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

WRIT PETITION NO.307 OF 2021

ICICI Home Finance Company Ltd.)
ICICI Bank Tower)
Bandra Kurla Complex)
Bandra East,)
Mumbai – 400 051.) ….Petitioner

V/s.

1. The Union of India, through)
Ministry of Finance,)
Department of Revenue)
having its office at Udyog Bhavan)
New Delhi – 110011.)

2. Principal Commissioner of CGST & CX)
Mumbai East Commissionerate)
9th Floor, Lotus Info Centre)
Near Parel Railway Station)
Parel (East),)
Mumbai – 400 012.) ….Respondents

Mr. Jitendra Motwani a/w Ms. Rinkey Jassuja i/by Economic Laws Practice for petitioner.

Ms. Asha A. Desai (through VC) a/w Mr. Jitendra B. Mishra and Mr. P. S. Patkar for respondents.

CORAM : K.R. SHRIRAM &
JITENDRA JAIN, JJ.
DATED : 11th JUNE 2024

ORAL JUDGMENT (PER K. R. SHRIRAM, J) :

1 Petitioner, a wholly owned subsidiary of ICICI Bank Limited, has approached this Court seeking a declaration that the proceedings initiated pursuant to two show cause notices dated 22nd October 2010 and 21st October 2011 for FY 2005-06 and FY 2006-07, respectively, be declared as non est. According to petitioner, these show cause notices have to be quashed in view of delay in adjudicating the same.

2 For show cause notice dated 22nd October 2010 (SCN-1), petitioner filed a reply vide letter dated 28th June 2011. For show cause notice dated 21st October 2011 (SCN-2), petitioner filed reply vide communication dated 12th June 2013. For SCN-1, personal hearing was granted on 5th January 2012 and petitioner filed written submissions dated 19th January 2012. For SCN-2, no personal hearing was provided.

3 Petitioner received two notices dated 26th November 2020 and 11th January 2021 calling upon petitioner to attend the personal hearing. It is at this stage, petitioner filed this petition on 25th January 2021. By an order dated 24th January 2022, ad-interim relief was granted to petitioner and same is continued as on date.

4. Since the pleadings in the petition are completed, with consent of the counsel, we decide the petition finally at the admission stage itself.

Therefore, Rule.

Rule made returnable forthwith.

5 The facts as narrated above are not disputed. The stand taken in the affidavit in reply filed through one Milind Gawai affirmed on 20th January 2022 is that both show cause notices were transferred to call book on 22nd June 2012 in view of department's appeal in the Apex Court in *Malabar Management Services Pvt. Ltd.*

6 In additional affidavit in reply filed through one Sumit Kumar affirmed on 5th April 2023 pursuant to the directions given by this Court on 8th March 2023, the fact that petitioner was not informed about the show cause notices being kept in abeyance and transferred to call book becomes clear. In fact Ms. Desai in fairness states that petitioner was not informed about the fact that the matter has been transferred to call book.

7 The issue that comes up for consideration and which is raised by Mr. Motwani is not whether it should be transferred to call book, but whether non-communication of transfer of the show cause notices to call

book is fatal to the case of respondents. In our view, the issue has to be answered in affirmative.

8 For this we are relying upon the judgment of this Court in case of ***Shreenathji Logistics Vs. Union of India & Ors.***[1] where the Court observed "……. 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. ……." In *Shreenathji Logistics* (supra), the Court also has relied and followed another judgment of this Court in ***Godrej & Boyce Mfg. Co. Ltd. Vs. Union of India***[2] where paragraph 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.*
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> *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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> *i. Even where the statue 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/*

1 2022 (11) TMI 709 (Bom)
2 2022 (142) Taxmann.com 418 (Bombay)

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.

B. Additionally, even on merit, we find that the impugned order is liable to be quashed and set aside. We find that there has been a deliberate dereliction of duty on the part of Respondent No. 3 because Respondent No. 3 has brazenly glossed over and ignored the specific submissions and case law relied upon by Petitioner pertaining to adjudication of stale show cause notices without so much as even attempting to deal with the same. The submissions made and case law

relied upon by Petitioner would have gone to the root of the matter. We find that it is this conduct of Respondent No. 3 which amounts to a dereliction of duty and has resultantly occasioned grave injustice to Petitioner. Respondent No. 3 is enjoined with a duty and obligation in law to act in a fair, just and judicious manner. Respondent No. 3 has in the facts of the present case failed and neglected to exercise his jurisdiction in a transparent, fair and just manner as required and expected of him by law. Respondent No. 3 in fact acted in an ex facie pre-determined manner with the sole objective of upholding the contention/action of the Revenue at any cost. Such conduct coupled with the failure of Respondent No. 3 to exercise jurisdiction as required by law has resulted in grave injustice and prejudice being caused to Petitioners.

C. We also find Respondents contention that Petitioner has available an alternate and equally efficacious remedy by way of Appeal also to be misplaced and of no substance in the facts and circumstances of the present case. The judgment in the case of Hover Automotive India Pvt. Ltd. (supra) is also wholly inapplicable to the facts of the present case. The only challenge in the case of Hover Automotive India Pvt. Ltd. (supra) was one which pertained to failure of the authority (in that case) to properly construe and deal with certain judgments cited before it. The challenge in the present case, however, is one which pertains to the grave prejudice caused to Petitioner on account of the violation of the principles of natural justice occasioned by Respondents conduct in re-opening adjudication proceedings after an inordinate delay. It has now been conclusively held that such conduct on the part of revenue authorities is in contravention of procedural fairness and thus in violation of principles of natural justice and is therefore amenable to challenge by way of a writ jurisdiction. Infact, a careful reading of the judgment in the case of Hover Automotive India Pvt. Ltd. (supra) also specifically sets out that writ jurisdiction can always be invoked and is available to a party when there is any contravention of the principles of natural justice. It is useful to reproduce here paragraph 13 from the judgment of the case of Hover Automotive India Pvt. Ltd. (supra) which in turn relies upon the judgment of the Hon'ble Supreme Court of India in the case of the Assistant Commissioner of State Tax & Others vs M/s Commercial Steel Ltd. dated 3rd September, 2021 passed in Civil Appeal No. 5121 of 2021 and reads thus, viz.,

13. In this context, we consider it useful to also refer to paragraphs 11 and 12 of the decision in Commercial Steel Limited (supra) cited by the petitioner. Paragraphs 11 and 12 are quoted below: -

> *"11. The respondent h ad a statutory remedy under section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:*
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> *(i) a breach of fundamental rights;*
>
> *(ii) a violation of the principles of natural justice;*
>
> *(iii) an excess of jurisdiction; or*
>
> *(iv) a challenge to the vires of the statute or delegated legislation.*
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> *12. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent."*
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> *(emphasis supplied)*

We therefore find that even though the remedy of Appeal is available, Petitioner is not required to exercise this alternate remedy in the facts and circumstances of the present case. The present Writ Petition is maintainable as the challenge in the present Writ Petition arises on account of the contravention of the rules of procedural fairness by Respondent. This conduct of Respondent as already held by us has resulted in grave prejudice being caused to Petitioner and amounts to a violation of the principles of natural justice. Thus, the present Writ Petition is squarely maintainable and Petitioner does not have to be relegated to the remedy of Appeal even though available.

> *D. Another aspect which we must note and one which also highlights the inequitable manner in which Respondents have acted is the fact that even though the impugned notices had been transferred to call book, Respondents continued to compute interest on the duty/tax amount mentioned therein. Since we are setting aside the impugned order we are not going into this aspect presently."*

9 This Court in ***ATA Freight Line (I) Pvt. Ltd. Vs. Union of India***[3] has held that non communication to petitioner about show cause notice being transferred to call book and being kept in abeyance would render the show cause notice to have lapsed. This view in *ATA Freight Line (I) Pvt. Ltd.* (supra) has been confirmed by the Apex Court in ***Union of India & Ors. Vs. ATA Freight Line (I) Pvt. Ltd.***[4]***.***

10 Ms. Desai submitted that the issue of transfer to call book is still pending in the Apex Court and relying upon the order of the Apex Court in ***Union of India Vs. Siddhi Vinayak Syntex Pvt. Ltd.***[5] submitted that this Court should not make any observation regarding the show cause notices being transferred to call book and the effect thereof. We are not inclined to adopt the course of action suggested by Ms. Desai. In *Siddhi Vinayak Syntex Pvt. Ltd.* (supra) which was an SLP filed by Union of India impugning the judgment of the Hon'ble Gujarat High Court in ***Siddhi Vinayak Syntex Pvt. Ltd. Vs. Union of India***[6]***,*** the Hon'ble Gujarat High Court has held that the Central Board of Excise and Customs was not empowered under Section 37B of the Central Excise Act, 1944 to issue instructions to the Central Excise Officer to transfer the show cause notices

3 (2022) 1 Centax 32 (Bom)
4 2023 (2) TMI 1131
5 2022 (379) ELT 553 (SC)
6 2017 (352) ELT 455 (Guj)

to call book and keep the same in abeyance. In the case at hand, petitioner is not challenging transfer of show cause notices to call book and keeping the same in abeyance, but is only raising a ground that non communication of transfer to call book is fatal to the case of respondents. Therefore, in our view, there is no impediment in proceeding to decide this matter.

11 Moreover, as is clear from affidavit in reply and as submitted by Ms. Desai, the reason why the show cause notices were transferred to call book was because of the SLP pending in the Apex Court in *Malabar Management Services Pvt. Ltd.* The legality of the issues raised in *Malabar Management Services Pvt. Ltd.* admittedly has attained finality and read with ***Union of India & Anr. Vs. Intercontinental Consultants & Technocrats Private Limited***[7]**,** the issue is decided in favour of assessee. Therefore, admittedly petitioner's case was kept in abeyance in view of pending SLP in the Apex Court and it is accepted that the issue therein covered the issue in petitioner's case as well. It would, in our view, therefore serve no purpose in adjudicating the show cause notice. Hence we are not inclined to accept the other suggestion made by Ms. Desai that respondents should be permitted to proceed with the adjudication of show cause notices. In our view, it could be nothing but an exercise in futility.

7 2018 (4) SCC 669

12 In the circumstances, the two show cause notices dated 22nd October 2010 and 21st October 2011 are hereby quashed and set aside.

13 Rule made absolute in terms of prayer clause (a) which reads as under :

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioner's case and declare that in the present case adjudication proceedings in relation to the impugned SCNs dated 22.10.2010 and 21.10.2011 are not maintainable due to the inordinate delay of 9 to 10 years and quash the SCNs dated 22.10.2010 and 21.10.2011."*

Petition disposed.

(JITENDRA JAIN, J.) (K.R. SHRIRAM, J.)