IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3605 OF 2024

The Great Eastern Shipping Company Ltd.	)	
Having its office at Ocean House, 134/A,	)	
Through Company Secretary	)	
Mr. Jayesh M. Trivedi	)	.. Petitioner

Versus

1. Union of India	)	
Through the Secretary	)	
Department of Revenue,	)	
Ministry of Finance, North Block,	)	
New Delhi – 110 001.	)	
2. The Commissioner Customs	)	
office of the Principal	)	
Commissioner of Customs-III	)	
Air Cargo Complex (Import)	)	
Andheri (East),	)	
Mumbai - 400 099.	)	
3. The Director General	)	
Directorate of Revenue	)	
Intelligence (DRI)	)	
7th Floor, D Block, I.P. Bhawan,	)	
I. P. Estate	)	
New Delhi- 110 002.	)	
4. The Additional Director	)	
General Directorate	)	
of Revenue Intelligence (DRI)	)	
7th Floor, D Block, I.P. Bhawan,	)	
I. P. Estate	)	
New Delhi- 110 002.	)	
5. The Additional Director	)	
General, DRI,	)	
MZU, Mumbai	)	..Respondents

Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani and Ms. Jasmine Dixit i/by UBR Legal for the petitioner.
Mr. Karan Adik a/w Mr. Satyaprakash Sharma for respondent nos.1 & 2.
Mr. Jitendra B. Mishra for respondent nos.3 to 5.

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

DATE : 14 October 2024

P. C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge a show cause notice dated 28 March 2002 issued under Sections 28, 124, etc. of the Customs Act primarily on the ground of delay in adjudicating the show cause notice until today.

2. Mr. Raichandani, learned counsel for the petitioner, submits that the show cause notice dated 28 March 2002 has not been adjudicated till today for almost more than 20 years and, therefore, relying upon the decision of this Court in cases of ***Sanghvi Reconditioners Pvt. Ltd. Vs. Union of India & Ors.***[1], ***Reliance Industries Ltd. & Anr. Vs. Union of India & Ors.***[2] and ***Coventry Estates Pvt. Ltd. Vs. The Joint Commissioner CGST and Central Excise and Anr.***[3] submits that the impugned show cause notice be quashed. He further submits that insofar as the decision in the cases of *Sanghvi Reconditioners Pvt. Ltd. (supra) and*

1 2017-TIOL-2618-HC-MUM-CUS
2 2019-TIOL-1597-HC_MUM-CUS
3 2023-TIOL-957-HC-MUM-CX

Reliance Industries Ltd.(supra) are concerned, common show cause notice was issued to these parties and the present petitioner and, therefore, the ratio laid down in these decisions would squarely apply to the facts of the present case.

3. Per contra, Mr. Adik, learned counsel for the respondents, submits that the petitioner's case was transferred to call book, and, therefore, the show cause notice was not adjudicated. He relied upon page 749 of the affidavit-in-reply affirmed on 18 August 2023 and submitted that since the matter in the case of ***A. S. Moolbhoy & Sons*** was pending before the Supreme Court, the case was transferred to the call book. He further submitted that the decision in the cases of *Sanghvi Reconditioners Pvt. Ltd. (supra)* was rendered in December 2017, and *Reliance Industries Ltd. (supra)* was rendered in July 2019. Still, the petitioner chose not to challenge the show cause notice immediately after that but has chosen to file the present petition now, and, therefore, the petitioner is equally responsible for the delay; therefore, even on this count, the petition should be dismissed.

4. We have heard the learned counsel for the petitioner and respondents.

5. There is no dispute that the common show cause notice was issued to *Sanghvi Reconditioners Pvt. Ltd., Reliance Industries Ltd.,* and the petitioner. The issue of delay in adjudication of the show cause notice came up for consideration in the cases of *Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra),* and this Court quashed the show cause notice on the ground of delay in adjudication of the said notice. In our view, the petitioner's case stands on a firmer footing because in the case of the petitioner, the delay is more than 20 years from the date of the show cause notice, whereas, in the case of *Sanghvi Reconditioners Pvt. Ltd.* and *Reliance Industries Ltd.,* the delay was of 15 years since show cause notice was quashed in the year 2017.

6. Merely because the petitioner did not file the writ petition after the order was passed in the cases of *Sanghvi Reconditioners Pvt. Ltd.* and *Reliance Industries Ltd.* but has filed the petition now, the same cannot be a ground for not following the ratio of the decision rendered in the case of co-noticees. We, therefore, reject the contentions of the respondents on this ground. In our view, the issue stands squarely concluded by the decision of the Co-ordinate Bench of this Court in the cases of *Sanghvi Reconditioners Pvt. Ltd. (supra) and Reliance Industries Ltd. (supra)* wherein show cause notice in case of co-noticees have been quashed on the same ground.

7. There is no material on record to show that the petitioner was informed about its case being transferred to call book because the matter was pending before the Hon'ble Supreme Court in the case of *A. S. Moolbhoy & Sons*. In our view, it was incumbent upon the respondents to have informed the petitioner about its case being transferred to the call book, even without reference to the provisions of Section 28(9) of the Customs Act. In the absence of the same, the defence raised by the respondents on this count is also rejected.

8. The Co-ordinate Bench of this Court in Writ Petition No.389 of 2023 decided on 10 September 2024 in the case of ***Bhusan Vora Vs. The Union of India & Ors.,*** to which one of us (Jitendra Jain, J.) was a party, had to consider this issue. After considering paragraphs 7, 8 and 9 of the said decision, we believe that in the absence of the assessee being informed about his case being transferred to the call book, justification for the delay in adjudication cannot be accepted.

9. The petitioner has challenged the present petition in 2023 because the respondents issued a notice on 28 February 2023 for adjudication of a show cause notice dated 28 March 2002. This shows cause notice in 2023 is how the respondents attempted to revive the 2002 notice that prompted the petitioner to file this writ petition.

10. In view of the above, Rule is 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 case and after going into the validity and legality thereof quash impugned letter/hearing notice dated 28.02.2023 (Exhibit "A1"); impugned Show cause notice F. No. DRI/BZU/E/6/99/9253 signed 28.10.1999 and dated 05/11.1999 (Exhibit "A2"); impugned Show cause notice F. No. DRI/BZU/E/8/99/9132 signed on 08.08.2000 and dated 16.08.2000 (Exhibit "A3"). impugned Show cause notice F. No. DRI/BZU/E/4/99/1227 dated 28.02.2002 (Exhibit "A4"); impugned Show cause notice F. No. DRI/BZU/E/4/99/1433 signed 28.02.2002 dated 28.03.2002 (Exhibit "A5"); impugned Show cause notice F. No. DRI/BZU/E/4/99/1434 signed 28.02.2002 dated 28.03.2002 (Exhibit "A6"); impugned Show cause notice F. No. DRI/BZU/E/3/2001/800 dated 04.02.2003 (Exhibit "A7"); impugned Show cause notice F. No. DRI/BZU/E/3/2001/801 dated 04.02.2003 (Exhibit "A8"); impugned letter/hearing notice dated 07.09.2017 (Exhibit "A9"); impugned letter/hearing notice dated 21.12.2018 (Exhibit "A10"); impugned letter/hearing notice dated 18.01.2019 (Exhibit "A11"); impugned letter dated 07.09 2019 (Exhibit "A12")."*

11. The petition is disposed of. No order as to costs.

(Jitendra Jain, J) **(M. S. Sonak, J)**