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

WRIT PETITION NO. 3063 OF 2021

UPL Limited, a company incorporated under the Companies Act, 1956, and having its registered office at 3-11, G.I.D.C. Vapi – 396 195, Gujarat and Corporate Office at Uniphos House, Madhu Park, 11th Road, Khar (West), Mumbai-400 052 ..Petitioner

Vs.

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 Central GST, Mumbai West Commissionerate** Shri Mahavir Jain Vidyalaya, C.D. Burfiwala Marg, Juhu Lane, Andheri(West), Mumbai – 400 058. ..Respondents

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Mr. Prakash Shah with Mr. Jas Sanghavi and Mr. Yash Prakash i/b. PDS Legal for Petitioner.
Mr. Ram Ochani for Respondents.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : AUGUST 22, 2023

Oral Judgment (Per G. S. Kulkarni, J.):-

1. Rule, made returnable forthwith. The respondents waive service.

By consent of the parties, heard finally.

2. The present petition filed under Section 226 of the Constitution is another classic case where the lackadaisical approach of respondent no.2-Commissioner of Central Excise in not adjudicating the show cause notice issued 13 years back dated 21 October, 2010 is prayed to be quashed and set aside by the petitioner, on the ground that the law would not permit such delayed adjudication of the show cause notice.

3. At the outset, we may observe that when the petitioner is before the Court pointing out serious lapses on the part of respondent no.2-Commissioner of Central GST, reply affidavit to the petition has been filed by the said respondent but by Shri. Akshay Patil, Deputy Commissioner of CGST & Central Excise, Division-IV, Mumbai. We wonder as to why the Commissioner who has issued the show cause notice and who has impleaded as respondent no.2 has kept himself away from the Court and has not bothered to respond to this petition when whatever was happening with show cause notice, was to the knowledge of this officer only. It can never be conceived that the Deputy Commissioner who has filed the reply affidavit is a person competent to file such affidavit.

4. We were constrained to make the above observations as we take judicial notice of series of petitions reaching this Court on the ground that the concerned jurisdictional officers exercising such enormous powers not only under the Finance Act, 1994, but also under the other Central Acts, for reasons which are totally ill-conceived and contrary to law, have not adjudicated and/or taken forward the show cause notice for unduly long periods and in some case about 10 years. In our opinion, a serious view in this regard is required to be taken by the Ministry of Finance in regard to the officers who are not diligently discharging such vital duties and who in fact are playing with the public revenue. In such context, in our decision in **Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise & Anr.**[1] which concerned delayed adjudication of a show cause notice, considering the binding statutory provisions, we have observed that such lethargic approach of the concerned officer not to adjudicate show cause notice within the time frame as prescribed by law, would be an action on the part of the concerned officer contrary to law, who cannot be expected to violate the mandate of law. As such issues vitally affect the public revenue, we also observed that such inaction on the part of such officers would adversely affect the interest of the revenue.

1 Writ Petition No. 4082 of 2022, decided on 25 July, 2023

We also observed that if prompt adjudication of the show cause notice is not undertaken, such lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication. Our observations in that regard are required to be noted which read thus:-

> "17. In our opinion, in the facts of the present case, such requirement and obligation the law would mandate is completely overlooked by the officer responsible for adjudicating the show cause notice. We are not shown any provision, which in any manner would permit any authority to condone such inordinate delay on the part of the adjudicating officer to adjudicate show cause notice. There can be none, as the legislature has clearly intended to avoid uncertainty, which otherwise can emerge. Thus, what would become applicable are the settled principles of law as laid down in catena of judgments, that the period within which such adjudication should happen is as mandated by law and in any case it needs to be done within a reasonable period from the issuance of the show cause notice. Further, whether such period is a reasonable period would depend upon the facts and circumstances of each case.
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> 18. An inordinate delay is seriously prejudical to the assessee and the law itself would manifest to weed out any uncertainty on adjudication of a show cause notice, and that too keeping the same pending for such a long period itself is not what is conducive.
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> 19. It is well said that time and tide wait for none. It cannot be overlooked that the pendency of show cause notice not only weighs against the legal rights and interest of the assessee, but also, in a given situation, it may adversely affect the interest of the revenue, if prompt adjudication of the show cause notice is not undertaken, the reason being a lapse of time and certainly a long lapse of time is likely to cause irreversible changes frustrating the whole adjudication.
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> 20. We are also of the clear opinion that a substantial delay and inaction on the part of the department to adjudicate the show cause notice would seriously nullify the noticee's rights causing irreparable harm and prejudice to the noticee. A protracted administrative delay would not only prejudically affect but also defeat substantive rights of the noticee. In certain circumstances, even a short delay can be intolerable not only to the department but also to the noticee. In such cases, the measure and test of delay would be required to be considered in the facts of the case. This would however not mean that

> an egregions delay can at all be justified. This apart, delay would also have a cascading effect on the effectiveness and/or may cause an abridgement of a right of appeal, which the assessee may have. Thus, for all these reasons, delay in adjudication of show cause notice would amount to denying fairness, judiciousness, non-arbitrariness and fulfillment of an expectation of meaningfully applying the principles of natural justice. We are also of the clear opinion that arbitrary and capricious administrative behaviour in adjudication of show cause notice would be an antithesis to the norms of a lawful, fair and effective quasi judicial adjudication. In our opinion, these are also the principles which are implicit in the latin maxim "*lex dilationes abhorret*", i.e., law abhors delay.

5. In such view of the matter, we are of the opinion that the Joint Secretary, Ministry of Law and Justice, Aayakar Bhavan, shall forward a copy of our judgment in **Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise & Anr**. (supra), as also this order to the Secretary, Ministry of Finance, so as to appraise him of a legal approach to be adopted by the adjudicating officers, who are vested with such substantial powers of issuing show cause notices and who are dealing with public revenue, so that a robust approach can be adopted in effectively adjudicating the show cause notices, unless such mechanism already exist. We will be failing in our duty if we do not request the Finance Secretary to look into such issues.

6. Now coming to the facts of this case, a show cause notice in question was issued to the petitioner by respondent no.2 about twelve

years back i.e. on 21 October, 2010, alleging non-payment of service tax on import of service on bank charges under banking and financial services and professional fee under Management Consultancy Services. The petitioner was called upon to show cause as to why Service Tax amounting to Rs. 7,79,52,151/- as set out in Annexure A to the said show cause notice, should not be demanded and recovered from it under the proviso to Section 73(1) of the Finance Act, as also interest and penalty levied as set out in the show cause notice.

7. The petitioner responded to the show cause notice by its letter dated 10 November, 2010 and requested 8 weeks time to collate all the papers and submit its reply, as also requested for a personal hearing. Copy of such request letter is annexed to the petition at Exhibit "B". Such a request was again made on 18 January, 2011. The petitioner by its letter dated 18 February, 2011 requested respondent no.2 to provide break-up of the annual cumulative amount of value of taxable services as set out in Annexure-A to the show cause notice in relation to the service tax allegedly payable on import of Management Consultancy Service, for the reason that this formed the basis of the show cause notice and being a document relevant to the show cause notice, the same ought to have been

supplied to the petitioner. By further letter dated 14 March, 2011, the petitioner informed respondent no.2 that it had deposited an amount of Rs. 83,49,786/- in respect of service tax and interest under the banking and financial services, under protest. Thereafter on 22 August, 2011, the petitioner filed its reply to the Audit Report No. 285/09-10.

8. It appears that since August 2011 to February 2016, nothing was done by the department and this was certainly a period prior to the GST regime being set into motion. In fact, nothing precluded respondent no.2 to call upon the petitioner and pass final orders on the show cause notice for such period of almost 5 years from August 2011 to February 2016. According to the petitioner, in law, this delay itself was sufficient to set aside the show cause notice.

9. However, what transpired thereafter is further interesting. After a period of five years i.e. from August 2011 to February 2016, the Superintendent of Service Tax vide his letter dated 08 February, 2016, informed the petitioner that hearing has been scheduled on 16 March, 2016 at 03.00 p.m. The petitioner much prior to the said scheduled hearing i.e. on 07 March, 2016, again reiterated its request to the respondents to provide the break-up in respect of import of services under

the Management Consultancy Services. It appears that responding to such request of the petitioner, office of the Commissioner, Service Tax, Mumbai addressed a letter to the Assistant Commissioner, Service Tax, Division-III, Mumbai, a copy of which was marked to the petitioner including a Final Audit Report No.285/09-10 in respect of the petitioner. In this view of the matter, the petitioner by its letter dated 15 March, 2016 addressed to respondent no.2 requested to grant fresh dates in the month of May 2016 for hearing on the show cause notice. The office of respondent no.2 by its letter dated 25 April, 2016, informed the petitioner that a fresh personal hearing was fixed on show cause notice on 11 May, 2016 at 04.00 p.m. On receipt of such notice, the petitioner once again addressed a letter to respondent no.2 dated 04 May, 2016 reiterating the request for providing the break-up in respect of import of services under the Management Consultancy Services. Surprisingly, respondent no.2 did not proceed to pass any orders and at the request of the petitioner, adjourned the hearing.

10. At this stage, it needs to be observed that respondent no.2 ought to have been conscious that the show cause notice itself was issued in the year 2010 and any further adjournment on any ground by the respondents could have been appropriately dealt. We also note that there is no

explanation whatsoever in this regard in the reply affidavit as well.

11. The petitioner, on the above backdrop, by its letter dated 13 May, 2016, again sought the details in regard to the break-up in respect of import of services under the Management Consultancy Services. However, no action was taken on such request. It was again open to respondent no.2 to reject such request and proceed to adjudicate the show cause notice, however such approach was not adopted, as also no explanation in that regard expected from a public officer is coming forth.

12. What is glaring, is that thereafter from the adjourned date of hearing i.e. 11 May, 2016 upto February, 2021, which is again a second tranche of period of 5 years, respondent no.2 did not bother to take any action on the show cause notice and in fact, it appears that the show cause notice was forgotten. It is on such conspectus, being aggrieved by uncertainty and the sword of Damocles of the show cause notice hanging, the petitioner filed the present petition on 23 March, 2021, praying that as no action was taken on the show cause notice for such a long time, the same is required to be quashed and set aside. The petitioner has accordingly prayed for the following substantive reliefs in the present petition:-

> "(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 Petitioners' case and and after going into the validity and legality thereof to quash and set aside the impugned show cause cum demand notice F. No. V/ST/GR-VI/Dn-III/ FAR/United/2010/7805 dated 21.10.2010 pending adjudication before Respondent No.2, with consequential reliefs, if any;
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> (b) That this Hon'ble Court be pleased to issue writ of Prohibition or any other appropriate writ in the nature of Prohibition prohibiting the Respondents from taking any further steps or proceeding pursuant to or in furtherance of or in implementation of the impugned show cause cum demand notice F. No. V/ST/GR-VI-Dn-III/FAR/United 2010/7805 dated 21.10.2010 including adjudication thereof."

13. As noted by us, reply affidavit has been filed by the Deputy Commissioner of CGST & Central Excise, Division-IV, Mumbai West Commissionerate. What is surprisingly found in the reply is that a totally unacceptable and implausible picture is sought to be painted, as also there are certain surprises thrown on the petitioner by contending that in fact, the personal hearing was fixed on 09 February, 2021, however, without any supporting document that any intimation/notice to this effect was served on the petitioner. It is further contended that thereafter a hearing was again fixed on 22 February, 2021. Again there is nothing to show that any intimation of a hearing was issued to the petitioner. It appears to us that such contentions raised without any supporting documents and the manner the law would certainly under no scantity to such contention of

the respondents, much less expect this Court to accept such contentions. In our opinion, such averments as made in the reply affidavit are clearly an eyewash and/or a lame attempt to cover up the delay. In any event such can never be an explanation for a prolonged delay of almost more than 11 years for respondent no.2-Commissioner of Central GST, Mumbai not to adjudicate the show cause notice. It is also seen from the reply that there is not a semblance of justification which has been set out which would persuade us to accept that such long delay of 5 years in the first tranche and another 5 years delay in second tranche i.e. period from 2011-16 totalling to more than 10 years, was justified in the facts and circumstances of the case.

14. In any event, the provisions of Section 73 and more particularly the provisions of sub-section (4)(B) which were inserted by the Finance Act 2014 being the statutory mandate was staring at respondent no.2 during the pendency of the show cause notice not to conclude the proceedings of the show cause notice. However, the conduct of respondent no.2 was totally overlooking the mandate of such legal requirement. In considering the provisions of Section 73(4)(B), in our decision in **Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise &**

Anr. (supra), we have made the following observations:-

> "15. Considering the plain consequences, Section 73(4B)(a) and (b) would bring about, it would be an obligation on the Central Excise Officer to determine the amount of service tax due under sub-section (2), within six months from the date of notice or within a period of one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A). Thus, the statute itself prescribes for such period within which the service tax would be required to be determined. Sub-section (1) of Section 73 would also be relevant when it restricts the liability to service tax, to the period of five years under the situations falling below the proviso to sub-section (4) in cases of fraud, collusion, wilful mis-statement, suppression of facts, contravention of any of the provisions of Chapter V of the Finance Act, 1994.
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> 16. We are thus of the opinion that there has to be a holistic approach and reading of the provisions of Section 73, when it concerns the obligation and repository of the power to be exercised by the concerned officer to recover service tax, in adjudicating any show cause notice, issued against an assessee considering the raison d'etre of the provision. It is hence expected that the approach and expectation from the officer adjudicating the show cause notice would be to strictly adhere to the timelines prescribed by provisions of the Act, as there is a definite purpose and intention of the legislature to prescribe such time limits, either under Section 73(4B) of six months and one year respectively or of five years under Section 73(1)."

15. In the facts of the case, Mr. Shah would also be justified in placing reliance on the decision of the Delhi High Court wherein in the facts of the case, even a delay of 18 months in adjudication of show cause notice was considered to be fatal, in dealing with the issues which had fell under Section 29 of the Customs Act. Their Lordships observed thus:-

> "46. In our view, there is no material to show that it was not possible for the proper Officer to determine the amount of duty within the prescribed period. The mention of the words, "where it is

> not possible to do so", in our opinion, does not enable the Department to defer the determination of the notices for an indeterminate period of time. The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer."

16. We may also observe that there is no material whatsoever on record including in the affidavit that respondent no.2 which in any manner would justify such non-adjudication on the ground that it was not possible for respondent no.2 to adjudicate the show cause notice for justifiable reasons either within a reasonable period and more so, within a period as sub-section (4)(B) of Section 73 would manifest.

17. In our opinion, even in absence of the provisions of sub-section (4)(B) of Section 73, respondent no.2 could not have acted oblivious to the settled principle of law, that a show cause notice would be required to be adjudicated within a reasonable time depending the facts of each case. However, as observed by us in our decision in **Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise & Anr**. (supra), reasonable time would not be an egregious, unjustified and unexplained inordinate delay. Having perused the reply affidavit, we find that no justification whatsoever is given by the Deputy Commissioner in

Commissioner not adjudicating the show cause notice. We are thus of the opinion that the present case is clearly covered by our decision in **Coventry Estates Pvt. Ltd. Versus The Joint Commissioner CGST and Central Excise & Anr**. (supra) in regard to the legal position we have set out.

18. In the light of the above discussion, we are certain that this petition is required to be allowed. It is accordingly allowed in terms of prayer clauses (a) and (b).

19. Rule is made absolute in the above terms. No costs.

20. As noted above, copy of this order be forwarded to the Secretary, Minister of Finance, as also to the Central Board of Customs and Indirect Taxes.

[JITENDRA JAIN, J.] [G. S. KULKARNI, J.]