

Chittewan

12. WP 2874-21.doc

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

WRIT PETITION NO.2874 OF 2021

The Bombay Dyeing and
Manufacturing Company Limited ...Petitioner

Versus

Deputy Commissioner of CGST
& CX, Div-IX, Mumbai Central GST
Commissioner ... Respondent

Mr. Ishaan Patkar a/w Mr. Yash Dhond i/b Mrs. Alaksha Legal for the
Petitioner.

Mr. Vijay H. Kantharia a/w Mr. Satya Prakash Sharma for the Respondent.

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

DATE : 14 FEBRUARY 2022.

ORAL JUDGMENT : (Per R.D. Dhanuka, J.)

. **Rule.**

2 Mr. Kantharia, learned Counsel appearing for the Respondent waives
service.

3 By this Petition, filed under Article 226 of the Constitution of India, the
Petitioner has impugned the Show Cause Notice dated 16 September 2005
annexed as Exhibit 'A' to the Petition.

4 The Petitioner has filed reply to the Show Cause Notice within four
weeks from the date of receipt of the said notice and did not get any further

Chittewan

12. WP 2874-21.doc

communication from the Respondent for hearing or any adjudication upon the said Show Cause Notice from the Respondent till today. The Petitioner has thus filed this Petition.

5 Mr. Patkar, learned Counsel appearing for the Petitioner invited our attention to the said Show Cause Notice and also to the averments made by the Respondents, more particularly, paragraph-5 of the Affidavit-in-Reply dated 27 August 2021. He submits that the Petitioner was never informed that the said Show Cause Notice was kept in call book at any point of time. He submits that the Respondent cannot be allowed to proceed with the Show Cause Notice after more than 16 years. In support of this submission, learned Counsel relied upon the unreported judgment in the case of **Parle International Ltd. Vs. Union of India**¹ dated 26 November 2020 in Writ Petition No.12904 of 2019.

6 Mr. Kantharia, learned Counsel appearing for the Revenue states that the stand taken by the Respondent is already set out in the affidavit-in-reply filed by the Respondent and on those grounds, the Petitioner is not entitled to seek any relief.

7 Perusal of the records indicates that the Show Cause Notice was issued on 16 September 2005. A reply was filed by the Respondent. It is not in dispute that no notice of hearing on the said Show Cause Notice was issued to the Petitioner at any point of time. The Petitioner was not informed that the said Show Cause Notice was kept in call book as alleged in the affidavit-in-reply. There is no delay attributable on the part of the Petitioner in the affidavit-in-reply filed by the Respondent.

¹ W.P. No.12904 of 2019, decided on 26.11.2020

8 This Court in case of **Parle International Ltd** (supra) has dealt with the identical situation, where the Show Cause Notice was adjudicated upon after 13 years after the date of issuance. This Court after considering the judgments in the cases of **Saghavi Reconditioners Private Limited Vs. Union of India**² and **Raymond Limited Vs. Union of India**³, where there was delay of 14 to 17 years in adjudicating the proceedings, this Court held that when the revenue keeps the show-cause notice in call book then it should inform the parties about the same. It serves two purposes – (1) it puts the party to notice that the show-cause notice is still alive and is only kept in abeyance. This would enable the party concerned to safeguard the evidence till the show-cause notice is taken up for adjudication; and (2) if the notices are kept in call book, the parties gets an opportunity to point out to the revenue that the reasons for keeping it in call book are not correct and that the notices should be adjudicated promptly. Thus, informing the parties about keeping the show-cause notice in call book would advance the cause of transparency in revenue administration.

9 This Court in the said judgement held that when a show-cause notice is issued to a party, it is expected that the same would be taken to its logical consequences within a reasonable period so that a finality is reached. In this case, the show-cause notice has not been adjudicated upon for about 16 years. We have perused the affidavit-in-reply filed by the Respondent. In the affidavit-in-reply, the Respondent does not allege that the Petitioner was informed about the show-cause notice having been kept in call book as sought to be alleged in the affidavit-in-reply filed by the Respondent. If the Respondent would have informed the Petitioner about the said Show-Cause

2 2018 (12) GSTL 290

3 2019 (368) ELT 481 (Bombay)

Chittewan

12. WP 2874-21.doc

Notice in the year 2005 itself, having been kept in call book, the Petitioner would have immediately applied for appropriate reliefs by filing the appropriate proceedings.

10 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. 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 the the gross delay on the part of the Respondent, the Petitioner cannot be made to suffer. The law laid down by the Division Bench of this Court in the case of **Parle International Limited** (supra), applies to the facts of this case. We do not propose to take any different view in the matter. Hearing of Show-cause notice belatedly is in violation of natural justice. We, accordingly, pass the following Order :-

11 The Impugned Show-Cause Notice dated 16 September 2005 issued by the Respondent to the Petitioner, annexed as Exhibit 'A' to the Petitioner is quashed and set aside. The Writ Petition is allowed in terms of prayer clause-(a) of the Petition. Accordingly, **Rule** is made absolute. No Order as to costs.

12 Parties to act on an authenticated copy of the Order.

[S. M. MODAK, J.]

[R. D. DHANUKA, J.]