



Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14213 OF 2023

Paresh H. Mehta, aged 65 years ]  
Indian Inhabitant carrying on business ]  
as a sole proprietor in the name of style of ]  
M/s. P. H. Mehta and Co. ]  
having his registered office at ]  
18, IDA Mansion, Vaju Kotak Road, ]  
Fort, Mumbai – 400 001 ]...Petitioner

*Versus*

1. The Union of India ]  
through the Secretary, ]  
Department of Revenue, ]  
Ministry of Finance ]  
Government of India ]  
New Delhi – 110 001 ]  
]  
2. The Commissioner of Customs ]  
Nhava Sheva, (General ) ]  
Centralized Adjudication Cell ]  
having his office at ]  
Jawaharlal Nehru Port Trust, ]  
Nhava Sheva, Taluka – Uran, ]  
District – Raigad – 400 707 ]  
]  
3] The Additional Director, ]  
Directorate of Revenue Intelligence ]  
Mumbai Zonal Unit, now having his ]  
office at UTI Building 13, Sir Vithaldas ]  
Thackeray Marg, Opp Patkar Hall, ]  
New Marines Lines ]

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Mumbai – 400 020

]...Respondents

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**Mr Jas Sanghvi a/w Mr. Vikas Poojary, i/by PDS Legal for the  
Petitioner.**

**Mr J B Mishra a/w Ms Sangeeta Yadav, for the Respondents.**

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**CORAM    M.S. Sonak &  
                 Jitendra Jain, JJ.**

**DATED:    24 October 2024**

**ORAL JUDGMENT :- (Per M. S. Sonak, J.)**

1.    Heard learned counsel for the parties.
2.    Rule. The Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.
3.    The Petition challenges the show cause notice dated 16 May 2008, which has been pending adjudication before the Respondents for the last 15 years.
4.    On 16 May 2008, the Respondents issued a show cause notice to the Petitioner seeking to impose a penalty under section 112(a) of the Customs Act, 1962, alleging *inter alia* a classification of clandestine clearance of 663 import assignments without payment of appropriate duty.
5.    The Petitioner filed detailed responses to the show cause notice dated 16 May 2008 on 01 October 2008 and 02 December 2008.
6.    The record bears out that personal hearings were fixed on 03 December 2008, 04 December 2008 and 05 December 2008. The Advocates, on behalf of the Petitioner, did attend

such hearings, but no effective hearing took place on the said dates. From December 2008 onwards, there was no progress until December 2011.

7. Again, in December 2011, a date was fixed for a personal hearing, and the Petitioner's Advocate attended such a hearing. But still, there was neither an effective personal hearing nor was the show cause notice disposed of.

8. Nothing was done in the impugned show cause notice for the next five years. On 24 February 2017, almost 9 years after the issue of the show cause notice and 7 years after the last date fixed for hearing, another notice was issued to the Petitioner to attend the personal hearing scheduled on 24 February 2017. Again, the petitioner's Advocate participated in the hearing, but there was no effective hearing. On 25 February 2021, 21 years after the issue of the show cause notice, and 4 years from the last date fixed for a personal hearing, another personal hearing was scheduled. This time, the Petitioner requested a hearing through video conferencing, but no link was provided.

9. In the above circumstances, the Petitioner, relying upon several decisions of this Court, has sought the quashing of the show cause notice and restraint on the proceeding further based upon the same. The respondents have filed an affidavit in this matter. On the perusal of the affidavit, we find no explanation for the non-disposal of the proceedings in the show cause notice from 2008 to 2021. There is a statement that on 17 March 2021, the show cause notice was transferred to the call book pursuant to the bold instructions No. 04/2021 issued vide F.No. Mumbai 450/72/2021-CUS-IV.

10. Except for the above statement in the Affidavit, no documents/file showing the actual transfer to the call book is

shown or produced. Further, there is no statement that any intimation was given to the petitioner about such transfer.

11. In almost identical facts, the Division Benches of this Court in the cases of **Coventry Estates Pvt Ltd Vs The Joint Commissioner CGST and Central Excise & Anr<sup>1</sup>**, **Eastern Agencies Aromatics (P) Ltd Vs Union of India & Ors<sup>2</sup>**, **ICICI Home Finance Company Ltd Vs Union of India & Pr. CGST & CX Mumbai<sup>3</sup>**, **Bhushan Vohra Vs The Union of India & Ors<sup>4</sup>**, **The Great Eastern Shipping Company Ltd Vs Union of India & Ors<sup>5</sup>** have held that when faced with such inordinate and unexplained delay, the show cause notice must be quashed and cannot be allowed to proceed.

12. Therefore, by adopting the reasoning in the said decisions rather than repeating the same reasoning in this order, we are satisfied that the case has been made out to quash the impugned show cause notice.

13. However, Mr. Mishra learned counsel for the respondents relied upon the order dated 10 July 2023 made by the Hon'ble Supreme Court in the case of **Commissioner, GST and Central Excise Commissionerate II & Ors Vs. M/S Swati Menthol And Allied Chemicals Ltd & Anr** disposing of Special Leave Petition No. (C) 20072/2021.

14. The Co-ordinate Bench considered the above order in **Coventry Estates Pvt Ltd Vs The Joint Commissioner CGST &**

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<sup>1</sup> 2023 (10) Centax 38(Bom)

<sup>2</sup> 2022 (12) TMI 323 (Bom)

<sup>3</sup> 2024 (6) TMI 682 (Bom)

<sup>4</sup> 2024 (9) TMI 713 (Bom)

<sup>5</sup> Writ Petition No. 3605 of 2024

Central Excise & Anr. The relevant discussion in paragraph 26 reads as follows:-

“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.”

15. Besides, in the Hon’ble Supreme Court’s order dated 10 July 2023, the explanation offered by the learned Additional Solicitor General found favour with the Court. It was explained that a matter similar to the matter under consideration was the subject matter of the Writ Petition before the Jammu and Kashmir High Court. Therefore, a decision was made to recommence the proceedings following the conclusion from the High Court received by the

department. Learned ASG also submitted concluding the proceeding within the time frame to be fixed by the Court.

16. In the present case, the delay between 2008 and 2021 is inordinate and, moreover, unexplained. The affidavit filed by the Respondent does not explain this inordinate delay. The Hon'ble Supreme Court's order, as noticed by the Co-ordinate Bench, does not make out the proposition that gross, unjustifiable and inordinate delay in adjudication of the show cause notice must, in every case, be excused regardless of the absence of any reasonable explanation.

17. In this case, the transfer of the matter to the call book was delayed. The show cause notice was issued in 2008, and the alleged transfer to the call book was in 2021. No intimation was given to the Petitioner; therefore, provisions of Section 28(9) of the Customs Act were breached. This Court has even otherwise taken the view that even without referring to the requirements of Section 28(9) of the Customs Act, the Respondents were duty-bound to intimate the party about transferring the matter to the call book. Such propositions are laid in **The Great Eastern Shipping Company Ltd Vs Union of India & Ors<sup>6</sup>**, in **Coventry Estates Pvt Ltd (supra)** and **Bhushan Vohra (supra)**.

18. Mr Mishra also relied on **Union of India Vs Prime Leathers<sup>7</sup>** to submit that in this case, the Hon'ble Supreme Court did not allow the Revenue to seek recall of the amount already refunded but permitted the Revenue to proceed with the adjudication.

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<sup>6</sup> 2024 10 TMI 912

<sup>7</sup> 2018 (15) G.S.T.L. 641 (S.C.)

19. We have examined this decision, and the facts therein do not compare with those in the present case. In the said case, the proper officer was not empowered to issue the show cause notices. There was an amendment in Section 28 of the Customs Act of 1962 to overcome this embargo. All this delayed the disposal of the show cause notice. Limited liberty was granted to the Revenue in these peculiar facts, which are entirely inapplicable to the present case. Therefore, based on the decision cited, no case is made to deviate from the several decisions of the Co-ordinate Bench on the topic.

20. Mr Mishra then submitted that the Petitioner has not pleaded or established prejudice in this case. In our judgment, prejudice is inherent. At this point in time, the Petitioners would undoubtedly be prejudiced to contest the show cause notice issued in 2008. Detailed reasons have been given in the decisions referred to above for quashing show cause notices that are not adjudicated for great lengths of time without justifiable reasons. If any demands are made and enforced at this point, the economics of the establishment would suffer.

21. Accordingly, for all the above reasons, we quash and set aside the impugned show cause notice dated 16 May 2008 and restrain the Respondents from proceeding further based on it.

22. The Rule is made absolute in the above terms without any cost orders. All the concerned to act on the authenticated copy of this order.

(Jitendra Jain, J)

(M.S. Sonak, J)