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

% ***Judgment reserved on: 13.02.2025***

Judgment pronounced on: 20.03.2025

\+ W.P.(C) 17168/2024 & CM APPL. 72863/2024 (INTERIM RELIEF)

MS SHYAM INDUS POWER SOLUTIONS PVT LTD ...Petitioner

Through: Mr. Smit Goel, Mr. Abhishek Thukral & Ms. Aditi, Advs.

versus

PRINCIPAL COMMISSIONER CGST DELHI NORTH ...Respondent

Through: Mr. Atul Tripathi, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The Petitioner herein impugns the Order dated 23.08.2024 passed by the Respondent imposing a service tax liability of Rs. 30,68,03,113/- along with interest and a penalty of Rs. 30,78,71,573/- on the Petitioner. This order dated 23.08.2024 emanates from the Demand-cum-**Show Cause Notices**[1] dated 18.10.2013, 21.05.2014,

[1]SCNs

07.09.2015, 13.10.2016 and 01.03.2018 issued for **Financial Years**[2] 2008-09 to 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 to 30.06.2017; and the Petitioner seeks here the quashing of these SCNs ("**the impugned SCNs**") as well.

2. The Petitioner challenges the same on numerous grounds but for the present purposes, we propose to examine the same only on the touchstone of our Judgment in ***Vos Technologies India (P) Ltd. v. Director General***[3], the same having formed the vanguard of the attack on the SCNs. The learned counsel for the Petitioner would contend that:

(a). The impugned order and the impugned SCNs were issued in gross violation of procedural fairness and the Principles of Natural Justice.

(b). The SCNs were issued between the years 2013 to 2018 and despite filing of replies thereto, the final adjudication was not done for several years.

(c). In respect of the SCN dated 07.09.2015, a personal hearing was also held as far back as 30.10.2015. This SCN dated 07.09.2015 contained the same issue as the other SCNs (except the first SCN i.e., the one dated 18.10.2013).

(d). These SCNs which were kept pending for 6 to 10 years are prejudicial to the interest of the Petitioner.

(e). As no order has been passed, in spite of duly filing replies and participation in the hearing, the Petitioner was under the impression that these proceedings have been

[2] FYs
[3] SCC OnLine Del 8756

dropped. However, out of the blue, without giving any hearing opportunity (*as the notices issued in 2024 were served on wrong email ids*), the Respondent passed the impugned Order dated 23.08.2024 demanding a service tax liability of Rs. 30,68,03,113/- along with interest and a penalty of Rs. 30,78,71,573/-.

(f). The delayed adjudication is wholly attributable to the department.

(g). The impugned order and the impugned SCNs are in the teeth of the judgment passed by this Court in ***Vos Technologies India.***

3. The learned counsel for the Respondent would endeavour to justify the actions of the Department and contend that the delay was justified and there was no infirmity in the passage of the impugned order.

BRIEF FACTS:

4. The Petitioner, registered with the Service Tax Commissionerate, Delhi, is engaged in the execution of the Engineering, procurement, and construction contracts (EPC) pertaining to the setting up of, sub-stationson turnkey basis, transmission line and system/towers, maintenance of such systems, meter installation, activity of supplying transformers, transmission equipments, electrical parts, wires, poles etc which are used in the transmission of power and deals with distribution company engaged in the distribution of electricity in various States.

5. The Petitioner entered into two work contracts with **Dakshin Haryana Bijli Vitran Nigam, Hisar, Haryana**[4] on 19.07.2011. The first work contract was executed for the supply of goods for the commissioning of 09 electric sub-stations and the second was for the civil part for the commission of those electric 09 sub-stations. The Petitioner contends that the entire work was divided into two parts of work contracts, which were separate and independent and the latter one was exigible to Service Tax at the rate of 4.12%. The Petitioner was availing **Central Value Added Tax**[5] credit of Service Tax paid on input services.

6. An audit of the Petitioner was conducted by the officers of Respondent for the FY 2011-12 under Rule 5A of the Service Tax Rules, 1994, which led to the issuance of the first SCN dated 18.10.2013 to the Petitioner for FY 2008-09 to 2011-12 as the Department was of the view that composite work contracts were divided by the Petitioner into two parts, which was otherwise a composite work contract. The Respondent, *inter alia*, alleged that by dividing the work contract into two parts and paying service tax applicable under only one work contract, service tax amounting to Rs. 21,01,50,386/- has been evaded by the Petitioner.

7. Vide **Order-in-Original**[6] dated 10.06.2015, the Principal Commissioner of Service Tax dropped proceedings in respect of the first SCN dated 18.10.2013.

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[4]DHBVN
[5]CENVAT
[6]OIO

8. Challenging this OIO, the department filed an appeal before the **Customs Excise and Service Tax Appellate Tribunal**[7] which was decided *vide* Order dated 18.09.2018. The Tribunal set aside the OIO dated 10.06.2015 and remanded the matter back to the original Adjudicating Authority for the purpose of verifying the claim of the Petitioner and as to whether, on certain contracts, the Petitioner has paid full rate of service tax rather than the concessional rate of service tax under the composition Scheme.

9. In the interregnum, the Department issued four (4) other SCNs dated 21.05.2014, 07.09.2015, 13.10.2016 and 01.03.2018 for FYs 2012-13, 2013-14, 2014-15 and 2015-16 to 30.06.2017, respectively, demanding tax along with interest and penalties.

10. The SCN dated 21.05.2014 was a follow-up of the SCN dated 18.10.2013 and the infractions and provisions mentioned in that were applicable to this subsequent SCN. Besides this, in this SCN, it was also alleged that the Petitioner is ineligible for seeking exemption from payment of service tax *qua* the job work provided by the Railway to the joint venture (which included the Petitioner as well). As per the department, the contract by the Railway was awarded to the joint venture and not the Petitioner directly. As per the Petitioner, the service was exempt from payment of service tax under the **Notification No. 25/2012 dated 20.06.2012**[8] for services provided to government authorities.

11. Toeing a similar line, the subsequent SCNs dated 07.09.2015, 13.10.2016 and 01.03.2018 were issued.

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[7]CESTAT
[8]Notification

12. The proceedings pertaining to the impugned order may be summarized as follows:

Financial Year	Date of Show cause notice	Reply to show cause notice	Notice of Personal hearing	Response/ proceedings	Alleged notices of Personal hearing	Adjudication
2008-09 to 2011-12	18.10.2013	03.01.2014	07.04.2015	SCN dropped by order dated 10.06.2015 but remanded by CESTAT by order dated 18.09.2018	Alleged notices dated 29.02.2024, 7.03.2024 and 18.03.2024 not received	23.08.2024
2012-13	21.05.2014	06.04.2015	21.09.2017 and 06.10.2017	Response of Petitioner dated 2017 to decide the matter on merits as per reply	Alleged notices dated 29.02.2024, 7.03.2024 and 18.03.2024 not received	23.08.2024
2013-14	07.09.2015	01.10.2015	07.10.2015 (hearing held on 30.10.2015) 21.09.2017 and 06.10.2017	Response of Petitioner dated 2017 to decide the matter on merits as per reply	Alleged notices dated 29.02.2024, 7.03.2024 and 18.03.2024 not received	23.08.2024
2014-15	13.10.2016	16.11.2016	21.09.2017 and 06.10.2	Response of Petitioner	Alleged notices dated	23.08.2024

			017	dated 2017 to decide the matter on merits as per reply	29.02.2024, 7.03.2024 and 18.03.2024 not received	
2015-16 to 30th June 2017	01.03.2018	02.05.2018			Alleged notices dated 29.02.2024, 7.03.2024 and 18.03.2024 not received	23.08.2024

ANALYSIS:

13. The date of issuance of the impugned SCNs and order are not disputed facts in the present case. The first impugned SCN, for FY 2008-2009 to 2011-12, was issued on 18.10.2013 and the latest one, for FY 2015-16 to 30th June 2017, was issued on 01.03.2018. These SCNs were decided together *vide* the impugned order dated 23.08.2024; and thus, it is apparent that the Respondent kept the impugned SCNs pending for periods between 6 to 10 years. The following table summarizes the timelines followed by the Respondent in adjudicating the impugned SCNs:

Period	SCN	Adjudication Order	Delay in adjudication
2008-2009 to 2011-12	18.10.2013	23.08.2024	10 years, 10 months, 5 days
2012-13	21.05.2014	23.08.2024	10 years, 3 months, 2 days
2013-14	07.09.2015	23.08.2024	8 years, 11 months, 16 days
2014-15	13.10.2016	23.08.2024	7 years, 10 months, 10 days

2015-16 to 30.06.2017	01.03.2018	23.08.2024	6 years, 5 months, 22 days

14. Section 73 of the Act empowers the taxing authorities to issue SCN(s) to the assessee, chargeable with service tax, which has not been levied or paid or short-levied or short-paid or erroneously refunded. After issuance of the SCN, Section 73(4B) of the Act casts a duty upon the authorities to determine the due amount of service tax withinsix months/ one year, where it is possible to do so, from the date of notice. The relevant portion of Section 73 states as follows:

> "**73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —**
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> (1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:
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> Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—
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> (a) fraud; or
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> (b) collusion; or
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> (c) wilful mis-statement; or
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> (d) suppression of facts; or
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> (e) contravention of any of the provisions of this chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months", the words "five years" had been substituted.
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(4-B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)—

(a) within six months from the date of notice where it is possible to do so, in respect of cases falling undersubsection (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4-A)."

15. This court, in ***Vos Technologies India***, had the opportunity to consider the effect of inordinate delay and failure on the part of the tax authorities to conclude the adjudication proceedings within a reasonable period of time (arising out of the **Customs Act, 1962**[9]**,** the Finance Act, 1994 and the Central Goods And Services Act, 2017) and held that such delay/ failure to act within a reasonable period of time, constituted sufficient ground to quash such proceedings. This Court also held that the authorities are bound and obliged in law to make endeavors to conclude adjudication with due expedition. Relevant extracts of the judgment are as follows:

"…….

2. The principal ground of attack is the inordinate delay in the finalisation of the adjudication proceedings with the writ petitioners contending that the failure on the part of the respondents to conclude adjudication within a reasonable period of time and inordinately delaying the same for decades together would constitute a sufficient ground to annul those proceedings. They would contend that the principles of a 'reasonable period' which courts have propounded in connection with an adjudicatory function conferred upon an authority would apply and the impugned SCNs' and orders are liable to be quashed on this short score alone.

…….

[9] The Custom Act

18. This provision flows along lines similar to those appearing in the Customs Act and creates two separate streams dependent on whether the allegation be plainly of short-levy, non-levy or erroneous refund as contrasted with cases where that may have occurred by reason of fraud, collusion, wilful misstatement or suppression of facts. However, and of significance is sub-section (4-B), and which continues to employ the phrase "where it is possible to do so" as opposed to the amendments which came to be made in Section 28 of the Customs Act.

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20. We have chosen to extract those provisions for the sake of completeness and notwithstanding the petitioners asserting that by virtue of Section 174(2) of the CGST Act, and which constitutes the 'Repeal and Saving' clause, it would be the provisions of the 1994 Act which would govern.

21. In terms of Section 73(1) of the CGST Act, which is principally concerned with cases other than where allegations of fraud, wilful misstatement or suppression of facts are made, and pertains to tax incorrectly computed, erroneously refunded or benefits wrongly availed, sets out terminal points within which action referable to that provision would have to be commenced and concluded. A final order on the culmination of adjudication is liable to be framed by the proper officer in terms contemplated under Section 73(9) of the CGST Act. By virtue of sub-section (10) thereof, the proper officer is bound to frame such an order within three years from the due date for furnishing of an annual return. A notice commencing proceedings referable to Section 73 must be issued at least three months prior to the time limit as specified in sub-section (10) coming to an end. It is relevant to observe that Section 73(10) of the CGST Act uses the words "shall issue" and does not adopt the "where it is possible to do so" phraseology as employed by the Customs Act and 1994 Act. Similar is the position that obtains in cases where fraud, wilful misstatement or suppression of facts may be alleged, and in which eventuality it is the provisions of Section 74 of the CGST Act which would govern.

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74. The meaning to be ascribed to the phrase "where it is possible to do so" was lucidly explained in *Swatch Group*. As the Court observed on that occasion, while the aforesaid expression did allow a degree of flexibility, it would have to be understood as being concerned with situations where the proper officer may have found it impracticable or impossible to conclude proceedings. *Swatch*

Group had explained that expression to be applicable only where the proper officer were faced with "*insurmountable exigencies*" and further recourse being rendered "*impracticable or not possible*". It thus held that the leeway provided by the statute when it employed the phrase "*where it is possible to do so*", could not be equated with lethargy or an abject failure to act despite there being no insurmountable factor operating as a fetter upon the power of the proper officer to proceed further with adjudication. It was these aspects which came to be further amplified by the Court in *Gala International*.

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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.

86. When we revert to the facts that obtain in this batch, we find that the respondents have clearly failed to establish the existence of an insurmountable constraint which operated and which could be acknowledged in law as impeding their power to conclude pending adjudications. In fact, and to the contrary, the frequent placement of matters in the call book, the retrieval of matters therefrom and transfer all over again not only defies logic it is also demonstrative of due application of mind quite apart from the said procedure having been found by us to be contrary to the procedure contemplated by Section 28. The respondents have, in this regard, failed to abide by the directives of the Board itself which had contemplated affected parties being placed on notice, a periodic review being undertaken and the proceedings having been lingered unnecessarily with no plausible explanation. The inaction and the

> state of inertia which prevailed thus leads us to the inevitable conclusion that the respondents clearly failed to discharge their obligation within a reasonable time. The issuance of innumerable notices would also not absolve the respondents of their statutory obligation to proceed with promptitude bearing in mind the overarching obligation of ensuring that disputes are resolved in a timely manner and not permitted to fester. Insofar as the assertion of the assessees' seeking repeated adjournments or failing to cooperate in the proceedings, it may only be noted that nothing prevented the respondents from proceeding ex parte or refusing to reject such requests if considered lacking in bona fides.
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> **87.** We are further constrained to observe that the respondents also failed to act in accord with the legislative interventions which were intended to empower them to pursue further proceedings and take the adjudicatory process to its logical conclusion. We have in the preceding paragraphs of this decision taken note of the various statutory amendments which were introduced in Section 28 and were clearly intended to ratify and reinforce the jurisdiction which the Legislature recognised as inhering in them. The above observations are, of course, confined to those cases to which the Second Proviso placed in Section 28(9) would not apply. The Second Proviso where applicable would in any case deprive the respondents of the right to continue a pending adjudication or frame a final order once the terminal point constructed by statute came into effect."

16. There is no apparent reason given for the inordinate delay in adjudication.

17. The court notes that despite a hearing conducted on 30.10.2015 (in respect of SCN dated 07.09.2015, for FY 2013-14), the Respondent did not issue the final order for approximately 9 years. Had the SCN dated 07.09.2015 been decided in 2015, the SCNs dated 21.05.2014, 13.10.2016 and 01.03.2018 could also have been adjudicated on similar lines as it had similar issues.

18. In *Vos Technologies India* this Court categorically held that matters having financial liabilities or penal consequences cannot be kept unresolved for years; and the phrase "where it is possible to do

so" cannot be a license to keep matters pending for years. The flexibility provided by the legislation is not meant to be misused or construed as sanctioning indolence. The statutory leverage cannot be brought into play routinely and in an unfettered manner for years, without any due justification or explanation.

19. As is apparent from the table above, the rationale espoused in the decision of this Court in *Vos Technologies India,* would apply with full vigour to the facts of the present case. For the said reason, the impugned SCNs dated 18.10.2013, 21.05.2014, 07.09.2015, 13.10.2016 and 01.03.2018 and the impugned order dated 23.08.2024 issued by the Respondent are hereby quashed.

20. The Petition and pending application(s), if any, are disposed of in the above terms.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 20, 2025/sm/er