

SC affirms HC's view that Revenue is not empowered to adjudicate SCN after inordinate delay

27 February 2023



Summary

The Supreme Court (SC) has upheld the Bombay High Court (HC) order disallowing the adjudication of Show Cause Notices (SCNs) pending for over 11 years. The HC had observed that the Revenue had decided to transfer the SCNs in a call book without intimating the said decision to the petitioner. The petitioner was completely unaware of such transfer of SCNs, and only on seeking a closure report was he informed that the cases had been transferred to a call book. Accordingly, the HC was of the view that the Revenue is entirely responsible for the gross delay in adjudicating the SCNs. The HC has opined that the SCNs pending for such a long time despite the submission of a reply is unwarranted. Hence, the Revenue authorities are not empowered to adjudicate the impugned SCNs on the ground of inordinate delay. The SC has affirmed the findings of the Bombay HC and does not intend to interfere in the judgement pronouncement by the HC.

Facts of the case

- ATA Freight Line (I) Private Limited (the petitioner) was engaged in the activity of buying and selling space in vessel. During the period between 2006 and 2015, it had recovered the expenses from its clients while providing cargo handling/freight service.
- The petitioner was served five SCNs for payment of service tax on freight difference, against which it had filed a reply refuting all the allegations levelled in the impugned SCNs. However, the petitioner did not receive any communication or confirmation from the Revenue in acknowledgement of the responses filed for the SCNs.
- The petitioner understood that the submissions made by it have been accepted. Successively, in February 2021, the petitioner addressed a letter to the authorities requesting a copy of closure report, but the petitioner was informed that the impugned SCNs have been put in a call book.
- The petitioner submitted that it was unaware of the department's decision of transferring the SCNs to a call book. Furthermore, the transfer of SCNs pending since 2011, 2012, 2013, 2014 and 2016 was intimated to the petitioner on 12 April 2021, but not before that.
- The petitioner contended that the decision of transferring SCNs to a call book was never communicated and the terms and conditions of the circular dated 10 March 2017 were also not justified.
- The petitioner further submitted that it is not responsible for any delay in adjudication of the SCNs for past several years. The entire action of the department of transferring the notices is contrary to the principles of law.

Bombay HC observations and ruling (Writ petition No. 3671 of 2021 dated 24 March 2022):

- **No intimation prior to letter seeking closure report:** The HC observed that the only information provided to the petitioner was that the SCNs were transferred to a call book as per the circular dated 26 April 2016, which dealt with various eventualities where file can be transferred to a call book. Neither the affidavit-in-reply nor the arguments advanced by the department indicate that the petitioner was informed about the transfer of file to a call book.
- **Adjudication of SCNs to be done within a reasonable period of time:** The HC opined that it is the Revenue's duty to adjudicate the SCNs and take it to a logical conclusion. The petitioner cannot be made to suffer for gross delay on the part of the department. Hence, the Revenue is responsible for keeping in abeyance without communication to the petitioner for more than 7 to 11 years.
- **Not allowed to proceed with adjudication at a belated stage:** The HC has observed that no order was passed by the Revenue against the impugned SCNs. Therefore, the petitioner could not file an appeal against the same. Considering the facts of the case, the HC has held that the Revenue would not be allowed to proceed with the adjudication of SCNs at such a belated stage.

SC observations and ruling (Special Leave Petition (Civil) No. 828 of 2023 dated 10 February 2023)

- **No interference with the HC ruling:** The SC has considered the facts of the case. Accordingly, it has held that it does not find any ground to interfere with the HC judgement. So, the SC dismissed the SLP filed by the Revenue.

Our comments

It has become a common practice for the department to issue an SCN to safeguard revenue but keep the same pending for years. This results in uncertainty for the business. The higher judicial forums are coming heavily against such tactics from the department. In the case of Citedal Fine Pharmaceuticals, the SC held that every authority should exercise the power within a reasonable period. The SC opined that in cases where an inordinate delay in the issuance of a notice or demand for recovery is raised, it would be open to the assessee to contend that it is bad on the ground of delay.

In the present case, the SC has reiterated that any legal actions taken against the assessee must be concluded on time. The SC held that the Revenue could not keep such cases pending indefinitely. The decision of the SC is in line with its earlier stand and should bring relief to other assessees dealing with a similar situation.

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