

# **DELAY IN ADJUDICATION OF SCN**

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Under many corporate laws and also erstwhile Central Excise Act, Service Tax law, Customs Act, Foreign Trade( Development & Regulation )Act, there is no time limit prescribed under the law by which the Adjudication Order shall have to be passed. On many occasions, the OIO is passed after 6 to 10 years and even more. I have compiled various landmark judgments. However, under GST law, Section 75(10) CGST talks of conclusion of proceedings if the order-in-original is not within the time specified under Section 73 and 74 of CGST Act.

2: The DB of Gujarat High Court in the case of Parimal Textiles vs. Union of India : MANU/GJ/2202/2017 has observed as under:-

In all cases, the department had issued show cause notices sometime in the year 2000. These proceedings were kept in call book without intimating the noticees. Without service of any further notices on the petitioners, the order-in-original came to be passed by the adjudicating authority. In the result, in all cases, the show cause notices followed by the order-in-original are set aside.

3: The DB Bombay High Court in the case of Hindustan Lever Limited vs. UOI MANU/MH/1218/2010 has noted the

following citation of the Hon'ble Supreme Court and that of High Courts.

4: In absence of any period of limitation, it is required that every Authority is to exercise the power within a reasonable period, as has been held in the case of Govt.of India v. The Citedal Fine Pharmaceuticals, MANU/SC/0198/1989: AIR 1989 SC 1771 and Bombay High Court in two cases Bhagwandas S. Tolani v. B.C. Aggarwal and Ors. reported in 1983 E.L.T. 44 (Bom) and Universal Generics Pvt. Ltd. Vs. UOI MANU/MH/0433/1993.

5: The Hon'ble Supreme Court in the case of Bhatinda District Coop. Milk MANU/SC/8017/2007 while deciding question of reasonable period of limitation for invoking revisional jurisdiction under PGST Act, 1948 applied limitation period prescribed under Section 11(6) of the PGST Act, 1948 and concluded that reasonable period cannot be more than 5 years.

6: The Punjab & Haryana High Court in the case of Gupta Smelter Pvt. Ltd. vs. UOI MANU/PH/2111/2018: 2019 (365) ELT 77 has set aside show cause notice which was issued for framing final assessment under Section 18 of Customs Act, 1962 on the sole ground that it was issued after 5 years from the date of bill of entry.

7: Furthermore, once again, the Punjab & Haryana High Court in the case of GPI Textiles Ltd. vs. UOI, CWP No. 10530 of 2017 has set aside show cause notice issued under Section 11A

of the Central Excise Act, 1944 raising demand of duty on the ground of its non-adjudication within reasonable period. The court relied its own previous judgment in the case of CCE vs. Hari Concast (P) Ltd. MANU/PH/1205/2009:2009 (242) ELT 12 wherein it has been held that notice of penalty issued under Central Excise Act, 1944 beyond 5 years is bad in the eye of law even though no limitation period is prescribed for penalty.

8: Board had issued a Circular No. 732/48/2003-CX. : MANU/EXCR/0009/2003, dated 05th August, 2003 directing that after the conclusion of personal hearing, it is necessary to communicate the decision immediately or at least one month from the date of the personal hearing. He also points out that the Board had issued instructions F. No. 280/45/2015-CX. 8A, dated 17th September, 2015 emphasising that all the adjudicating authorities are directed to pass adjudicating order within the time limit prescribed.

9: The DB of Delhi High Court in Sunder System Pvt. Ltd. vs. Union of India and Ors. (17.12.2019 - DELHC) : MANU/DE/4374/2019, has observed as under:-

This Court is also of the view that, even if no time period for limitation is prescribed, the statutory authority must exercise its jurisdiction within a reasonable period and if it is not so done, it will vitiate the proceedings.

9.1: The writ petition is allowed and show-cause notice dated 25th November, 2011 is quashed.

10: The DB of Bombay High Court in the case of Raymond Ltd. vs. UOI (06.08.2019 - BOMHC) : MANU/MH/3290/2019

Petitioners to proceed on the basis that the department was not interested in prosecuting SCN and had abandoned it. Even if, notices can be kept in the call book to avoid multiplicity of the proceedings, yet the principle of natural justice would require that before the notices are kept in the call book, or soon after the petitioners are informed the status of the show cause notices so as to put the parties to notice that the show cause notices are still pending. Giving notices for hearing after gap of 17 years, as in this case, is to catch the parties by surprise and prejudice a fair trial, as the documents relevant to the show cause notices are not available with the petitioners.

11: The DB of Bombay High Court in Sanghvi Reconditioners Pvt. Ltd. vs. Union of India and Ors. : MANU/MH/3805/2017 has held as under:-

Revenue has not been able to justify its lapse in not adjudicating the show cause notice issued on 28th March, 2002 for more than 15 years. There may be reasons enough for the Revenue to retain some matters like this in the call book, but those reasons do not find any support in law insofar as the present petitioner's case is concerned. Merely

because there are number of such cases in the call book does not mean that we should not grant any relief to the petitioner before us.

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