

IN THE HIGH COURT OF BOMBAY

Writ Petition No. 1361 Of 2019

RELIANCE INDUSTRIES LTD AND ANR

Vs

UNION OF INDIA AND ORS

M S Sanklecha & S C Gupte, JJ

Dated: July 23, 2019

Appellant Rep by: Mr J C Patel a/w Shilpa Balani and Shamita Patel I/b A S Dayal & Associates

Respondent Rep by: Mr P S Gujar, Mr Pradeep S Jetly

Cus - Petition challenged a notice of hearing dated 21.12.2018 issued by the Office of Commissioner of Customs (Import) seeking to adjudicate a SCN issued on 28 th March 2002 u/s 28 of the Customs Act, 1962 - basis of the challenge to the notice of hearing is the long delay in taking up adjudication proceedings - Petitioner submits that the High Court had by its order dated 12 th December 2017 in the case of *Sanghvi Re-conditioners P Ltd. - 2017-TIOL-2618-HC-MUM-CUS* allowed the petition by observing that long delay in taking up adjudication process causes serious prejudice to the parties.

Held: Counsel for the respondents very fairly state that the issue arising herein would stand concluded against the Revenue by the decision of this Court in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra) - Inasmuch as the petitioners herein were co-noticees along with M/s. Sanghvi Re-conditioners Pvt. Ltd. for alleged breach of Customs Act, 1962 in the Show Cause Notice dated 28th March, 2002 - Moreover, common notices for personal hearing of the Show Cause Notice dated 28th March, 2002 were issued after the gap of 16 years i.e. by Notice dated 21st December, 2018 - Therefore, it is an agreed position between the parties that the decision of this Court in Sanghvi Re-conditioners Pvt. Ltd. (supra) would equally apply to the facts of the present case - Revenue has not pointed out any distinction in facts, which would warrant a different view in this case from that taken in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra) - long delay in taking up the adjudication of a showcause notice (without sufficient cause), would be indicative of the Revenue having abandoned the showcause notice - moreover, delay in adjudication would cause prejudice to the noticee as the men in the knowledge of the facts may not be available or even if available, memories fail - Besides, papers and records which may be an answer to the challenges in the notice may not be traceable, thus, making it impossible to respond to the notice appropriately - petition is allowed and the show cause notice dated 28th March, 2002 to the extent it is issued to the petitioner is quashed and set aside - Petition allowed: High Court [para 2 to 5]

Petition allowed

Case law cited -

Sanghvi Re-conditioners P Ltd. 2017-TIOL-2618-HC-MUM-CUS ...para 2 to 5..followed

JUDGEMENT

1. On 27th June, 2019 we passed the following order.

"1. Mr.Patel, learned counsel appearing in support of the petitioner states that the respondents have been served and he undertakes to file an affidavit of service by 1st July, 2019.

2. This petition under article 226 challenges a notice of hearing dated 21st December, 2018 issued by the office of the Commissioner of Customs (Import) seeking to adjudicate show cause notice issued on 28th March, 2002 under Section 28 of the Customs Act, 1962. The basis of the challenge to the notice of hearing, is the long delay in taking up adjudication proceedings.

3. The petitioner states it was a conoticee alongwith one M/s.Sanghvi Re-conditioners Pvt. Ltd. to show cause notice dated 28th March, 2002. In case of Sanghvi Re-conditioners Pvt. Ltd. a notice for personal hearing dated 7th September, 2017 was issued in respect of the same show cause notice dated 28th March, 2002. The notice for personal hearing dated 7th September, 2017 was challenged in this Court by M/s.Sanghvi Re-conditioners Pvt. Ltd. as being bad because of the long delay. This Court by its order dated 12th December, 2017 (reported in 2018 (12) G.S.T.L. 290 (Bom.) Sanghvi Re-conditioners Pvt. Ltd. V/s. Union of India) = 2017-TIOL-2618-HC-MUM-CUS allowed the petition as long delay in taking up adjudication process causes serious prejudice to the parties. This in the absence of any reasons to justify the delay in taking up the notices for adjudication.

4. The issue arising here prima facie appears to be covered by the decision of this Court in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra).

5. The Respondents have not appeared despite service. The petitioners are directed to serve the copy of this order upon the respondents and inform them that the petition is now kept for hearing on 11th July, 2019.

6. Parties are put to notice that the petition itself may be disposed of finally at the admission stage.

7. Stand over to 11th July, 2019."

2. Today, Mr. Jetly and Mr. Gujar, learned Counsel appearing for the respondents very fairly state that the issue arising herein would stand concluded against the Revenue by the decision of this Court in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra). The petitioners herein were conoticees along with M/s. Sanghvi Re-conditioners Pvt. Ltd. for alleged breach of Customs Act, 1962 in the Show Cause Notice dated 28th March, 2002. Moreover, common notices for personal hearing of the Show Cause Notice

dated 28th March, 2002 were issued after the gap of 16 years i.e. by Notice dated 21st December, 2018. Therefore, it is an agreed position between the parties that the decision of this Court in Sanghvi Re-conditioners Pvt. Ltd. (supra) would equally apply to the facts of the present case.

3. In fact, this Court in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra) while considering the issue of delay in adjudication proceedings had while allowing the petition observed as under :-

"17. We do not therefore find explanation from paragraphs 14 to 18 of this affidavit to be enough for granting the Revenue an opportunity to now adjudicate the subject show cause notice. We have not found from any of these averments and statements in the affidavit that there was a bar or embargo, much less in law for adjudicating the show cause notice. This Court indulged the Revenue enough and by giving them an opportunity to file an additional affidavit. The additional affidavit as well, does not indicate as to why the Revenue took all these years, and after conclusion of the personal hearing in the year 2004, to pass the final order. Now allowing the Revenue to pass orders on the subject show cause notice would mean we ignore the principle of law referred above. 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."

4. It is pertinent to note that in this case, the Revenue has not pointed out any distinction in facts, which would warrant a different view in this case from that taken in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra). We are of the view that long delay in taking up the adjudication of a showcause notice (without sufficient cause), would be indicative of the Revenue having abandoned the showcause notice. As observed by this Court in the above case, this delay in adjudication would cause prejudice to the noticee as the men in the knowledge of the facts may not be available or even if available, memories fail. Besides, papers and records which may be an answer to the challenges in the notice may not be traceable. Thus, making it impossible to respond to the notice appropriately.

5. Therefore, in view of the above, for the reasons stated in M/s. Sanghvi Re-conditioners Pvt. Ltd. (supra), this petition is allowed and the show cause notice dated 28th March, 2002 to the extent it is issued to the petitioner is quashed and set aside.

6. Petition allowed in the above terms.