

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No. III**

EXCISE APPEAL No. 40526 OF 2014

(Arising out of Order-in-Original No.10/CE/COMMR/2013 dt. 25.09.2013 passed by Commissioner of Central Excise, Central Revenue Building, NGO - 'A' colony, Tirunelveli 627 007)

K.L. Hakkim

... Appellant

Managing Partner,
M/s.Galaxy Rubber Industries
5/148, M.K. Kutil,
Verkilambi,
Kanyakumar District - 629 166

Versus

The Commissioner of GST & Central Excise

...Respondent

Central Revenue Building,
NGO 'A' Colony,
Tirunelveli 627 007.

APPEARANCE :

Ms. Manne Veera Niveditha, Advocate
For the Appellant

Mr. Harendra Singh Pal, Assistant Commissioner (A.R.)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 31.08.2023
DATE OF DECISION : 05.09.2023

FINAL ORDER No.40757/2023

ORDER :

Brief facts are that the appellants are manufactures of tread rubber classifiable under Central Excise Tariff Item 16A of the erstwhile Central Excise Rules upto 28.02.1986 and thereafter under Chapter Heading 4006 of the Central Excise Tariff Act, 1985 from 01.03.1986. Based on intelligence that there was evasion of central excise duty by the assessee, the officers of Central Excise of Preventive Unit, Madurai conducted investigations and follow up action. It was noticed that during the years 1984-85 and 1985-86, the appellant made clearances without accounting for the same and without paying central excise duty. The evasion was done by the appellant as follows :-

- They had made bookings through M/s.Southern Roadways, Marthandam for quantities not accounted for in the statutory records;
- They had collected excess amounts from their buyers in the guise of sales tax, but had not paid such sales tax to the Sales Tax Department;
- They had purchased raw rubber from unlicensed agents without the cover of bills/invoices and suppressed the fact with intention to produce tread rubber from such raw rubber and remove it without payment of duty;

- They also had operated a benami account in the name of M/s.Galaxy Rubber and issued invoices to different transport corporations;
- They had, during both the years, suppressed the value of clearances in the statutory records, thereby evaded payment of central excise duty.

2. It was found that the appellant was liable to pay duty of Rs.17,96,241/-. Accordingly, show cause notice dt. 05.05.1989 was issued to them proposing to demand duty, interest and for imposing penalties. After due process of law, the Collector of Central Excise, Madurai vide order No.19/90 dt. 28.12.1990 confirmed the demand of Rs.16,95,289/- being the duty not paid during the years 1984-85 and 1985-86 and ordered for appropriation of Rs.50,000/- already paid by them. Penalty of Rs.4 lakhs was imposed on the appellant and a personal penalty of Rs.1 lakh was imposed on Sri K.L. Hakkim, Managing Partner under rule 173Q of Central Excise Rules, 1944.

3. Against such order, the appellant filed appeal before CEGAT, Madras. The Tribunal vide Final Order No.693/95 dt. 31.08.1995 set aside the impugned order and remanded for *de novo* consideration. Thereafter, the matter was taken up for *de novo* consideration and the impugned order was passed by the adjudicating authority on 25.09.2013 again confirming the demand of Rs.16,95,289/- and imposing penalty of Rs.4 lakhs on M/s.Galaxy Rubber Industries under Rule 173Q and further penalty of Rs.1 lakh on Sri K.L. Hakkim

Aggrieved by such order, the appellant is once again before the Tribunal.

4. Ld. Counsel Ms. Manne Veera Niveditha appeared and argued for the appellant. It is submitted by the learned counsel that the adjudicating authority has passed the impugned order after 18 years of the remand order by the Tribunal. It is also noted by the adjudicating authority that there is no show cause notice available on the file and the said authority has proceeded to pass the order on the basis of the original order earlier passed in the matter. On perusal of the findings in the impugned order itself it can be seen that the adjudicating authority has completely relied upon the discussions made by the original authority in the earlier order dt. 28.12.90. The paragraphs from the said order have been extracted and quoted by the original authority to confirm the demand. The adjudication has been done after huge delay and without perusing any documents. The show cause notice or the relied upon documents were not available with the adjudicating authority. The entire order has been passed by relying on the earlier order dt. 28.12.90 which has been already set aside by the Tribunal while remanding the matter. It is thus submitted by the learned counsel that there is complete violation of principles of natural justice.

5. Ld. Counsel submitted that the appellant has closed down the business many years before and is now not in a position to furnish any documents. The learned counsel pointed out that there is huge delay of about 18 years in passing the adjudication after the remand

by the CEGAT in 1995. For this reason itself, the impugned order cannot sustain.

6.1 The decision in the case of *Raymond Ltd. Vs Union of India* - 2019 (368) ELT 481 (Bom.) was relied by the learned counsel to argue that when there is delay in taking up the adjudication of the show cause notice, in the absence of any fault on the part of the party, it has been held as breach of principles of natural justice.

6.2 The decision in the case of *R. Chakravarthy Vs CCE Chennai* - 2008 (225) ELT 243 (Tri.-Chennai) was relied by the counsel to argue that when relevant files are not available for passing the order, the adjudication rendered is to be considered as in violation of principles of natural justice.

6.3 In the case of *Mentha & Allied Products Ltd. Vs CGST, Chandigarh* - 2021 (376) ELT 41 (P&H), the Hon'ble Punjab & Haryana High Court held that when there is a delay of 10 years for adjudication after issuance of the show cause notice, the order is not sustainable in the eyes of law and deserves to be quashed.

6.4 Hon'ble Rajasthan High Court in the case of *P.G. Foils Ltd. Vs AC, CGST, Pali* - 2022 (381) ELT 215 (Raj.) has held that adjudication taken place after 8 to 13 years and issuing the show cause notice is against the principles of natural justice when the department is not able to explain the reason for such unreasonable delay.

6.5 In the case of *Sushitex Exports (India) Ltd. Vs UOI* – 2022 (380) ELT 244 (Bom.) the adjudication had happened after two decades of issuing the show cause notice. It was observed that the department does not have unfettered right to choose time for conclusion of proceedings as per its convenience. Arbitrary exercise of power by Department whereupon the proceedings were kept in dormant stage for 14 years after hearing it and passing order with inordinate delay, concluding by confirming the duty cannot sustain.

6.6 *Parle International Ltd. Vs Union of India* - 2021 (375) ELT 633 (Bom.) is a case in which the show causes were transferred to call book by the department and kept in dormant for 13 years. In that case, it was held by the Hon'ble Bombay High Court that the department should adjudicate the show cause notice expeditiously within a reasonable period. When the delay in adjudication is not attributable to the assessee it is in contravention of procedural fairness and thus violative of the principles of natural justice. Ld. Counsel prayed that the demands may be set aside and the appeals may be allowed.

7. Ld. A.R Sri Harendra Singh Pal supported the findings in the impugned order.

8. Heard both sides.

9. The main ground put forward by the appellant is the delay in adjudication and non-availability of documents especially the show cause notice. The earlier OIO was passed on 28.12.1990 which was

an *ex-parte* order. The appellant then approached the Tribunal and vide Final order dated 31.08.1995 the order passed by the adjudicating authority was entirely set aside and the matter was remanded for fresh adjudication. It is seen from the impugned order that *de novo* adjudication was done only in 2013. The impugned order or the records do not show why the show cause notice dt. 05.05.1989 was not taken up for *de novo* adjudication by the Department. Though the date of show cause notice has been mentioned in the impugned order it was not available before the adjudicating authority while passing the order and is not available before us also. This is clear from the discussions made in para-6 of the impugned order which reads as under :

“6. I have gone through the entire facts of the case on record like the Order-in Original passed by my Id. predecessor, the Collector of Central Excise, Madurai, the submissions, both oral and written made by Galaxy Rubber Industries, the Final Order passed by the Hon. Tribunal and the legal provisions at the material period and on the basis of the above, I proceed to decide the issue on merits. Since the Show Cause Notice is not available on file, I proceed with the order based on the original order passed by my Id. Predecessor, referred Supra. Since this is a *de novo* order, judicial etiquette stimulates me to reproduce the observation of the Hon. Tribunal, while remanding the case. **When adjournment has been sought for proper and valid reason, rejection of the same was not just or proper. We are inclined to think in the interests of justice, the impugned order has to be set aside and the matter remanded as the appellants did not have the opportunity to Cross-examine the witness who had been summoned who admittedly did not turn up more than once. Therefore, for the reasons stated above, we are of the view that the request of the consultant for adjournment should have been granted since the same was on grounds of personal illness supported by a medical certificate. In this view of the matter, the impugned order is set aside and the matter remanded to the original authority for reconsideration of the issue in accordance with law.”**

(emphasis supplied)

10. From the above, it can be seen that the show cause notice was not available before the officer while passing this impugned order. So also, the documents were not available.

11. The issue is with regard to denial of exemption benefit on the ground that the aggregate value of clearances of the appellant viz. Galaxy Rubber Industries has exceeded the SSI exemption limit. It is also alleged that the aggregate value of goods sold by another unit Galaxy Rubber has to be included in the value of the goods sold by the appellant M/s.Galaxy Rubber Industries. It is alleged by the department that Galaxy Rubber is benami unit of the appellant. To arrive such conclusion, the original authority has merely relied upon the discussions made by the adjudicating authority in the earlier order dt. 28.12.90. The discussions have been quoted and extracted in para 10 of the impugned order. In such discussion, it is held that value of goods of Galaxy Rubber has to be included in the value of clearances of the appellant to determine that the value of clearances of appellant and thus has exceeded the SSI exemption limit. It is very much evident that there was no evidence available before the adjudicating authority to conclude that M/s.Galaxy Rubber was a benami of the appellant. Ld. A.R adverted our attention to para 11 of the impugned order wherein it is stated that a report from the Government Examiner of Questioned Documents was obtained to show that hand writing and signatures found on invoices pertaining to both Galaxy Rubber Industries and Galaxy Rubber were the same. We do not find any such report being made part of the records.

12. Another allegation in the SCN is that the appellant had collected excess amount from the buyers in the guise of sales tax and had not paid the amount to the sales tax department. Department is of the view that the said amount has to be included for the purpose of valuation. Again, the original authority has merely relied upon the discussions made in the earlier order dt. 28.12.90 and has not perused any documents to arrive his conclusion. The department has not given any explanation as to what has caused this unreasonable delay. We find that there is delay in passing the adjudication order and also that the impugned order has been passed without perusing any documents and even the show cause notice. It is indeed violation of the principles of natural justice.

13. In the case of *Raymond Ltd. Vs UOI* (supra), the Hon'ble Bombay High Court has held as under :

“8. Further, this Court in the case of *M/s. Sanghvi Reconditioners* (supra) had occasion to consider an identical submission as made before us by the Revenue i.e. show cause notices had been kept in the call book as an identical challenge in case of another assessee was pending in the Hon'ble Supreme Court. This defence on the part of the Revenue was negated by the Court. This on the ground that accepting such a stand on behalf of the Revenue would defeat the rule of law itself. In fact, the Court noted as under :-

“Secondly, we also omit totally from our consideration the complaint of the petitioner that in a matter as old as of 1999, if now the adjudication has to be held, it will be impossible for them to trace out all the records and equally, contact those officials who may not be in their service any longer. Thus, they would have no opportunity, much less reasonable and fair, to defend the proceedings. That is equally a balancing factor in the facts and circumstances of the present case.”

9. In the present facts, it is the case of the petitioner that because of long delay, papers and proceedings relevant to meet the show cause notice are not available. Thus, seriously hampering the petitioners to appropriately meet the show cause notice. This delay in taking up the adjudication of the show cause notice (in the absence of any fault on the part of the party complaining) is a

facet of breach of principles of natural justice. It impinges on procedural fairness, in the absence of the party being put to notice that the show cause notices will be taken up for consideration, after some event and/or time, when it is not heard in a reasonable time. In the absence of the above, particularly as in this case, long delay has resulted in papers being misplaced. The reasonable period may vary for case to case. However, when the notices are being kept in abeyance (by keeping them in the call book as in this case), the Revenue should keep the parties informed of the same. This serves two fold purpose - One it puts the party to notice that the show cause notice is still alive and is only kept in abeyance. Therefore, the party can then safeguard its evidence, till the show cause notice is taken up for adjudication. Secondly, if the notices are being kept in the call book for some reason, the party gets an opportunity to point out to the Revenue that the reasons for keeping it in call book are not correct and the notices could be adjudicated upon immediately. This is the transparent manner in which the State administration must function.

10. In fact, we note that the above manner of functioning is the objective of the State administration, as our attention has been drawn to the C.B.E. & C. Circular No. 1053/2/2017-CX., dated 10-3-2017. In Paragraph 9.4 of the above circular of C.B.E. & C. has directed the officers of the department to formally communicate to the party that the notices which have been issued to them, are being transferred to the call book. This would be expected of the State even in the absence of the above circular; the circular only states the obvious. In this case, the show cause notices were kept in the call book not at the instance of petitioner, but by the Revenue of its own accord. After having kept it in the call book, no intimation/communication was sent by the Commissioner pointing out that the show cause notices had been kept in the call book. Thus, bringing it to the notice of the petitioners that the show cause notices are still alive and would be subject to adjudication after the show cause notices are retrieved from the call book on the dispute which led to keeping it in the call book being resolved. This, admittedly has not been done by the Revenue in this case.

11. Therefore, it was reasonable for the petitioners to proceed on the basis that the department was not interested in prosecuting the show cause notices and had abandoned it. These proceedings are now being commenced after such a long gap, after having led the petitioner to reasonably expect that the proceedings are dropped. Therefore, even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the show cause notices are not available with the petitioners.

12. In the above circumstances, the impugned show cause notices dated 4th April, 2001, 18th September, 2001, 24th January, 2002, 24th June, 2002, 26th March, 2003 and 12th January, 2004 under the Act and the consequent hearing notices dated 26-6-2018 and 11-7-2018 are quashed and set aside.”

14. In the case of *R. Chakravarthy Vs CCE Chennai* (supra) it was held as under :

"5. After considering the submissions, we note that all the files had gone untraceable in the Departmental offices concerned and hence could not be shown to the party for perusal. It appears, the files were not available. The direction of the Hon'ble High Court to the Commissioner was to show the three files, if available, to the writ petitioner for perusal. Apparently, the files were not available and hence could not be shown to the writ petitioner for perusal. The Hon'ble High Court's order contains a further observation to the effect that the party could raise all objections with regard to the subject-matter of the notice before the authority concerned and, thereafter, the said authority shall pass orders in accordance with law. It appears from the records before us that the entire case framed against the appellants by the department is founded mainly on the three files specified in para 8 of the Hon'ble High Court's order. Factual materials contained in those files constitute part of the subject-matter of the show-cause notice. Where files were not shown to the parties or copies of the relevant documents not supplied to them, the parties were disabled from raising objections with regard to the subject-matter of the notice. In other words, an effective opportunity of meeting the allegations raised in the show-cause notice was not available to any of these appellants. This case clearly involves negation of natural justice. On this ground, we set aside the impugned order and allow these appeals. However, if the relevant files can be traced out, it shall be open to the Commissioner to proceed to undertake *de novo* adjudication of the case after allowing the parties to peruse the files in terms of the Hon'ble High Court's order and after giving them a reasonable opportunity of being personally heard."

15. The Hon'ble High Court of Punjab & Haryana in *Mentha & Allied Products Ltd. Vs CGST, Chandigarh* (supra) had occasion to analyse the issue with regard to the delay of 10 years in passing the adjudication order. The Hon'ble High Court considered the decision in *M/s.GPI Textiles Ltd. Vs Union of India* - 2018 (363) ELT 388 (P&H) wherein there was unreasonable delay in passing the order after issuing the show cause notice and held that the order passed with unreasonable delay to be unsustainable.

16. The Hon'ble Rajasthan High Court in the case of *P.G. Foils Ltd.* (supra) analysed the issue as to when show cause notices were transferred to call book without intimating the assessee and not following due process with prior approval of Commissioner on the periodical review and revival of proceedings; it was held that the inordinate delay was unjustified. Relevant paragraphs of the judgment read as under :

"31. As a consequence of the above discussion, we are of the firm view that allowing continuance of the assessment proceedings against the petitioners as a consequence of the impugned show cause notices and the revival notices would be absolutely unjustified. There is no material on the record of the case to satisfy the Court that the original show cause notices were actually transferred to the Call Book and if so, by following the due process as prescribed by the mandatory Circulars referred to supra. No communication was ever made to the petitioners of the decision to transfer the show cause notices to the Call Book and thus, the petitioners would be acting under a *bona fide* and reasonable expectation that the respondents had decided not to proceed further with the assessment proceedings as a consequence of the show cause notices and hence, there was no reason for them to retain the material/evidence required to defend against the impugned show cause notices. Even if it is assumed that the matters were sent to the Call Book, then too the reason for taking such a decision has not been explained in a satisfactory manner. The case of *M/s. J.K. Cement Works* [Central Excise Appeal No. 12/2012], which is attributed to be the reason for the decision to transfer the cases of the petitioners to the Call Book at a highly belated stage, was registered in the year 2012, whereas some of the original show cause notices were issued way back in the year 2007. Thus, pendency of controversy in the said case could not be the reason behind the decision for sending the cases to Call Book.

32. As a consequence of the above discussion, the impugned show cause notices, the revival notices issued to the petitioners, as detailed in the table supra, and the consequential orders, if any, deserve to be and are hereby quashed. The writ petitions are allowed in these terms. No order as to costs."

17. *Sushitex Exports (India) Ltd. Vs UOI* (supra) is a case wherein the show cause notice had not been adjudicated for 23 years from its existence and the petitioner had approached the Hon'ble High Court to set aside such notice. The relevant para reads as under :

“3. The grievance voiced by the petitioners in this writ petition dated 15th December, 2020 is that the show cause notice has not been adjudicated during the 23 years of its existence; accordingly, a prayer has been made to set aside such notice as well as the proceedings that followed and for a direction on the respondents to return to the petitioners the said sum of Rs. 2 crore deposited under protest during the investigation together with accrued interest at the prime lending rate prevalent in 1995-1996, in accordance with law.

... ..

14. It is not in dispute that after the show cause notice was issued on 30th April, 1997, the petitioners were called upon for a hearing in the year 2006. At least, till 2006, it can be inferred that the issue was live. However, why no final order was passed immediately after the hearing was granted to the petitioners is not disclosed in the affidavit-in-reply. The respondents seem to have slipped into deep slumber thereafter. While the respondents’ right in law to initiate proceedings for violation of the provisions of the Act can never be disputed, at the same time they do not have the unfettered right to choose a time for its termination and conclude proceedings as per their convenience. Indeed, the words ‘reasonable period’ call for a flexible rather than a rigid construction having regard to the facts of each case, but the period in excess of two decades without the respondents sufficiently explaining as to what prevented them to conclude the proceedings has to be seen as unreasonable and the reasons assigned in the affidavit-in-reply as mere excuses for not adjudicating the show cause notice according to law. Law is well-settled that when a power is conferred to achieve a particular object, such power has to be exercised reasonably, rationally and with objectivity with the object in view. It would amount to an arbitrary exercise of power if proceedings initiated in 1997 are not taken to their logical conclusion for over two decades and then a prayer is made for its early conclusion, no sooner than the matter enters the portals of this Court. We agree with the decision in *Parle International Limited* (supra) to the extent it lays down the law that the proceedings should be concluded within a reasonable period and that proceedings that are not concluded within a reasonable period, which the Court on the facts of each case has to consider, may not be allowed to be proceeded with further. On facts and in the circumstances, we are satisfied that the proceedings arising out of the impugned show cause notice having remained dormant for about fourteen years since hearing was given to the petitioners, it should not be allowed to be carried forward further in the absence of a satisfactory explanation.

15. We are also not persuaded, at this distance of time, to agree with Mr. Jetly that the respondents should be granted liberty to conclude the proceedings. It is the petitioners who have approached the Court to have the impugned show cause notice set aside. Had the petitioners not invoked the writ jurisdiction of this Court, the show cause notice would have continued to gather dust. The petitioners, in such circumstances, cannot possibly be worse off for seeking a Constitutional remedy and thereby suffer an order to facilitate conclusion of the proceedings which,

because of the inordinate delay in its conclusion, is most likely to work out prejudice to them.

16. Article 14 of the Constitution of India is an admonition to the State against arbitrary action. The State action in this case is such that arbitrariness is writ large, thereby incurring the wrath of such article. It is a settled principle of law that when there is violation of a Fundamental Right, no prejudice even is required to be demonstrated.

17. Having bestowed due consideration to all relevant aspects, we are constrained to set aside the show cause notice dated 30th April, 1997 and all proceedings following the same. It is ordered accordingly.

18. What remains is the consequential relief for returning Rs. 2 crore, which the petitioners claim to have paid under protest. According to Mr. Jetly, the claim is in the nature of a money claim and cannot be entertained by the writ Court.

19. We are once again not persuaded to agree with Mr. Jetly, since the relief for return of Rs. 2 crore is not claimed as the principal relief in the writ petition but as a consequential relief to the principal relief of setting aside the impugned show cause notice.

20. Mr. Shroff has placed before us several decisions to buttress his contention that the Courts have proceeded to award interest @ 12% per annum. Reference in this connection may be made to the decisions of the Supreme Court in *Kuil Fireworks Industries v. Collector of Central Excise & Another* reported in (1997) 8 SCC 109 = [1997 \(95\) E.L.T. 3](#) (S.C.), and *Commissioner of Central Excise, Hyderabad v. ITC Ltd.* reported in (2005) 13 SCC 689 = [2005 \(179\) E.L.T. 15](#) (S.C.), wherein interest @ 12% per annum was awarded.

21. In *Alok Shanker Pandey v. Union of India*, reported in (2007) 3 SCC 545, it has been observed as follows :

“9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence, equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

22. Following the aforesaid decisions, we direct that the sum of Rs. 2 crore which the petitioners were required to deposit in course of investigation shall be returned with interest @ 12% per annum. Let such return be effected with interest within two months of receipt of a certified copy of this order by the respondents.

23. The writ petition stands allowed. However, the parties shall bear their own costs.”

18. The Hon’ble High Court of Bombay in *Parley International Ltd. Vs UOI* (supra) had also considered the issue of delay in adjudication for the reason that show cause notice was transferred to call book . Relevant paras of the order read as under :

“23. In the present case, it is evident that the delay in adjudication of the show cause notices could not be attributed to the petitioner. The delay occurred at the hands of the respondents. For the reasons mentioned, respondents have kept the show cause notices in the call book but without informing the petitioner. Upon thorough consideration of the matter, we are of the view that such delayed adjudication after more than a decade, defeats the very purpose of issuing show cause notice. When a show cause notice 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 as in the present case certainly cannot be construed to be a reasonable period. Petitioner cannot be faulted for taking the view that respondents had decided not to proceed with the show cause notices. An assessee or a dealer or a taxable person must know where it stands after issuance of show cause notice 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. As has been rightly held by this Court in *Raymond Limited* (supra), such delayed adjudication wholly attributable to the revenue would be in contravention of procedural fairness and thus violative of the principles of natural justice. An action which is unfair and in violation of the principles of natural justice cannot be sustained. Sudden resurrection of the show cause notices after 13 years, therefore, cannot be justified.

24. There is one more aspect which we would like to point out. Respondents had not taken any action pursuant to the show cause notices for long 13 years till issuance of notice for personal hearing on 13-8-2019. After the petitioner approached this Court by filing the present writ petition on 6-9-2019 with due intimation to the respondents, respondent No. 3 went ahead and passed the order-in-original dated 11-11-2019. We fail to understand when the respondents could wait for 13 long years after issuance of the show cause notices, 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. Is it open to the respondents to materially alter the subject matter of the writ petition pending before the Court and then contend that because of such

material alteration, the writ petition has become infructuous and that the petitioner should avail the alternative remedy of appeal?

25. In *M/s. Harihar Collections v. Union of India*, decided on 15-10-2020, [[2021 \(375\) E.L.T. 90](#) (Bom.)] this Court was confronted with a similar situation when during the pendency of the writ petition, Commissioner of Customs had passed review order on 1-10-2020 under Section 129D(2) of the Customs Act, 1962. This Court held as under :-

“26. When this Court had taken cognizance of the grievance made by the petitioner and was in *seisin* of the matter fixing 6-10-2020 for consideration, it was highly improper on the part of Commissioner of Customs (Import-II) to have passed the order dated 1-10-2020 without any intimation to or taking leave of the Court. It needs no reiteration that when the court, that too the High Court, is in *seisin* of a matter, an administrative or executive authority cannot start a parallel proceeding on the very same subject matter at its own *ipse dixit* and record a finding. It would amount to interfering with the dispensation of justice by the courts. In the instant case, when the Court was set to examine the grievance of the petitioner regarding non-release of the goods despite the order-in-original, what was sought to be done was to present the Court with an order passed in the midst of such examination keeping the Court totally in the dark saying that the order-in-original suffers from illegality or impropriety directing the subordinate authority to apply to the Commissioner (Appeals) to set aside the order-in-original and then contending that the writ petition should be dismissed because of the subsequent development or that the petitioner should be relegated to the appellate forum to contest the subsequent order. As pointed out above, this amounts to interfering with the administration of justice and is thus not at all acceptable. A view may be taken that such an order should be ignored as it is contumacious.”

26. The above aspect also requires a serious consideration and therefore has been re-stated. 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.

27. In any view of the matter when the commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of show cause notices and submission of reply is held to be untenable in law, any consequential decision or order based on such delayed adjudication would also be rendered invalid.

28. Thus, having regard to the discussions made above and taking an overall view of the matter we have no hesitation to hold that respondents were not justified in commencing adjudication proceeding 13 years after issuance of the show cause notices dated 1-6-2006 and 28-11-2006. Such adjudication proceeding is therefore, held to be invalid. Consequently, impugned order-in-original dated 11-11-2019 issued by respondent No. 3 would also stand interfered with. It is accordingly set aside and quashed.

29. Writ petition is allowed as above. However, there shall be no order as to costs.

30. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.”

19. In the present case, it is not a situation of the show cause notice transferred to call book. It is a case in which there is delay in taking up the matter for *de novo* adjudication after the remand by the Tribunal (earlier known as CEGAT). The department has not been able to explain the delay of about 18 years in completing the *de novo* adjudication. The matter was remanded by the Tribunal on 31.08.95 and the remand order of *de novo* adjudication has been passed only on 29.09.2013. The delay is humongous and unexplained. The documents were also not available for perusal by the adjudicating authority who has been fair enough to record the same in the order. We find complete violation of principles of natural justice.

20. For these reasons and following the decisions cited supra, we are of the considered opinion that the impugned order cannot sustain and requires to be set aside which we hereby do. Appeal is allowed with consequential relief.

(pronounced in court on 05.09.2023)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI C.S.)
Member (Judicial)

gs