(2015) 08 BOM CK 0265

In the Bombay High Court

Case No : Writ Petition No. 11309 of 2014

S2 Infotech Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Citation : (2015) 323 ELT 464 : (2015) 52 GST 224 : (2015) 40 STR 10

Hon'ble Judges : S.C. Dharmadhikari, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : Bharat Raichandani and Mahesh Raichandani i/b, Mihir Prashant Deshmukh, for the Appellant; Vijay Kantharia and Neelesh V. Kalantri, Advocates for the Respondent

Judgement

1. The order passed by the Commissioner of Service Tax dated 27-6-2014 has been impugned in this Writ Petition essentially on the ground that the petitioner appeared before the said Commissioner for adjudication in Show Cause Notice issued on 23-1-2009. The show cause notice is concerning the period 2005-2006, 2006-2007 and 2007-2008. The recovery or demand is of Service Tax. A reply to this show cause notice was given by the petitioners on 21-6-2010. On 1-8-2012 a personal hearing was given and concluded on the same date. However, the impugned order had been passed after a period of almost 22 months. The petitioner relied upon series of circulars issued by the Central Board of Excise and Customs emphasizing that the Law laid down by the Hon''ble Supreme Court in Criminal Appeal No. 389 of 1998 with other appeals decided on 6th August, 2001 (Anil Rai v. State of Bihar, 2009 (233) E.L.T. 13 (S.C.) : 2009 (13) S.T.R. 465 (S.C.) would apply and there should not be any unreasonable delay in passing adjudication order which will be causing difficulties and obstacles in realising Public revenue expeditiously. The Hon''ble Supreme Court has clarified that inordinate, unexplained and negligent delay in pronouncing judgments hampers the exercise of right of appeal. Therefore, the belief, faith and trust of the people in the institution and judiciary is shaken by such delay. This dictum also applies to the quasi judicial adjudication as is

contemplated by laws such as Central Excise Act, 1944, Customs Act, 1962 and Finance Act, 1994 as amended from time to time. That is why these circulars were issued.

2. Prima facie in this case there appears to be no explanation for the inordinate delay and as mentioned above. We are really not worried only about this matter. Even if there is any restructuring and reorganizing of the Department of Service Tax and the Commissionerate thereof, there is no reason why such inordinate delay should occur. Ordinarily we would have disposed of this Writ Petition by setting aside the impugned order on this ground alone and sending the matter back to the Commissioner for fresh hearing and in accordance with law by keeping rival contentions open.

3. We do adopt this course immediately but defer it only because we are worried and equally anxious about the number of files and matters which are pending in the Commissionerate. Let Mr. Kantharia takes instructions about the pending matters in the Commissionerate and how the Commissionerate is going to deal with them hereinafter. If the delay has not been explained and the Revenue has to accept the adverse verdict of a Court of Law only on this ground, then, remedial measures must be initiated including calling for an explanation from the concerned officers and thereafter taking action against them in accordance with law. Eventually all Commissioners must realise that delay in proceedings and passing of orders would be contrary to public interest. They are conferred with powers to determine and adjudicate the demands raised only in a hope that they take steps expeditiously and recover outstanding amount from the defaulters, if any. Hence, sitting on files and for months together and sometimes beyond the financial year is, thus, not conducive to the interest of nation''s economy. The trust and faith reposed in them is also then betrayed. If no action is taken against such Officers and they are allowed to go scot-free, then, apart from the Revenue getting involved in litigation in higher Courts and Tribunal, others would be encouraged. Therefore, we would like a comprehensive affidavit being filed by the chief Commissioner of Service Tax and measures that he proposes to take or has already taken. He shall, then, disclose number of files and matters pending and serially. It should not happen that one who comes to Court, challenges the adverse order only on the ground of delay, the High Court, then, directs that the matter be taken and decided out of turn. Therefore, we would like complete data and figures to be placed on record. We would also like the Commissioner to enlighten us as to how much time would be taken at the end of his Commissionerate to dispose of pending cases. List the matter on 31st August, 2015.

