$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28th February, 2025

\+ **W.P.(C) 7148/2008 & CM APPL. 19092/2019**

UNISING PROJECTS PVT. LTD .....Petitioner

Through: Mr. R.S. Yadav and Mr. Abhishek Jaju, Advocates.

versus

UOI & ANR. .....Respondents

Through: Mr. Aditya Singla, SSC CBIC, Ms. Supriya Juneja and Ms. Arya Suresh Nair, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. This petition has been filed by the Petitioner-Unising Projects Pvt. Ltd. under Article 226 of the Constitution of India seeking quashing of the amendment made in Clause (105) of Section 65 by the Finance Act, 2005.

3. The present petition has a long history having been filed originally in the year 2008. The Petitioner is in the business of providing air-conditioning systems, DG sets, power backup systems, fire-fighting rooms, electric sub-stations, water tanks, transformers and installation services relating to the same in building complexes.

4. An audit was conducted of the Petitioner's records in June 2008. A letter dated 15th July, 2008 was issued against the Petitioner raising a demand of a sum of Rs. 35,40,956/-. This was challenged by the Petitioner before this

Court in the present writ petition along with other challenges to Section 65(105) of Finance Act, 2005. When the petition was initially listed, on 30th September, 2008, notice was issued and it was observed as under :-

> *"In case a demand is raised, the petitioner is at liberty to approach the Court."*

5. Thereafter, on 26th September, 2008. A show cause notice was issued raising a service tax demand of Rs. 3,38,07,757/- (including cess). The Petitioner then sought to amend the present writ petition. The matter was then listed on 22nd July, 2009 on which date, a detailed order was passed in the application seeking stay as under :-

> *"After hearing the counsel for the parties, we are not inclined to grant stay of proceedings before the respondent No. 2. The respondent No. 2 may pass the final orders. In case the demand is raised, the petitioner would be at liberty to raise all the issues questioning the said demand.*
>
> *CM stands disposed of."*

6. The writ petition continued to remain pending. The proceedings before the Adjudicating Authority did not continue. It appears that the Adjudicating Authority continued to remain under the impression that the Court had kept the proceedings before it in abeyance. The presumption of the Department was that the Petitioner had requested that the proceedings be kept in abeyance and the Petitioner's stand is to the contrary. This issue, however, got completely resolved with the order dated 10th September, 2018 when the Court passed a detailed order to the following effect :-

"Affidavit as directed vide order dated 4th September, 2018, has been filed by the respondent.

2. The respondent accepts that adjudication order pursuant to show cause notice No. 443/2018 dated 26th September, 2008, has not been passed. The affidavit further states that the proceedings before the authority were adjourned sine die in view of the letter dated 7th February, 2013 written by the petitioner.

3. Learned counsel for petitioner has disputed the said assertion and submitted that the High Court, vide order dated 22nd July, 2009, had rejected and declined to grant stay of proceedings before the adjudicating authority.It is also submitted that the letter written by petitioner, dated 7th February, 2013, is being grossly misinterpreted. Said letter refers to different orders passed by the High Court and states, "kindly take on records the above-mentioned documents/orders, as you have kept the matter in abeyance."The petitioner had not asked and requested that the proceedings may be kept in abeyance. Learned counsel for petitioner has also drawn our attention to order passed by Commissioner (Adjudication), dated 7th February, 2013, which records "the matter is still pending in Hon'ble Delhi High Court. Therefore, it will be proper if the matter is kept in abeyance till the High Court decides the matter."

4. We are surprised that the adjudicating authority did not proceed with the hearing and decide show cause notice, in view of pendency of present Writ Petition, notwithstanding the fact that this Division Bench had specifically rejected the stay application. Hence there was no reason or cause to keep adjudication proceedings in abeyance though stay application had been rejected.

5. The aforesaid lapse will be brought to notice of the

> *Principal Chief Commissioner, who will examine the records and take appropriate action. Copy of the decision by the Principal Chief Commissioner will be sent to the Board along with copy of this order. The Board may consider issue of appropriate directions.*
>
> *6. Counsel for the parties request that this Writ Petition not to be taken up for hearing today and tomorrow, as they want more time to be ready.*
>
> *7. In view of the request made, the writ petition will not be taken up for hearing till 13th Sept, 2018."*

7. Thus, whatever doubt remained was completely clarified with this order that there was no stay granted and in fact, the application for stay was specifically rejected. The Adjudicating Authority thus had no reason to keep the show cause notice in abeyance. The order in original, thereafter, has come to be passed on 28th February, 2019, which was again challenged by the Petitioner by way of an amendment.

8. In the said application, on 24th April, 2019, it was directed that no coercive steps should be taken against the Petitioner. The said amendment was also allowed on 25th July, 2019. The matter has been pending for hearing.

9. The writ petition got admitted and was again thereafter taken up in 2024. The question that arises in this case is whether the impugned show cause notice and the order in original deserve to be quashed, owing to the decision in ***VOS Technologies India Pvt. Ltd. vs. Principal Additional Director General & Anr., 2024 SCC OnLine Del 8756*** and ***Nanu Ram Goyal vs. Commissioner of CGST and Central Excise, Delhi, [(2023) 6 Centax 148 (Del.)].***

10. The show cause notice in this case is more than fifteen years old. There

was no justification for the Respondents to keep the show cause notice adjudication pending. Despite the dismissal of the stay application, the Adjudicating Authority failed to adjudicate the show cause notice and has in fact, now gone ahead and passed the order in original after several years.

11. The matter is fully covered by the decisions in ***VOS Technologies (supra)*** where the Court observed as under :-

> *"85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together.* ***A statute enabling an authority to conclude proceedings within a stipulated period of time "where it is possible to do so" cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch.*** *A statutory authority when faced with such a challenge would be obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act."*

12. Recently, this Court has also had the occasion of considering similar matter in ***Vijay Enterprises vs. Principal Commissioner of Customs*** where the Court has observed as under :-

> *"20. The above-observations have been referred to by*

<u>the Co-ordinate Bench of this Court in Vos Technologies (supra), wherein further to the SCN, the order-in-original was also passed in certain writ petitions. Despite this, the Court held that the SCN as also the final order that came to be passed in the corresponding proceedings would be liable to be quashed due to the delay in adjudication of the impugned SCN therein</u>.

21. Considering the aforesaid discussion, the opinion has been unanimous of the Coordinate Benches of this Court as also of other High Courts, that placing of the matter on the call book and taking it up after several years would not be permissible, even if the order-in-original is passed.

22. Coming to the facts of this case, the Show Cause Notice dates back to 23rd May, 2008. The first notice for personal hearing was sent to the Petitioners on 15th January, 2010. Thereafter, communication for providing all the RUDs happened between the Petitioners and the concerned adjudicating officer. The Petitioners were granted personal hearing on 27th February, 2012, 16th March, 2012 and a personal hearing also scheduled for 13th May, 2014. Despite the repeated personal hearing conducted by the concerned adjudicating officer, the impugned SCN was not adjudicated between 2008 and 2016. Even if the date is reckoned from 13th May, 2014 the Mangli Impex decision came only on 3rd May, 2016 and the matter has been placed in the callbook on 29 June, 2016. A few months later, it was retrieved on 3rd January, 2017. Thereafter, impugned SCN was again put in the call book on 3rd November, 2017 and taken out from the call book on 3rd May, 2019. Further, in view of the judgment of the Supreme Court in Canon India (supra), the impugned SCN was again transferred to the call book on 17th March, 2021 and taken out from the call book on

31st March, 2022.

23. A perusal of the above would show that the impugned SCN, which was issued way back in 2008, due to repeated placing in the call book has not been adjudicated for so long. Repeated placing and removing from the call book is not a valid justification for non-adjudication of the impugned SCN for about 15 years. Moreover, the gaps between the said periods is also inexplicable. Hearing notices have been given to the Petitioners but there is no reason for non-adjudication of the impugned SCN for long period. The present case is fully covered by the decisions of the Coordinate Bench of this Court, including the recent decision of this Court in Shri Balaji Enterprises v. Additional Director General New Delhi, W.P.(C) 11207/2023 (decided on 19th December, 2024).

24. Thus, following the decisions of the Coordinate Benches, the impugned SCN dated 25th May, 2008, deserves to be quashed and is accordingly set aside.

25. Considering that the impugned SCN which forms the basis for passing of the impugned Order-in-Original itself has been set aide, the said impugned Order-in-Original cannot be sustained or survive in terms of the settled principles of law. Thus, the *impugned Order-in-Original also deserves to be quashed and is accordingly set aside."*

13. In the present case, the two orders of this Court mentioned above, namely, 30th September, 2008 and 10th September, 2018 brook no ambiguity that there was no stay of the adjudicating proceedings.

14. Following the said decisions, the impugned show cause notice dated 26th September, 2008 and all the subsequent proceedings pursuant to the same including the order in original dated 28th February, 2019 shall stand quashed.

15. Ld. Counsel for the Petitioner does not press the challenge to

amendment made in Clause (105) of Section 65 of the Finance Act, 2005 and does not seek any other reliefs.

16. The petition is accordingly allowed and disposed of in the above terms. The pending application(s), if any, is also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

FEBRUARY 28, 2025/*nd/ks*