exports India Ltd. & Ors. Vs. The Union of India & Anr. 2022-TIOL-123-HC-MUM-CUS;*

(iv) *Reliance Industries Ltd. Vs. Union of India, 2019 (368) E.L.T. 854 (Bom.);*

(v) *Bhagwandas S. Tolani Vs.B.C. Aggarwal & Ors., 1983 (12) E.L.T. 44 (Bom.);*

(vi) *Lanvin Synthetics Private Ltd. Vs.Union of India, 2015 (322) E.L.T. 429 (Bom.);*

(vii) *The Bombay Dyeing and Manufacturing Company Limited Vs.*

*Deputy Commissioner of CGST & CX, delivered on 14th February 2022
in Writ Petition No.2874 of 2021.*

12. It is submitted that the respondent no.2 ought to have adjudicated upon those 5 show cause notices within a reasonable period of time and could not have transferred to call book. He submits that in any event, the petitioner is not responsible for any delay in adjudication of those show cause notices for last several years. The petitioner thus cannot be made to suffer on the ground that the respondent has transferred the show cause notices to call book contrary to law. He submits that the entire action on the part of the respondent is contrary to the principles of law laid down in the above referred judgments.

13. Mr.Mishra, learned counsel for the respondents, on the other hand, submits that the show cause notices could not be adjudicated upon due to the reason that the said show cause notices had been transferred to call book. A case is transferred to call book if such case cannot be adjudicated immediately due to certain specified reasons and adjudication is to be kept in abeyance. The transfer of show cause notice to call book is governed by circulars issued by the Central Board of Excise & Customs i.e. Circular No.162/73/95-CX dated 14th December 1995, Circular No.719/35/2003-CX dated 28th May 2003 and Circular No.992/16/2014-CX dated 26th April 2016, Circular No.1053/2/2017-

CX dated 10th March 2017 where the Board had specified the following categories of cases (i) Cases in which the Department has gone in appeal to the appropriate authority, (ii) Cases where injunction has been issued by the Supreme Court/High Court/CEGAT, etc. (iii) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book and (iv) Cases are admitted by the Settlement Commission, which are transferred to call book.

14. Learned counsel for the respondents placed reliance on the judgments of this Court in case of **Commissioner of S.T., Mumbai-VII Vs. M/s.Greenwich Meridian Logistics (I) Pvt. Ltd., 2019 (28) G.S.T.L. 591 (Bom.)** and in case of **Sona Processors Vs. Commissioner of Central Excise Thane & Ors.**, delivered on 21st February 2022 in Writ Petition No.2404 of 2021.

15. It is submitted by the learned counsel that the Board is empowered to issue such Circulars under Section 37B of the Central Excise Act, 1944 to bring uniformity in the classification of excisable goods or with respect to levy duties of excise on such goods.

16. It is submitted by the learned counsel that issue involved in the subject show cause notices in the writ petition are regarding non-payment of service tax on freight difference. The said show cause notices

had been initially transferred to call book in the light of appeal filed by department in this Court against the order of CESTAT dated 30th September 2015 in case of *M/s.Greenwich Meridian Logistics (I) Pvt. Ltd.* The appeal filed by the department was dismissed by this Court. The department filed appeal before the Supreme Court which was dismissed on the grounds of delay vide order dated 1st April 2019. The show cause notices however, were kept in call book in the light of similar issue where department had filed appeal in this Court against the order of CESTAT dated 27th July 2016 in respect of M/s.Phoenix International Freight Services Pvt. Ltd. The said departmental appeal is still pending before this Court.

17. Mr.Raichandani, learned counsel for the petitioner in his rejoinder arguments submits that each and every stand taken by the respondents in the affidavit-in-reply is contrary to the principles of law laid down by this Court in catena of decisions which are relied upon by the petitioner.

REASONS AND CONCLUSION :-

18. It is not in dispute that the respondent no.2 had issued 5 show cause notices referred in paragraph 4 of this judgment. The petitioner had filed replies to all 5 show cause notices vide letter dated 9th November 2012, 12th July 2013, 5th October 2016 and 5th October 2016

respectively denying all the allegations levelled therein.

19. It is an admitted position that the respondent no.2 did not fix any date of hearing of those show cause notices or did not send any other communication to the petitioner informing as to why the said show cause notices were not being heard. The respondent no.2 informed the petitioner for the first time on 12th April, 2021 that the show cause notices were transferred to call book by invoking the circulars referred to and relied upon in the earlier paragraphs of the judgment.

20. The first letter was addressed by the respondent no.2 on 5th / 7th June 2021 in response to the letter dated 23rd February 2021 addressed by the petitioner seeking a copy of closure report, if any.

21. A perusal of the said reply from the respondent no.2 indicates that the only information provided to the petitioner was that files were transferred to call book as per the circulars issued by the Central Board of Excise and Customs which has been revised from time to time. A copy of the Circular dated 26th April 2016 was enclosed by the respondent no.2 along with the said letter for reference of the petitioner.

22. A perusal of the said Circular dated 26th April 2016 relied upon by the respondent no.2 indicates that by the said circular, the

respondent no.1 clarified that the cases where (i) the issue involved has either been decided by the Supreme Court or the High Court and such order has attained finality or, (ii) Board has issued new instruction or circular clarifying the issue involved, subsequent to issue of the order to transfer the case to the call book would be taken out of call book and adjudicated. The said circular also provides for various eventualities where file can be transferred to call book already referred to in the earlier paragraph of this judgment.

23. Neither the affidavit-in-reply nor the arguments advanced by the learned counsel for the respondents indicated that the petitioner was at any point of time informed about the transfer of file relating to the show cause notices in question to call book prior to the date of the petitioner's letter asking for closure report.

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 show-cause 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. 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. In case of **Commissioner of S.T., Mumbai-VII Vs. M/s.Greenwich Meridian Logistics (I) Pvt. Ltd. (supra)** relied upon by the learned counsel for the respondents in support of the submission that writ petition filed by the petitioner is not maintainable in view of the remedy in terms of Section 83 of the Finance Act, 1944 is concerned, in our view, the said judgment would not advance the case of the respondents.

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.

30. In so far as the judgment of this Court in case of **Sona Processors (supra)** relied upon by the learned counsel for the respondents is concerned, in our view, the said judgment would not advance the case of the respondents and is clearly distinguishable. In the said judgment, this Court had considered the facts where the Customs, Excise and Service Tax Tribunal had remanded the matter back

to the Commissioner in the year 2011 with a request to decide all the issues afresh in accordance with law. The respondents had not furnished any documents or relevant records till date. The respondents belatedly furnished the records to the petitioner.

31. In that case this Court had granted an opportunity to the petitioner to file reply to the said show cause notice with a direction to dispose of the said proceedings remanded back to the Tribunal. The facts before this Court in case of **Sona Processors (supra)** are totally distinguishable in the facts of this case and would not advance the case of the respondents. For the reasons recorded aforesaid, the respondents cannot be now allowed to proceed with the show cause notice at such belated stage.

32. We accordingly pass the following order :-

- (i) Writ petition is allowed in terms of prayer clauses (a) and (b).
- (ii) Rule is made absolute accordingly. No order as to costs.
- (iii) Parties to act on the authenticated copy of this order.

S.M. MODAK, J.

R.D. DHANUKA, J.