CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Excise Appeal No. 41608 of 2017

(Arising out of Order-in-Original No. 16/2017 dated 27.03.2017 passed by Commissioner of Central Excise, Central Revenue Building, NGO 'A' Colony, Tirunelveli – 627 007)

M/s. Tirunelveli Lime Products **...Appellant**
Abcoy Gardens,
Sankarnagar,
Tirunelveli – 627 357.

Versus

Commissioner of GST and Central Excise **...Respondent**
Tirunelveli Commissionerate,
Central Revenue Building,
NGO 'A' Colony,
Tirunelveli – 627 007.

APPEARANCE:

For the Appellant : Mr. G. Shanmugam, Advocate
For the Respondent : Ms. Anandalakshmi Ganeshram, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40477 / 2025

DATE OF HEARING : 03.04.2025
DATE OF DECISION : 24.04.2025

Per Mr. VASA SESHAGIRI RAO

This Appeal No. E/41608/2017 has been filed by the M/s. Tirunelveli Lime Products (hereinafter referred to as 'Appellant') assailing the Order-in-Original No. 16/2017 dated 27.03.2017 passed by the Commissioner of Central Excise, Tirunelveli demanding the duty of Rs.4,59,803/- under Section 11A of the Central Excise Act, 1944 in *denovo* proceedings.

2. Brief facts of the case and the causes which led to the issue of the Show Cause Notice and the findings of the Original Authority are as follows: -

2.1 The Appellants were the manufacturers of Burnt Lime (Calcium Oxide). The subject goods fell under Tariff Item 66 of the erstwhile First Schedule of the Central Excise Act, 1944. Rule 174 of the erstwhile Central Excise Rules, 1944 specified that a manufacturer of excisable goods should take out a Central Excise Licence. Consequent on the restructuring of the Central Excise Tariff the product burnt lime was classifiable under Chapter Sub-heading 2505.00 of the erstwhile First Schedule to the Central Excise Tariff Act, 1985.

2.2 The Appellant filed a declaration Schedule on 11.01.1984 with the Superintendent of Central Excise, Tirunelveli claiming exemption from duty under Notification No.77/83 dated 01.03.1983 in respect of "Burnt Lime" falling under Tariff Item 68 manufactured in their factory for the year 1983-84 as the value of clearances in the preceding financial year 1982-83 was Rs.28,00,093.44/. Since the value of clearances had exceeded 80% of the exemption limit, they were asked by the Range officer to take a Central Excise licence *vide* his Letter O.C. No.223/84, dated 13.01.84 and the Appellant filed an application in Form AL-4 on 07.02.84 for the issue of Central Excise licence. They filed the plan of the factory on 06.03.84. The officers visited the factory on 07.03.1984 and it was noticed that the factory was running with 3 Kilns and the 4th Kiln was under construction while application for licence as well as the plan exhibited only one kiln. The officers were informed that though the entire factory is owned by the Appellant, kiln No. II had been leased out to M/s. HUF Chemicals, Sankar Nagar with Shri. K.S. Raman, as proprietor on 01.08.1981 and Kiln No.III had been leased out from 01.11.81 to M/s. Abcoy, Sankar Nagar with Smt. Vijayalakshmi Raman, W/o. Shri. K.S. Raman as a partner. But during the verification of plant and machinery at the factory it was seen that all the Kilns were adjacent to each other and only one common crusher was used for crushing the lime stone for all the kilns and there was only a common elevator for Kilns No. II and No. I.

2.3 During the course of investigation it was noticed that the Appellant had taken out a Central Excise licence, L4 No.1/P&V/75 dated 12.11.1975 for TI 14 of the erstwhile 1

Schedule to the Central Excise Act, 1944 i.e. Paints and Varnishes. The licence had been renewed till 31.12.1979 and not thereafter. They had also filed Classification List on 13.11.1975 and the same had been approved on 16.12.1975. In the Classification List the full description of the goods manufactured had been given as follows: -

i. Burnt Lime as filler-material-precipitated Calcium Carbonate.
ii. Chalk
iii. Barytes Powder.

These products had been approved under Tariff Item 14 III (7) (1) with 'NIL' rate of duty in terms of Notifications No.23/55 dated 29.40.1955, No.27/73 dated 01.03.1973 and No.126/75 dated 12.05.1975.

2.4 The licence issued and the Classification List approved were for paints and varnishes. Burnt lime (Calcium Oxide) produced by them did not appear to be covered by the above licence or Classification List. Thus, it was found that the Appellant had been manufacturing "Burnt Lime" (Calcium oxide) which was a different product not covered by the items mentioned in the above said Classification List for which no licence had been issued. During the period in question "burnt lime" (Calcium oxide) fell under TI 68 (till 28-2-86) of the erstwhile Schedule I of the Central Excise Act, 1944 and under Chapter Sub-heading 2505.00 of the erstwhile First Schedule to the Central Excise Tarif Act, 1985 (from 01.03.1986) for which no licence had been obtained. Only on 11.01.1984 the Appellant filed a Schedule seeking exemption from duty in terms of Notification No.77/83 dated 01.03.1983 wherein they themselves had classified "burnt lime" under Tariff Item 68. The concerned notification also related to goods falling under T1. 68. Although the said firm applied for and obtained a licence for the manufacture of 1. Burnt lime as filler material precipitated calcium carbonate, 2. Chalk 3. Barytes Powder classifying them under TI 14 they had suppressed the fact of production of Burnt Lime (Calcium Oxide) which was classifiable under TI 68 (upto 28.02.1986) and under Chapter Sub-heading 2505.00 of the erstwhile First Schedule to the Central Excise Tariff Act, 1985 (from 01.03.1986) for which neither licence had been obtained nor the procedures of Central Excise were followed.

2.5 The Appellant, having 4 kilns (one under construction) appeared to be a single unit and not 3 independent units even though kiln No.II was shown as leased out to M/s. HUF Chemicals, Sankarnagar with effect from 1-8-81 and kiln No.III was shown as leased out to M/s. Abcoy, Sankarnagar from 1-11-81. The factory had been registered under the Factories Act, 1948. The plan of the factory with all the 4 kilns shown therein had been approved by the Chief Inspector of Factories, Madras on 30-7-79. M/s. HUF Chemicals and M/s. Abcoy did not appear to have separate Electricity connection. M/s. HUF Chemicals and M/s Abcoy Chemicals did not appear to have any separate laboratory or storing place. There was no independent crusher for kiln No.II (i.e. HUF Chemicals) and Kiln No.III (M/s. Abcoy). There was only a common elevator for Kilns No.1 and No.II. The same works Engineer and Chief Chemist were in-charge of all the kilns. The burners and testers were also attending on all the kilns. Hence it appeared that the lease agreement with M/s. HUF Chemicals and M/s. Abcoy was only a paper arrangement to avail the exemption from excise duty envisaged for small scale units under, various notifications issued under Central Excise Law from time to time.

2.6 Thus, the Appellant had not fulfilled the prime condition envisaged for the eligibility of small scale units under Notification No.105/80 CE dated 19-5-80, superseded by Notification No.77/83 dated 1-3-83 which was superseded by Notification No.77/85 CE dated 17-3-85 and continued till 28-2-86, which stipulated as to the total value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods under clearance were manufactured, was not more than Rupees

Twenty Lakhs In as much as M/s. TLP had exceeded the criteria and value of the Plant and Machinery (i.e. Rs.35,26,527.52) for the purpose of its eligibility to avail the conditional exemption as contemplated in the aforesaid Notifications. It was apparent that they were not eligible to avail the concession contained therein relating to the small scale industries.

2.7 The Notification No.77/85 dated 17.03.85 was rescinded by Notification No. 180/86 CE dated 1-3-86 *vis-a-vis* restricting the condition applicable to the exemption for the goods falling under TI 68 (i.e. said goods) till 28-2-86 in the case of small-scale industry. Para 3 of the notification No.175/86 CE dated 1-3-86 stated,

> *"nothing contained in this notification shall apply if the aggregate value of clearances of all excisable goods for home consumption:-*
> *(a) by a manufacturer from one or more factories, or*
> *(b) from any factory by one or more manufacturers had exceeded rupees one hundred and fifty lakhs in the preceding financial year."*

and in the process totally deleting the criteria of provision of value of plant and machinery contained in the earlier notification No.77/85 CE dated 17-3-85. Also, para 4 of the Notification No.175/86 CE dated 1-3-86 reduced the eligibility to avail the exemption contained in this notification if the factory has not registered with Director of Industries in any state or the Development Commissioner (Small Scale Industries) under the provisions of the Industries (Development and Regulations) Act, 1961 (65 of 1951) providing the relaxation provisions in proviso (a) and (b) contained therein.

2.8 Based on the above, the appellants were issued with the Show Cause Notices as detailed below demanding duty for the period noted against each: -

Sl. No.	Show Cause Notice No.& Date	Period	Value (Rs.)	Duty (Rs.)
1.	OC 724/84 dt.19-3-84	1978-79	28,39,163.90	1,41,958.45
2.	OC 790/84 dt.29-3-84	79-80	35,99,445.90	2,87,955.60
3.	OC 875/84 dt.21-4-84	80-81	29,12,963.76	2,33,037.10
4.	OC 878/84 dt.23.4.84	81-82	55,80,272.36	4,46,421.76
5.	OC 878/84 dt.23.4.84	82-83	52,70,714.05 3,98,053.16	4.21,657.12 39,805.31
6.	OC 878/84 dt.23.4.84 OC 2989/87 dt.20-9-87	83-84	45,98,032.15 (upto 29-2-84) 4,84,175.19 (Mar-84)	4,59,803.22 48,417.52
7.	OC 2989/87 dt.20-9-87	84-85	35,02,815.91 (upto 16-3-85) 42,764.55 (17.3.85 - 31.3.85)	3,50,281.59 5,131.75
8.	OC 2989/87 dt.20-9-87 OC 2994/87 dt.20-9-87	85-86	17,49,257.41 (1-4-85 - 28-2-86) 9,86,024.86 (1-3-86 - 30.11.86) 32,041.80 (1.12.86 – 31.1.87)	2,09,910.88 1,18,682.98 3,845.02
				27,66,908-30

2.9 After the issue of Show Cause Notice, the Appellant filed Writ Petitions No.4012 and 4013 of 1984 in the Hon'ble Madras High Court. The Hon'ble High Court, in Order dated 12.04.84 in WMP Nos.6261 and 6262 of 1984 granted injunction on the proceedings against the Show

Cause Notices issued by the Range Officer, Tirunelveli viz O.C. No.724/84 dated 19-3-84 and No.790/84 dated 29-03-84. The said interim injunction was vacated by the Hon'ble Madras Hight Court, by Order dated 26-3-87, following which the Show Cause Notices cited *supra* were taken up by the Collector of Central Excise, Madurai for adjudication.

2.10 After the due process of law, the Collector of Central Excise, Madurai passed an Order-in-original No.91/87 dated 02.01.1988 against the Appellant demanding duty of Rs.27,66,908.30 for the period from 1978-79 to 1985-86 (upto January'87) and imposing penalty of Rs.5 lakhs, in respect of the SCNs. The appellant went on appeal to the CEGAT, Chennai in Appeal Nos. E/277 and E/37/88-C/Md. As per the directions received from the SDR, CEGAT, Special Branch-C, New Delhi, *vide* Letter in Appeal No.E/3799/88-C, dated 07.05.1991, the case records were sent under letter C.No.V/68/2/94/88-Appeals, dated 17.05.1991.

2.11 The CEGAT, Chennai *Vide* Final Order No.1028 & 1029/2000, dated 02.08.2000, remanded this case for de-novo adjudication, allowing the appeals regarding the penalty and the determination of duty, except the demand for Rs.4,59,803.22 for 1983-84, which was set aside with a direction for de-novo adjudication.

2.12 The Tribunal Chennai disposing of the Appeals *vide F.O.Nos. 1028 & 1029/2000 dated 02.08.2000* has ordered as follows: -

> *"7. We have considered the submissions and the material on record and we find that:*
>
> *a) In the facts of this case, no reasons could have been arrived at for invoking the proviso to Section 11A(1). Appellants had field classification list, obtained licence, got it extended from time to time for four years and thereafter did not renew it and the classification were approved. The classification fully exempts the goods from duty. In the classification list filed by them they have declared the product as calcium carbonate. Thereafter the proper officer has applied his mind and corrected the declaration as it appeared, after his enquiries, applied the Notification which he was of the opinion to be applicable. There is no allegation of collusion of the officers in the show cause notice. Therefore we cannot find the appellants to be guilty of any misdeclaration. It was for the department to have conducted enquiry through the proper officer and appealed against the present classification list, if it was incorrectly approved. We would therefore find that the show cause notices issued in this case to be barred by limitation.*
>
> *b) In any event the show cause notice at Sl. 1 being beyond five years and Sl. 6, 7, 8 which are covered by the Supreme Court decision in the case of ONGC 1998 (103) ELT 563 which have been issued by an officer who was not competent to issue are without jurisdiction. We find that the show cause notice at Sl.*

No. 6 is partly within time and partly beyond the period of six months. Therefore, we proceed to examine the issue on merits of the demand.

c) *Examining the question of eligibility of the Notification under TI 68 we find that the Collector has not given any finding that the demand would be justified under TI 68 as investment on plant and machinery has exceeded the limit under the relevant notification applicable. We find that the appellants have contested the valuation as arrived at in the show cause notices and therefore the demands covered by the show cause notice at Sl. 6 of para 17 of the impugned order being within a period of six months would have to be re-determined by giving clear cut findings under TI 68 as to how the valuation exceeds the Notification in question by mentioning the number of the Notification and also give findings why the appellants say that valuation to be covered by Notification, is not acceptable to the Collector. The order regarding confirmation of demand for the period 83-84 for the show cause notices at Sl. 6 in para 17 of the order would therefore be set aside with a direction for de novo determination of the quantum of capital investment on plant and machinery and thereafter whether the benefit of Notification for that period under TI 68 was eligible or not. The other demands issued under other show cause notices as mentioned in para 17 of the impugned order are set aside.*

d) *Since major portion of the demands is set aside being barred by limitation we cannot uphold the levy of penalty under Rule 173Q else. Since the demands in the show cause notice at Sl. 6 on para 17 for the year 83-84 is partially within the period of six months we do not consider it to be a fit case for* *imposition of penalty for any period. Penalty ordered is therefore set aside.*

e) In view of the above findings the appeals are allowed-as regards penally and determination of duty on show cause notices mentioned in para 17 of the impugned order except for Sl. No. 6 for the period 83-84 which demand is also set aside with a direction for denovo adjudication.

The appeals are disposed of in the above terms."

2.13 The impugned order was passed by the Commissioner, Tirunelveli *vide* Order-in-Original No. 16/2017 dated 27.03.2017 that is after lapsing of more than 16 years when calculated from the above Tribunal Final Order dated 02.08.2000.

3. The Ld. Advocate Mr. G. Shanmugam for the Appellant have submitted that:

i. In terms of the impugned order in original, demand of duty of Rs,4,59,803/- was confirmed on the Partnership firm *vide* Order-in-Original No. 16/2017 dated 27.3.2017 while no Show Cause Notice had been issued to the assessee firm. The Show Cause Notice 23.4.1984 was issued to the partners of the firm and not to the assessee *viz*. Tirunelveli Lime Products wherein the goods were alleged to have been manufactured. Further, the Show Cause Notice also had not quantified the amount of duty demanded nor the provisions of law under which it was demanded. Annexure to the Show Cause Notice showed merely working out of duty of Rs.4,59,803.22 upto 29.02.1984, without bringing out any specific demand in the show cause notice. Only the value of plant and machinery has been noted under para 10 of the show cause notice. Thus, he has argued that the Show Cause Notice itself is defective and any subsequent order arising from such defective show cause notice is also not sustainable and that the impugned order is not sustainable in law. The Ld. Advocate has placed his reliance on the following judgements in support of his contentions: -

a. *[2015 (39) STR 433 (AP)] - Narayana Coaching Centre., Maintained by the Hon'ble Supreme Court as reported in 2015(39) STR J-173 (SC). It was held that when the show cause notice was not issued to the assessee, the proceedings therewith is a nullity and the adjudication thereof is also non-est.*
b. *Final order No.40129/2016 dated 27.1.2016 passed by the Hon'ble CESTAT, Chennai Bench, in the case of M/s. Needle Industries India Pvt Ltd. wherein it was held that show cause notice being the foundation for any proceedings, non-issuance of the same makes the proceedings void.*
c. *[2001 (130) ELT 195 (Tri. Del.)] - Sompura Ceramics. Held that Firm being a separate legal entity from its partners, service of notice on partners not considered to be notice on firm vide Section 11A.*
d. *[2002(146) ELT 241(SC)] - Metal Forgings. Specific Show cause notice indicating the amount demanded is required to be issued to the assessee.*

ii. It was further submitted that the matter was remanded by the Tribunal *vide* Final Order No. 1028 & 1029 dated 2.8.2000, for *de novo* adjudication. The *de novo* adjudication order has been passed after an abnormal delay of more than 16 long years *vide* Order-in-Original No. 16/2017 dated 27.3.2017 placing reliance on the Hon'ble Bombay High Court's decision in the case of *Reliance Industries Ltd. vs. UPOI [2019 (368) ELT 854 (Bom.)]* setting aside the order of adjudication on the ground of delay of 15 years in disposal of a case, the Ld. Advocate contended that the impugned Order-in-Original dated 27.03.2017 deserves to be set aside.

iii. While remanding the matter, the Tribunal *vide* para 6 (c) of its order has held that no finding was given in regard to eligibility to the Notification under T1-6 for investment on plant and machinery. In spite of this clear-cut direction, the Adjudicating Authority has not made any endeavor to arrive at the value and instead simply subscribed to the views of the Assistant Commissioner on the ground that the assessee has not produced any record (after a period of more than 16 years). The Commissioner ought to have made some efforts to arrive at the value of machinery and plant taking into consideration the date of installation starting from 1.4.1978 onwards and the depreciated value for the relevant period (1983-84). It was submitted that the Adjudicating Authority has acted in clear violation of the remand direction. On this ground also, the impugned order is not sustainable. The Ld. Advocate has relied upon the judgement of the Hon'ble Apex Court in the case of *Union of India vs. Kamalakshi Finance Corporationn Ltd. [1991 (55) ELT 433 (SC)].*

4. The Ld. Authorized Representative Ms. Anandalakshmi Ganeshram represented the Department. The findings in the impugned order were reiterated.

5. We have carefully gone through the submissions made by both sides, the appellate records and also relied upon case laws.

6. A perusal of the history of the case as above, clearly indicate that the Tribunal Chennai *vide* its *F.O. Nos. 1028 & 1029/2000 dated 02.08.2000* has remanded the matter back to the Original Authority for verification of value of the plant and machinery by the appellant in order to determine whether the appellant was eligible or not for the benefit of the then SSI exemption. This remand order of the Tribunal was dated 02.08.2000. The duty of demand in

dispute is to the tune of Rs.4,59,803/-. In the present case, the Order-in-Original No. 91/87 was passed by the Collector of Central Excise, Madurai on 02.01.1988. In the impugned *denovo* Order-in-Original No. 16/2017 dated 27.03.2017, the Adjudicating Authority has concluded that the appellant could not furnish the details of quantum of capital investment in order to ascertain their eligibility for the SSI exemption and so concluding that the demand to be confirmed.

7. Thus, the *denovo* Order-in-Original (impugned order) was passed after lapsing of more than 16 years as the Final Order of the Tribunal was dated 02.08.2000 and the impugned order dated 27.03.2017.

8. The Ld. Advocate has vehemently argued that the Show Cause Notice was itself defective and any order issued in pursuance to such Show Cause Noice could not be sustained. In support of his contention, the Ld. Advocate has relied upon the decisions rendered in the cases of *Commissioner of Customs, Central Excise & Service Tax, Guntur Vs. Narayana Coaching Centre [2015 (39) STR 433 (AP)], M/s. Needle Industries India Pvt. Ltd. [F.O.No. 40129/2016 dated 27.01.2016], Sompura Ceramics [2001 (130) ELT 195 (Tri. Del.)]* and *Metal Forgings [2002 (146) ELT 241 (SC)].*

9. It cannot be disputed that there is an abnormal delay of more than 16 years in carrying out the directions issued by the Tribunal by the Adjudicating Authority. Such kind of delay cannot be treated as normal and the power of adjudication has to be exercised within a reasonable period though the act does not provide for limitation within which the said power should be exercised. The higher Courts and the Tribunals have consistently held that period of five years to complete adjudication proceedings should be reasonable period as held in the case of *Transworld Shipping Services Pvt. Ltd. Vs. Government of India [2018 (361) ELT 17 (Mad.)]*. The relevant portion of the order is as follows: -

> *"25. As pointed out in the aforementioned decisions, the respondents, while exercising the powers under Section 116 of the Customs Act, have to exercise the same within the reasonable period, though the Act does not provide for a limitation, within which, the said power should be exercised. The Courts have consistently held that the period of five years to complete the adjudication proceedings should be reasonable period, as the bond executed by the agent is required to be kept alive for a period of five years. The Government of India, in exercise of its revisional powers, followed the decision of various Court and held to the same effect. In the preceding para, the relevant dates have been noted and the time taken between two stages have also been mentioned.*
>
> *26. The Learned Senior Standing Counsel for the Revenue would contend that the show cause notice was issued well*

within the period of five years from the date of discharge, and therefore, the decisions referred to by the petitioner are distinguishable. One more contention being that, if the steamer agent was of the view that, Import Manifest or Import Report is in any away incorrect or in complete, they should have taken steps to amend the same. They having not done so, the petitioner should be made to pay penalty. In this regard, the decisions of the Hon'ble Division Bench, in (i) Chowgule Brothers (supra) and (ii) Caraval Logistic Pvt. Ltd., (supra) were referred to.

27. The underlying principle in all the decisions is that, though an Authority, exercising power under the statute can do so, and if such an action has the effect of disturbing rights of a citizen, it should be done within a reasonable time, even if period of limitation is not stipulated under the relevant statute. What is required time would depend upon the facts and circumstances of each case. Thus, bearing the legal principle in mind, it is absolutely necessary to examine the factual matrix of the case."

Applying the ratio of the above decision to the facts of this case, it can be reasonably concluded that there is abnormal delay vitiating the adjudication process.

10. Further, the Hon'ble High Court of Madras in the case of *Lanvin Synthetics Private Ltd. Vs. Union of India [2015 (322) ELT 429 (Bom.)]* has quashed the Show Cause Notice issued for non-adjudication for long period of 18 years and it was held therein that non-mention of time frame in statute for adjudication would not mean that proceedings can

be concluded at will and fancies of the Department which reads as given below: -

> ***"12.*** *After hearing both sides, we are of the view that there is no denial of the fact that the investigations were carried out in this case way back in the year 1995. If the investigations were carried out in August, 1995, the show cause notice came to be issued on the conclusion thereof in March, 1997, then, we do not see any reason for the Revenue/Department not passing an adjudication order for 17 long years. The petitioners cannot be faulted for having approached this Court belatedly as is the contention of the Revenue. In the present case, it is the petitioners who brought to the notice of the department and repeatedly that the show cause notice is pending adjudication and that the department has retained the sum deposited. It is the petitioners who sought information by making an application under the Right to Information Act, 2005. The records were not available and there was no information available with regard to this show cause notice. The admitted position today is that the concerned Commissionerate is unable to trace the file and locate the record. It has given no explanation as to why show cause notice was not adjudicated for 17 long years. The explanation now placed on affidavit does not inspire confidence. We do not countenance the submission and as made belatedly that the department with the assistance of the petitioners will pass a adjudication order within a time frame and it deserves that opportunity. We do not find that the statements made on affidavit are enough to grant such opportunity. If the law postulates early end to such proceedings and there is no period of limitation prescribed, does not mean that the proceedings initiated could be concluded at the sweet will and fancies of the department. The department should not have blamed the petitioners for having approached this Court belatedly, but the*

department must appreciate that the petitioners are seeking two reliefs one is for quashing of proceedings and secondly, a direction to the department forthwith refund the deposit and with interest.

13. *We can take note of the department's objection with regard to the petitioner's approaching this Court after a lapse of several years for return of money but certainly we cannot refuse any relief to the petitioners of quashing of the proceedings of the show cause notice once the legal principles are well settled. The period that has been taken in this case for adjudication of the show cause notice cannot be said to be reasonable. If within a reasonable time the proceedings have to be concluded then in the present case 17 years can never be said to be a reasonable period or time. The department and going by the settled legal principles, cannot pass an adjudication order on the show cause notice and as requested by Mr. Jetly.*

14. *As a result of the above discussion, we make the Rule absolute in terms of prayer clause (a). We quash the show cause notice and we prohibit the respondents from passing any adjudication order in furtherance thereof.*

15. *However, finding some merit in the objection raised but not expressing any opinion thereon, we grant liberty to the petitioners to institute such proceedings as are permissible in law for recovery of sums deposited with accrued interest. We clarify that all objections with regard to the jurisdiction of the forum where the proceedings may be instituted and maintainability thereof, of both sides are kept open.*

16. *We conclude this matter with some pain and anguish. If delay on the part of the department results in loss to the exchequer and as directed presently no recovery can be made of the sums demanded, then, it is for the superiors to initiate all steps and measures. Our order should not be taken as relieving officials concerned of their duties and* *obligations in terms of the law including the departmental rules and circulars. We would highly appreciate if the Secretary in the Ministry of Finance, Government of India directs initiation of departmental and other legal proceedings so that all guilty of causing loss to public exchequer are brought to book. A copy of this order be forwarded to the Secretary in the said department by the Registry. The Additional Prothonotary and Senior Master (Judicial) to take the requisite steps and communicate this order expeditiously."*

11. Further, in the case of *Zodiac Clothing Co. Ltd. Vs. Union of India [2023 (384) ELT 175 (Bom.)]*, the Hon'ble High Court of Bombay held as follows: -

*"**7**. The question as on today therefore is, when the petition has come up for hearing in 2022, whether the Petitioner can be subjected to further proceedings in furtherance of the show cause notice dated 7 July, 1997 that is 25 years (including the period of interim order).*

***8**. In support of his contention that gross delay without any justifiable reason in acting in furtherance of the show cause notice is not found to be legal and proper by this Court on the count of administrative discipline and prejudice to the party. The Learned Counsel for the Petitioner relied upon series of decisions. These are :*

(a) Lanvin Synthetics Pvt. Ltd. and Anr. v. Union of India and Anr. [2105 TIOL 1668 HC MUMCUS = 2015 (322) E.L.T. 429 (Bom.)]
(b) Bhagwandas S. Tolani v. B.C. Aggarwal and Others [1983 (12) E.L.T. 44 (Bom.)]
(c) Cambata Indus Pvt. Ltd. v. Additional Dir. of Enforcement, Mumbai [2010 (254) E.L.T. 269 (Bom.)]

(d) Government of India v. Citedal Fine Pharmaceuticals [1989 (42) E.L.T. 515 (S.C.) = 1989 taxmann.com 618 (SC)

(e) Universal Generics Pvt. Ltd. v. Union of India [1993 (68) E.L.T. 27 (Bom.) = 1993 taxmann.com 30 (Bom.).

This position is summarised in the case of Eastern Agencies Aromatics (P.) Ltd. v. Union of India [Writ Petition (L) No. 30629 of 2022, dated 24 November, 2022] [(2023) 3 Centax 227 (Bom.)] Learned Counsel for the Petitioner contends that in view of the settled law as enumerated in the above case, the show cause notice and the notice calling upon the petitioner for personal hearing requires to be quashed and set aside. Learned Counsel for the respondent relied upon affidavit in reply filed.

***9**. ….*

***10**. Assertion of the Petitioner that the Petitioner was not informed that the file of the Petitioner was transferred to the Call Book has not been controverted. The position continued for 18 years. The fact situation where show cause notice has been transferred to the Call Book and the noticee is not informed about the pendency for an unreasonable period of time has been considered in various decisions. It has been held that not only it is necessary that the show cause notice should be taken to its logical end at the earliest as a matter of administrative discipline, but keeping the show cause in Call Book without informing the notice for a long period of time causes severe prejudice, as the noticee may act on the premise that the proceedings have been dropped and it is also likely that the record and proceedings are not available. In the present case the show cause notice was kept dormant and the notice for personal appearance was issued 18 years ago. The dicta as laid down is clearly applicable to* *the facts of the present case. There is no dispute and cannot be any dispute regarding the above position of law laid down in these decisions. The petition was admitted and Rule was issued, and thus, the position has continued for 25 years."*

12. Similarly, in the case of *J.M. Baxi & Co. Vs. Government of India [2016 (336) ELT 285 (Mad.)]*, the Divisional Bench of the Hon'ble High Court of Madras has observed that though the statute not providing any time limit for adjudication, it is a settled law that it should be done within a reasonable time as given below: -

> ***"17.*** *In the order of adjudication dated 7-1-2000, there is nothing to indicate as to what transpired from 23-5-1995 up to 7-1-2000, except for two dates. One is a letter dated 23-10-1999 where the appellant sought an injury to be inflicted upon them voluntarily, reminding the Department of the pendency of the show cause notice. The next date is 4-1-2000 when a personal hearing took place. Therefore, the order of adjudication certainly had not taken place within a reasonable period. Though the statute does not prescribe a period of limitation for passing an order of adjudication, the law is well settled that anything in respect of which no period of limitation is prescribed, should be done at least within a reasonable time. What is reasonable time, would depend upon the facts and circumstances of each case. In cases of this nature, where the weight of the cargo discharged by the vessel of a Steamer Agent is questioned, it is not possible for a Steamer Agent to defend themselves against the show cause notice long after the vessel had sailed. Therefore,*

the third question of law is also be answered in favour of the appellant."

13. Appreciating the ratio of the above decisions and as there is an undue delay of more than 16 years in complying with the remand directions of the Tribunal Order dated 02.08.2000, the Order-in-Original No. 16/2017 27.03.2017 passed by the Commissioner of Central Excise, Tirunelveli cannot be sustained and so, ordered to be set aside.

14. Thus, the appeal is allowed with consequential reliefs, if any, as per the law.

(Order pronounced in open court on 24.04.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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