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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION NO. 540 OF 2020**

Shreenathji Logistics

.....Petitioner

Vs.

Union of India and Ors.

.....Respondents

Mr. Bharat Raichandani a/w Mr. Rishabh Jain i/by UBR Legal Advocates for  
Petitioner.

Mr. Pradeep Jetly, Senior Advocate a/w Mr. Siddharth Chandrashekhar for  
Respondents.

**CORAM : K. R. SHRIRAM &  
A. S. DOCTOR, JJ.**

**DATE : 10<sup>th</sup> NOVEMBER, 2022**

**PC:-**

1. Petitioner is seeking a Writ of Certiorari, Writ of Mandamus or any other Writ order or direction under Article 226 of the Constitution of India quashing the impugned show cause notice dated 19<sup>th</sup> October, 2012 primarily on the ground that there has been an inordinate delay in adjudicating the show cause notice. It is Petitioner's case that after the reply was filed to the show cause notice between 2018 and 2019, Petitioner wrote numerable letters to Respondent No.3-the adjudicating authority, to which there was not even an acknowledgment. Since there was total silence on the part of Respondent No.3, Petitioner approached this Court by way of this Petition.

2. For the first time, in the Affidavit-in-Reply, Respondent stated that since there was a matter where identical issue was held against Respondents by the Central Excise Service Tax Appellate Tribunal (CESTAT), Mumbai, and Respondent had preferred an Appeal in this Court, the show cause notice in the case at hand was transferred to the call book. Respondent has also alleged that Petitioner took repeated extensions to file reply to the show cause notice and finally filed the reply only on 15<sup>th</sup> October, 2014. Therefore the delay between 19<sup>th</sup> October, 2012, the date of show cause notice, and 15<sup>th</sup> October, 2014 when the reply was filed was solely due to Petitioner's inaction. Though we will take no quarrels with Respondents on this aspect, we fail to understand why Respondent was so indulgent with Petitioner. Nothing prevented Respondent to have gone ahead and adjudicated the matter. If a party seeks an adjournment and an acceptable cause is shown, Respondent could have given one extension or may be two extensions, but not for two years.

3. Be that as it may, still there is no satisfactory explanation as to why between October, 2014 till now no adjudication has taken place. This Court has, time and again, held that if the show cause notice is being transferred to the call book, the party should be informed about the same. Mr. Jetly, learned senior counsel appearing for Respondents, relying upon the Affidavit-in-Reply of one P. K. Chawla, affirmed on 2<sup>nd</sup> November, 2020 submitted that Respondents cannot be blamed because an identical issue in

the matter of Greenwich Meridian Logistics (I) Pvt. Ltd. (Greenwich) was pending in this High Court and when the High Court held that remedy would lie to the Hon'ble Apex Court by an order dated 6<sup>th</sup> September, 2018, Respondent filed an Appeal before the Hon'ble Apex Court. On 1<sup>st</sup> April, 2019, Hon'ble Apex Court has dismissed the Appeal. Mr. Jetly therefore submitted that in January, 2020 Petitioner has approached this Court and therefore there was no delay.

4. The Affidavit-in-Reply does not indicate when the show cause notice first transferred to the call book. Moreover the High Court dismissed the Appeal of Respondents in Greenwich on 6<sup>th</sup> September, 2018. The Hon'ble Apex Court dismissed Respondent's Appeal on 1<sup>st</sup> April, 2019. Only on 22<sup>nd</sup> November, 2019, the show cause notice, it is stated, was taken out of the call book, but still Respondents did nothing. Therefore, in our view, there has been a delay and the case will be squarely covered by a judgment of this Court in *Godrej & Boyce Mfg. Co. Ltd. Vs. Union of India, Writ Petition (L) No.21447 of 2022*<sup>1</sup> where paragraph No.11 reads as under;

*"11. We have heard the submissions of learned counsel appearing for both sides as also considered the case law relied upon by them. We have no hesitation in holding that the present Petition deserves to be allowed for the following reasons, viz.,*

A. *The law pertaining to adjudication of show cause notices is now well settled by various judgments, in particular Raymonds (supra) and Parle (supra) of this Hon'ble Court, from which the following can be culled out, viz.,*

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<sup>1</sup>[2022] 142 taxmann.com 418 (Bombay)

- i. *Even where the statute does not prescribe a time limit for adjudication, a show cause notice must be adjudicated upon within a reasonable time;*
- ii. *Though reasonable time is flexible and would depend upon the facts and circumstances of each case, since the object of issuing a show cause notice is to secure and recover public revenue, larger public interest requires that revenue authorities act diligently and expeditiously when adjudicating the same;*
- iii. *Diligence would include keeping the answering party informed when a show cause notice is kept in abeyance/transferred to call book. This serves a twofold purpose, viz.,*
  - (a) the answering party is put to notice that proceedings are still alive and the answering party can thus safeguard the necessary evidence etc. till such time as the show cause notice is taken up for adjudication; and/or*
  - (b) the answering party could at that stage itself contest the show cause notice and/or point out why the same should be taken up for adjudication.*
- iv. *Failure to keep the answering party informed about the fate of the show cause notice and delay in adjudicating the same (for no fault of answering party) impinges on procedural fairness and is thus a violation of the principles of natural justice;*
- v. *Adjudication proceedings, delayed for more than a decade (for no fault of answering party and without putting answering party on notice for the reason of delay), defeats the very purpose of issuing show cause notice/s and such delayed adjudication is bad in law;*
- vi. *An answering party who does not hear from the authorities for more than 10 years after issuance of show cause notice and submission of reply thereto is justified in taking the view that the reply had been accepted and the authorities had given a quietus to the matter;*

- vii. *It is not open to authorities to reopen adjudicating proceedings after a long delay without having compelling and justifiable reasons.*
- viii. *Even where adjournments are sought frequently by the answering party, the same should not be granted liberally as this would give the impression that revenue is not interested in proceeding with the matter or rather has a vested interest in assisting the answering party.*

*On considering the above, we find that the facts in the present case are squarely covered by the law laid down by this Hon'ble Court especially in the case of Parle (supra) and Raymond (supra). We find that the following facts of the present case are ad idem to the facts in the case of Parle (supra), viz.,*

- i. *The impugned show cause notices were resurrected after 13 years (identical period in Parle);*
- ii. *Petitioner was never informed that the impugned notices had been transferred to call book;*
- iii. *With the passage of time (and failure to inform) Petitioner was put in a position of irretrievable prejudice as the evidence was lost/not traceable and the concerned persons were no longer in the employment of Petitioner.*
- iv. *No delay was occasioned on account of Petitioner.*

*In light of the above, we find that the adjudication of the impugned notices by Respondent No. 3 in the present case was clearly bad in law and consequently the impugned order is also void. Respondent No. 3 had taken up the impugned notices for adjudication after a period of thirteen years from the date of issuance thereof and after submission of reply. This by all counts is well beyond the reasonable period of time in which Respondents were expected and required to act. Additionally, Respondents did not inform Petitioner that the impugned notices had been transferred to call book this coupled with the sudden resurrection of the impugned notices after over a decade has impinged on procedural fairness and put Petitioners in a position of irretrievable prejudice. The principles of natural justice and fair play in this case have clearly been violated by Respondents. Though*

*Respondents have contended that the impugned notices were transferred to call book as per the circular of the Board, we find that even the Affidavit in Reply does not mention either the date on which the impugned notices were so transferred, nor does it annex a copy of the circular upon which Respondents have placed reliance. The least that was expected from Respondents was that they would have produced a copy of the relevant circular on which reliance has been placed. Another fact that is to be noted is that the circular relied upon by Respondent is dated 2003 and the impugned notices were issued in the year 2008/2009. Hence, absent production of the said circular and/or a proper explanation as to the contents of the same, Respondents contention that the impugned notices had been transferred to call book based thereon is completely unintelligible and mere ipse dixit. Thus, in the facts and circumstances of the present case, we have no hesitation in holding that Petitioner was entirely justified in concluding that Respondents had abandoned the impugned show notices.*

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5. Moreover, it is Respondents own case in the Affidavit-in-Reply that the issue in the show cause notice issued to Petitioner is squarely covered by the order passed by CESTAT in the matter of Greenwich. The Appeal was dismissed by High Court and the Hon'ble Apex Court has also dismissed the Appeal of Respondents. Therefore the order in Greenwich passed by CESTAT has attained finality. Since in the Affidavit-in-Reply Respondents accept that the order of CESTAT covers the issue in this matter as well, it would, in our view serve no purpose in adjudicating the show cause notice. It would be a futile exercise.
6. In the circumstances, the show cause notice dated 19<sup>th</sup> October, 2012 is hereby quashed.

7. Mr. Raichandani at this stage states that certain amounts have been paid during the course of investigation as averred in paragraph 4.11 and 4.12 of the Petition and therefore those amounts should be directed to be refunded together with interest, if any, in accordance with law. We have no hesitation in directing the department to return these amounts since that is a natural consequence of the order passed by us in quashing the impugned show cause notice. The amount deposited together with interest thereon, be refunded within 8 weeks from the date of this order being uploaded. Petition disposed.

**(A. S. DOCTOR, J.)**

**(K. R. SHRIRAM, J.)**