

Supreme Court revives notice quashed by Punjab and Haryana High Court and allows Revenue to continue proceedings after gap of 10 years

26 July 2023



Summary

The Punjab and Haryana High Court (HC) had earlier held that allowing the Revenue to continue proceedings after a gap of 10 years post the issuance of a show cause notice (SCN) without a proper explanation was unlawful and arbitrary. Therefore, the HC had allowed the petition and had quashed the SCN. However, the Supreme Court (SC) has set aside the order passed by the HC and allowed the Revenue to adjudicate a decade old SCN, and has remanded the matter back to the authorities. The SC stated that if adjudication is not allowed, it would cause prejudice to the Revenue, as the demands made by them would remain unpaid by the taxpayer.

Facts of the case

- M/s. Swati Menthol & Allied Chemicals Limited (the petitioner) was engaged in the manufacture of menthol crystal/powder/solution and de-mentholised oil (DMO), peppermint oil, terpinen, etc.
- Investigation was done at the petitioner's unit by the officer of Central Excise during 2008-2010, pursuant to which a SCN was issued to the petitioner, alleging that the petitioner had availed CENVAT credit against fake invoices issued by the J&K and Northeast-based units.
- The petitioner filed a reply against the SCN, but no proceedings were conducted.
- A number of correspondences were exchanged between the Office of the Principal Commissioner, GST & Central Excise Commissionerate, Chandigarh, fixing various dates of hearing, but the hearing never materialised.
- Aggrieved by the same, the petitioner filed a writ petition before the Punjab and Haryana HC.

Petitioner's contentions:

- The petitioner contended that a SCN was issued on 2 March 2010 and 6 May 2010, and a period of more than 10 years has elapsed, still it has not been adjudicated upon without any fault on its part.
- The petitioner mentioned that the proceedings should be concluded within a period of six months, whereas in the case of fraud, collusion, etc., the period prescribed is one year.
- Therefore, the petitioner requested the HC to quash the aforementioned SCN.

Revenue's contentions:

- The Revenue submitted that because of genuine reasons, the proceedings could not be concluded, as a similar matter was pending before the J&K HC.
- The Revenue submitted that it would be prejudiced, as the demands made by it would be

stifled on account of the impugned order passed by the HC.

Punjab and Haryana HC observations and ruling (CWP-9340-2021, dated 17 May 2021):

- **Proceedings pursuant to SCN after a long gap are unlawful and arbitrary:** The HC analysed the judgements in the case of M/s Siddhi Vinayak Syntex Private Limited and in the case of M/s GPI Textiles Limited, and held that the proceedings pursuant to the SCN after a long gap without proper explanation are unlawful and arbitrary.
- **Call book concept is not suitable in present case:** The HC noted that the law provides that the adjudicating authority is required to determine the duty within the time frame specified by the legislature as far as possible. The HC held that the concept of a call book is contrary to the provisions of the Central Excise Act and noted that transferring pending cases to the call book is contrary to the statutory mandate. Therefore, the HC quashed the SCN and held that these are not sustainable in law.

SC observations and ruling (Civil Appeal No. 4320 of 2023, dated 10 July 2023]

- **Demand will remain unpaid:** If the order of the HC is upheld, then the Revenue would be prejudiced inasmuch as the demands made by the department would be stifled on account of the impugned order passed by the High Court. Therefore, the SC stated that the proceedings need to be concluded within the time frame fixed by this court.
- **SC set aside the order passed by the HC:** The SC set aside the HC order and remanded the matter to the adjudicating authority with a direction to conclude the proceedings within a period of eight weeks from 10 August 2023.

Our comments

It has become a common practice for the department to issue a SCN to safeguard revenue but keep the same pending for years without any reasons. This results in uncertainty for the business.

However, on a similar issue recently, the SC, in the case of ATA Freight Line (I) Private Limited, had affirmed the Bombay HC's view that the Revenue is not empowered to adjudicate a SCN after inordinate delay. The HC had observed that the Revenue was entirely responsible for the gross delay in adjudicating the SCNs. The SC reiterated that any legal actions taken against the assessee must be concluded on time and the Revenue cannot keep such cases pending indefinitely.

Even 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.

The present decision by the SC is contrary to its earlier views and is likely to cause hardship to taxpayers.

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