IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Writ Petition No. 16834 of 2016 (O&M)
Reserved On: 27.11.2019
Pronounced On: 08.01.2020

M/s. Super Oil Company through its Partner
Mr. Vinay Kumar, Ludhiana, Punjab

.... Petitioner

Versus

Union of India and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE GIRISH AGNIHOTRI

Present: Mr. Jagmohan Bansal, Advocate
for the petitioner.

Mr. Anshuman Chopra, Advocate
for the respondents.

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GIRISH AGNIHOTRI, J.

1. The petitioner, a Partnership Firm, is engaged in the business of importing, *inter alia*, Pressed Distillate Oil (for short 'PDO') with its office situated at Ludhiana. The petitioner filed a Bill of Entry on 30.06.2011 importing one consignment of "PDO", which was detained by the Customs Authorities, doubting the description of the goods as "PDO". Samples in terms of Section 144 of the Customs Act, 1962 (in short 'the 1962 Act') were drawn and sent for testing to two (02) different laboratories, namely, Punjab Tent House and CRCL, New Delhi. Upon receipt of test report dated 14.07.2011 **(Annexure P-1)** from the Punjab Tent House confirming the material as PDO, the Proper Officer provisionally assessed the Bill of Entry and the goods were cleared after payment of duty based on such provisional assessment. Subsequently, a report dated 24.08.2011

(Annexure P-2) was received from the CRCL, New Delhi, with the observation that there was no specification of “PDO” available with them.

2. The Directorate of Revenue Intelligence (in short 'DRI'), thereafter on 28.01.2013, searched the residential and business premises of the petitioner and drew samples of the said goods on 12.02.2013 for testing by CRCL, New Delhi, which vide its subsequent report dated 14.03.2013 reported that the samples had the characteristics of “Base Oil”. The Customs Authorities based on the said report issued the impugned Show Cause Notice dated 07.02.2014 **(Annexure P-6)** for mis-declaration of value and description of goods, inviting payment of duty on the value of Base Oil and penalty under Section 112 of the 1962 Act, thereby finalizing the assessment.

3. Counsel for the petitioner has raised two fold arguments :-

(i) that after the clearance of goods from the custom area, no authority has the power to draw fresh samples (as drawn from the factory premises of the petitioner) in view of the provisions of Section 144 of the 1962 Act, which ordains that the samples can only be drawn at the time of Entry of Goods or clearance of goods or while goods passed through the custom area;

(ii) that the impugned Show Cause Notice was issued on 07.02.2014 **(P-6)** and till date, concededly, no order of adjudication has been passed. It is contended that this issue stands covered by the judgment of this Hon'ble Court in case of ***M/s.***

Harkaran Dass Vedpal ***Versus*** ***Union of India and others, 2019-TIOL-1591-HC-P&H-CUS***, whereby it has been held that the Custom Authorities cannot adjudicate a Show Cause Notice beyond a period of five (05) years from the date of Show Cause Notice and in case of the Show Cause Notice pending on 29.03.2018, the Proper Officer in view of the amended provisions was bound to pass an order within one year, i.e. on or before 28.03.2019, unless the period had been extended in terms of Section 28(9) or Section 9-A of the 1962 Act, concededly, no such extension has been made. Hence, it is claimed that show cause notice would lapse.

4. We have considered the rival arguments and the provisions of law and find that the present petition has to succeed on both the counts;

(i) that the DRI or the Custom Authorities, after the imported goods had been cleared from the custom area, had no authority to draw fresh samples on 28.01.2013 of such cleared imported goods from the factory premises in view of the provisions of Section 144 of the 1962 Act, as held by us in the judgement rendered in ***CWP No. 23588 of 2016***, titled ***"M/s. Raghav Woollen Mills Pvt. Ltd. Versus Union of India and others***, decided on **07.01.2020**;

(ii) that in the absence of any extension of time after expiry of one year w.e.f. 28.03.2018 for adjudication on the Show Cause Notice dated 07.02.2014 **(P-6)**, either under Section 28 Sub Section (9) or 9(A) of the 1962 Act, we hold that the impugned Show Cause Notice has lapsed for the reasons recorded by this Court in ***M/s. Harkaran Dass Vedpal's case (supra)***.

In view of above, the present petition is **allowed** and the impugned Show Cause Notice dated 07.02.2014 **(P-6)** is hereby **quashed**.

(JASWANT SINGH)
JUDGE

(GIRISH AGNIHOTRI)
JUDGE

January 8th, 2020
'anju rani / dk kamra'

Whether Speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*