

Bombay High Court: Adjudication of Show-Cause Notices after 13 years is untenable in law

The Hon'ble High Court of Bombay, in ***Parle International Limited v. Union of India and others [Writ Petition No.12904 of 2019, (dated, November 26, 2020)]*** held that, the commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of Show Cause Notices ("**SCN**") is untenable in law and any consequential decision or order based on such adjudication proceeding is therefore, held to be invalid.

Facts:-

Parle International Limited ("**Petitioner**") is private limited company is engaged in the business of manufacture of excisable goods, that was availing CENVAT credit on inputs and capital goods under CENVAT credit rules of different years. A SCN dated June 1, 2006 under Rule 25 of the Central Excise Rules, 2002 was issued by the Joint Commissioner of Central Excise and Customs, ("**Respondent - 2**") Vapi, alleging amongst others that Petitioner had availed excess CENVAT credit amounting to Rs. 11,52,281, which was followed by another SCN dated November 28, 2006 issued to the Petitioner by the Deputy Commissioner of Central Excise and Customs, ("**Respondent - 3**") Vapi, alleging amongst others that Petitioner had wrongly availed excess CENVAT credit of Rs.98,324.

Petitioner responded to the above SCN by submitting detailed replies denying the allegations made against it. And nothing was heard by the Petitioner and there was no communication to the Petitioner from either of the Respondents. Since no consequential decision was taken, the Petitioner was under the bona fide belief that the central excise authorities had accepted its reply submissions and had given a quietus to the matter. After about 13 years, Petitioner was served with a letter issued from the office of Respondent authority informing the Petitioner that in connection with the two SCN, a personal hearing was fixed on August 21, 2019.

Issue:-

Whether in the facts and circumstances of the case, such delayed adjudication of the SCN would be just, proper and legal?

Held:-

The Hon'ble High Court of Bombay, in ***Writ Petition No.12904 of 2019*** held as under:

- Stated that, such delayed adjudication after more than a decade, defeats the very purpose of issuing SCN. When a SCN is issued to a party, it is expected that the same would be taken to its logical consequence within a reasonable period so that a finality is reached. A period of 13 years certainly cannot be construed to be a reasonable period, and Petitioner cannot be faulted for taking the view that Respondents had decided not to proceed with the SCN. An assessee or a dealer or a taxable person must know where it stands after issuance of SCN and submission of reply. If for more than 10 years thereafter there is no response from the departmental authorities, it cannot be faulted for taking the view that its reply had been accepted and the authorities have given a quietus to the matter.
- Observed that, after the Petitioner approached the Court by filing the present writ petition with due intimation to the Respondents, Respondent 3 went ahead and passed the order-in-original. The Court fail to understand when the Respondents could wait for 13 long years after issuance of the SCN, there could not have been any earthly reason to proceed at such great speed and pass the order-in-original before the Court could adjudicate on the correctness of the action of the Respondents. When a matter is brought before the Court or the Court is examining the matter, Respondents cannot initiate or proceed with a parallel proceeding on its own to render the Court scrutiny redundant. Such an approach is neither acceptable nor permissible.
- Held that, the commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of SCN and submission of reply is untenable in law, any consequential decision or order based on such delayed adjudication would also be rendered invalid and therefore, sudden resurrection of the SCN after 13 years, therefore, cannot be justified. An action which is unfair and in violation of the principles of natural justice cannot be sustained.

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