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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.09.2023	**Pronounced on:** 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1738 of 2021
and
W.M.P.No.1942 of 2021

C.Solomon Selvaraj .. Petitioner

Vs.

Principal Commissioner of Customs,
Chennai VIII,
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent, culminating in Order-In-Original No.76206/2020 dated 28.09.2020 and quash the same.

For Petitioner : Mrs.L.Maithili

For Respondent : Mr.H.Siddharth
Junior Standing Counsel

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O R D E R

The petitioner has challenged the impugned Order-in-Original No.76206/2020 dated 28.09.2020.

2.The operative portion of the impugned Order-in-Original No.76206/2020 dated 28.09.2020 reads as under:

> "55. In view of the discussion and findings as mentioned above, I pass the following order:-
>
> 1. I order the confiscation of the undeclared goods totally valued at Rs.3,99,16,875/- (Rupees Three Crore Ninety Nine Lakh Sixteen Thousand Eight Hundred and Seventy Five Only) duly seized, imported vide container No. TEMU 6929879 and covered by Bill of Entry No.4228874 dated 01.12.2017 under section 111(d).111(1), 111(1) and 111(m) of the Customs Act, 1962 read with Section 19 of the Legal Metrology Act, 2009 read with Section 2(w) ibid.
>
> 2. I order the confiscation of the declared goods of Rs.4,27,122/-(Rupees Four Lakh Twenty Seven Thousand One Hundred and Twenty Two Only) based on reassessed value, duly seized, imported vide container No. TEMU 6929879 and Bill of Entry No.4228874 dated 01.12.2017 under Section 119 of the Customs Act, 1962 as they are used to conceal smuggled goods.
>
> 3. I order Shri. C. Solomon Selvaraj being the beneficial owner importer, to pay the demand of

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total differential duty of Rs.4,56,00,374/- (Rupees Four Crore Fifty Six Lakh Three Hundred and Seventy Four Only) leviable on the goods imported vide container No. TEMU 6929879 including the Anti-Dumping Duty, under Section 28(4), 28(8)of the Customs Act, 1962 read with Section 46(4) ibid.

4. I confirm the demand of the interest leviable on the total differential duty under Section 28AA of the Customs Act, 1962, and payable by Shri. C. Solomon Selvaraj being the beneficial owner importer, under Section 28(8) of the Customs Act,1962.

5. Considering the involvement and gravity of offence, I impose a penalty of Rs. 4,56,00,374/- (Four Crores Fifty Six Lakhs Three Hundred and Seventy Four only)along with interest applicable as at (4) above on M/s. R.M.Enterprises under Section 114A of the Customs Act, 1962 for non-levy / short levy of duty.

6. Considering the involvement and gravity of offence, I impose a penalty of Rs. 4,56,00,374/- (Four Crores Fifty Six Lakhs Three Hundred and Seventy Four only)along with interest applicable as at (4) above on Shri. C. Solomon Selvaraj under Section 114A of the Customs Act, 1962 for non-levy / short levy of duty.

7. Considering the involvement and gravity of offence, I impose a penalty of Rs.45,00,000/- (Rupees Forty Five Lakhs) on M/s. Saran Enterprises under Section 112 of the Customs Act, 1962, for rendering the goods liable for confiscation or abetting the same by their omissions or commissions.

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8. Considering the involvement and gravity of offence, I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs) on M/s. Asian Shipping Agencies, Customs Broker under Section 112 of the Customs Act, 1962, for rendering the goods liable for confiscation or abetting the same by their omissions or commissions.

9. Considering the involvement and gravity of offence, I impose a penalty of Rs.50,00,000/- (Rupees Fifty Lakhs only) on Shri. C.Solomon Selraraj under Section 114AA of the Customs Act, 1962 for causing to submit false documents or submitting false documents to Customs.

10. I am refraining from taking action on demand of duty or imposition of penalty against the Noticees who are not traceable by the Investigating Authorities and against whom they have reserved the right of the department to investigate afresh about the role of those persons in smuggling of undeclared goods, as and when fresh lead or evidences surface and upon issue of supplementary notice for action against those persons."

3.The impugned order precedes a Show Cause Notice dated 18.06.2018, which was issued not only to the petitioner, but also to several other persons, who have been accused of violating the provisions of the Customs Act, 1962. As far as the petitioner is concerned, relevant portion of the Show Cause Notice, reads as under:

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"27. From the investigation done, voluntary statements,evidences mustered by DRI-CZU, the following appear to emerge:

(1). Shri. Salomen Selvaraj stated that he was arrested in the year 2016 by DRI, Chennai for smuggling of 70,00,000 sticks of Djarum Black Cigarettes valued at Rs.7 crores in the consignment imported in the name of his company M/s Thivya Agencies [IEC: 0414009703] declared to contain Malaysian Core Veneer and after obtaining bail, started doing customs clearance work for various importers of commercial goods consignments with weight difference/quantity mis-match.

(ii). Shri. Salomen Selvaraj owns a firm by name M/s. The Sea Shipping Forwarders and is its sole proprietor entered in to a conspiracy with Shri. Vishal, whose actual identity is unknown, to smuggle goods from China by concealing them behind declared goods to evade duty or prohibitions on the import of goods and landing the containers having such shipments/consignments at Kattupalli Port only to avoid scanning of the containers.

(iii). Shri Salomen Selvaraj informed that Shri. Vishal is involved in sourcing and arranging such shipments/consignments from China and engages Shri. Salomen Selvaraj for clearing such shipments/consignments from Customs and Shri. Salomen Selvaraj undertakes such works on lump sum basis i.e. including all incidental charges and the Customs Duty.

(iv). Shri Salomen Selvaraj informed that Shri. Vishal sourced and arranged to ship the container TEMU 6929879 with goods declared as 3B Glass Top Gas Stove (Unbranded/Unpopular brand) and Glass spare part for three burner gas stove concealed with steel measuring tapes and sewing machine needles in order to evade payment of appropriate Anti-Dumping Duty and caused to land at Kattupalli Port to avoid scanning.

(v). Shri Salomen Selvaraj informed that Shri. Vishal engaged the services of Shri. Salomen Selvaraj in clearing the consignment imported vide

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container TEMU 6929879 through Customs and caused the import documents including IEC details,required for filing Bill of Entry to be handed over to Shri. Salomen Selvaraj through Shri. Manikandan and those documents are false, Shri. Vishal is liable for penalty under Section 112 of the Customs Act, 1962 and 114AA of the Customs Act. 1962.

(vi). As Shri. Salomen Selvaraj could not give any details about Shri Vishal and Shri Sunil Saran and as Shri Salomen Selvaraj had effective control over the imported goods under reference, thereby becoming a beneficiary of the import.

(vii). Shri. Salomen Selvaraj approached M/s. Asian Shipping Agencies, Customs Broker through Shri K. Faizullah,Clerk, M/s. Asian Shipping Agencies for filing Bill of Entry and Shri K. Faizullah filed the self-assessed Bill of Entry No.4228874 dated 01.12.2017 for the shipment imported vide container TEMU 6929879 based on the documents given by Shri. Salomen Selvaraj, in the name of M/s. R.M. Enterprises and the said act of Shri. Salomen Selvaraj amounts to abetment to smuggling attempt of Shri. Vishal attracting penalty under Section 112 of the Customs Act, 1962 and and 114AA of the Customs Act, 1962.

(viii). RMS picked up the self-assessed Bill of Entry No.4228874 dated 01.12.2017 for verification and accordingly Shri K. Faizullah, Clerk along with a staff of Shri. Salomen Selvaraj and Chandru alias Shri. R. Chandrakumar attended the verification of self-assessment at the Appraising Group.

(ix). Shri. Salomen Selvaraj then insisted Shri K. Faizullah that further activities about the consignment including transportation would be taken care by him and paid the Customs Duty through his bank account maintained in the name of M/s.The Sea Shipping Forwarders in M/s. IDBI Bank and further obtained Delivery Order from the Container Operator M/s.Hyundai Merchant Marines Co. Ltd., through his bank account maintained in the name of M/s. The Sea Shipping Forwarders in M/S. IDBI

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Bank.

(x). Shri. Salomen Selvaraj then instructed R.Chandrakumar to attend the examination/clearance work at CFS and R. Chandrakumar accordingly attended to the said work.as instructed and obtained the Out of Charge Order for the Bill of Entry under reference.

(xi). The container TEMU 6929879 was then detained by DRI, CZU and examined again wherein undeclared goods viz."steel measuring tapes" and "sewing machine needles" were found concealed behind the declared goods and there was a shortage in quantity of the declared goods.

(xii). A total of 2,01,13,000 Pieces of sewing machine needles of various sizes of Brand "Organ" and "Flying Tiger and d 70,200 Pieces of "measuring tapes" of various sizes were found which were not declared in any of the documents submitted for clearance of the goods including invoice and packing list.

(xiii). There were two models of "Organ" Brand needles found in the consignment viz. DBx1 and HAx1 were found to be labelled with "Organ Needle Co. Ltd." and "Made in Vietnam",manufacturer as M/s. Organ Needle (Vietnam) & Co. Ltd., the importer as M/s. Sunny International, Kolkata, MRP, "Home Use"etc., respectively. The "Flying Tiger" Brand needles were found be to labelled with details like "Made in China", the manufacturer as M/s.Jiangsu Flying Tiger Needle Co. Ltd., China etc. The undeclared item measuring tapes neither had any labels nor any embossing on them about the country of origin or manufacturer name and all the goods found in the container TEMU 6929879 were detained. From the public domain information, it is found that the country of origin for "Organ" brand DBX1 model sewing machine needles is Japan and that the "Flying Tiger" brand HAx1 model sewing machine needles are meant for household type sewing machines.

(xiv). The detained goods were seized vide seizure memorandum dt. 29.12.2017 and were

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handed over to the Custodian, CFS for safe custody.

(xv). The declared premises and the residential address of the IEC of M/s. R.M. Enterprises were found to be fictitious upon verification

(xvi). Shri. K.Faizullah and Shri. Prem Kumar, Partner, M/s.Asian Shipping Agencies, the Customs Broker admitted Shri.Salomen Selvaraj engaged them to file the Bill of Entry under reference and had taken care of duty payment, examination etc.,

(xvii). Shri. R. Chandrakumar admitted that he had attended the examination work at the CFS for the Bill of Entry under reference.

(xviii). Shri. Salomen Selvaraj admitted that he had undertaken to clear the goods under reference on lump sum basis including transportation charges despite knowing that the container under reference had sewing machine needles and measuring tapes concealed inside and further admitted that he undertaken this work at the behest of Shri. Vishal whose whereabouts are unknown to him.

(xix). Searches conducted at premises of M/s. Sunny International, Kolkata and statements taken from Shri. Harshad Bhogilal Mehta, Proprietor, M/s. Sunny International revealed that name of M/s.Sunny International, Kolkata was mis-used.

(xx). Shri. Sunil Saran of M/s. Saran Enterprises who credited Rs. 5,00,000 to M/s. The Sea Shipping Forwarders for payment of Customs Duty of Rs. 4,26,188 for the Bill of Entry under reference was not found at his declared credentials in M/s.IDBI Bank.

(xxi). Shri. Vishal, Shri. Manikandan, Shri. Sunil Saran and Shri. Ramesh Menon R, the IEC holders are not traceable in the absence of any information.

(xxii). As the imported goods are mis-declared with respect to quantity, description and value and as fraudulent documents are submitted to Customs, the declared value is liable for rejection in terms of Rule 12 of the Customs

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Valuation(Determination of value of Imported Goods) Rules, 2007 as not a transaction value read with Explanation (1) (iii) (d) and Explanation(1)(iii)(f) to the Rule 12 of the said Rules.

(xxiii). The value of the undeclared goods of description sewing machine needles of Vietnam and Japan origin of Brand Organ is to be re-determined in terms of Rule 4 ibid read with Rule 3(4) ibid, as given in the Annexure-III based on the contemporaneous value of the identical goods i.e. Same description, brand and country of origin available in ICES 1.5 as given in Annexure-II, in terms of Rule 2(d) ibid.

(xxiv). As there are no contemporaneous records of imports of sewing machine needles for home use of the Brand"Flying Tiger" and country of origin as China in ICES 1.5. the value of the undeclared goods of description sewing machine needles for home use of the Brand "Flying Tiger" is to be redetermined in terms of the contemporaneous value of unknown brands of sewing machine needles for home use and of country of origin China available in ICES 1.5 as given in Annexure-II, as per Rule 5 ibid read with Rule 3(4) ibid, which are similar goods in terms of Rule 2(f) ibid, as given in the Annexure-III.

(xxv). The value of the undeclared goods of description measuring tapes of country of origin as China is to be redetermined in terms of the contemporaneous value of identical goods as available in ICES 1.5 as given in Annexure-II, as per Rule 4 ibid read with Rule 3(4) ibid, as given in the Annexure-III.

(xxvi). The differential duty leviable of Rs.1,29,72,416/-(Rupees One Crore Twenty Nine Lakh Seventy Two Thousand Four Hundred and Sixteen Only) on the undeclared measuring tapes and the undeclared sewing machine needles found in the imported consignment as given in the Annexure-III is liable to be demanded under Section 28(4) of the Customs Act, 1962 read with Section 46(4) of

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the Customs Act, 1962.

(xxvii). The total Anti-Dumping Duty leviable of Rs.3,26,27,958/- (Rupees Three Crore Twenty Six Lakh Twenty Seven Thousand Nine Hundred and Fifty Eight Only) on the undeclared measuring tapes and the undeclared sewing machine needles found in the imported consignment in terms of the Notification 31/2015-Cus(ADD) dt. 09.07.2015 and Notification 31/2017-Cus (ADD) dt. 22.06.2017 respectively as given in the Annexure-III is liable to be demanded under Section 28(4) of the Customs Act, 1962 read with Section 46(4) of the Customs Act,1962.

(xxviii). Interest on the differential duty leviable is also to be demanded under Section 28AA of the Customs Act, 1962.

(xxix). The undeclared goods with a total value of Rs.3,99,16,875/- (Rupees Three Crore Ninety Nine Lakh Sixteen Thousand Eight Hundred and Seventy Five Only) and duly seized are liable for confiscation under Section 113(d), 111(f), 111(1)and 111(m) of the Customs Act, 1962 read with Section 19 of the Legal Metrology Act, 2009 read with Section 2(w) ibid.

(xxx). The declared goods i.e. 3B Gas stoves and parts of value Rs.4,27,122/- (Rupees Four Lakh Twenty Seven Thousand One Hundred and Twenty Two Only) based on the re-assessed value are also liable for confiscation under Section 119 of the Customs Act, 1962 as they were used to conceal the smuggled goods i.e. undeclared measuring tapes and sewing machine needles.

(xxxi).Penalty under Section 112 of the Customs Act, 1962 is imposable on M/s. R.M.Enterprises for rendering the goods liable for confiscation.

(xxxii). Penalty under Section 112 of the Customs Act,1962 is imposable on Shri. Salomen Selvaraj for abetting the smuggling of the goods liable for confiscation

(xxxiii). Penalty under Section 112 of the Customs Act,1962 is imposable on Shri Vishal for

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rendering the goods liable for confiscation.

(xxxiv).Penalty under Section 112 of the Customs Act,1962 is imposable on Shri.Sunil Saran Proprietor, M/s. Saran Enterprises for abetting the smuggling of the goods liable for confiscation.

(xxxv).Penalty under Section 112 of the Customs Act, 1962 is imposable on M/s Asian Shipping Agencies, Customs Broker for omission to comply with Customs Brokers Licensing Regulations,2013 abetted the smuggling of the goods liable for confiscation.

(xxxvi). Penalty under Section 114A of the Customs Act,1962 is also imposable on M/S. R.M. Enterprises for short levy of duty.

(xxxvii). Penalty under Section 114A of the Customs Act, 1962 is imposable on Shri Vishal for short levy of duty.

(xxxviii). Penalty under Section 114A of the Customs Act,1962 is imposable on Shri Salomen Selvaraj for short levy of duty.

(xxxix).Penalty under Section 114AA of the Customs Act,1962 is also imposable on Shri. Salomen Selvaraj for submitting false documents to Customs.

(xl). Penalty under Section 114AA of the Customs Act,1962 is also imposable on Shri. Vishal for causing to submit false documents to Customs.

28. As the smuggling under reference had been attempted in the name and IEC of M/s. R.M. Enterprises as importer on record with Shri Saloman Selvaraj as the beneficiary by virtue of his effective control over the imported goods and Shri Vishal as the actual owner of the goods; M/s. R.M Enterprises, Shri. Vishal and Shri. Saloman Selvaraj are all appear to be importers for the purpose of this smuggling attempt read with Section 2(26) of the Customs Act, 1962.

29. In view of the above, M/s. R.M Enterprises, S/Shri C.Saloman Selvaraj, Shri. Vishal, Shri. Sunil Saran, M/s. Saran Enterprises and M/s. Asian Shipping Agencies, Customs Broker jointly and severally are hereby called upon to show cause

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to the Commissioner of Customs, Commissionerate-II, Custom House,No. 60, Rajaji Salai, Chennai-1 within 30 days from the date of receipt of this show cause notice as to why:

a) The undeclared goods totally valued at Rs.3,99,16,875/-(Rupees Three Crore Ninety Nine Lakh Sixteen Thousand Eight Hundred and Seventy Five Only) duly seized, imported vide container No. TEMU 6929879 and Bill of Entry No.4228874 dated 01.12.2017, attempted to be smuggled should not be confiscated under section 113(d), 111(f), 111(l) and 111(m) of the Customs Act, 1962 read with Section 19 of the Legal Metrology Act, 2009 read with Section 2(w) ibid.

b) The declared goods of Rs.4,27,122/-(Rupees Four Lakh Twenty Seven Thousand One Hundred and Twenty Two Only)based on re-assessed value, duly seized, imported vide container No.TEMU 6929879 and Bill of Entry No.4228874 dated 01.12.2017 should not be confiscated under Section 119 of the Customs Act, 1962 as they are used to conceal smuggled goods.

c) Penalty should not be imposed under Section 112 of the Customs Act, 1962, for rendering the goods liable for confiscation or abetting the same by their omissions or commissions.

30. In view of the above, Shri. Vishal, M/s. R.M Enterprises and Shri C. Saloman Selvaraj, are jointly and severally hereby called upon to show cause to the Commissioner of Customs,Commissionerate-II, Custom House, No. 60, Rajaji Salai,Chennai-1 within 30 days from the date of receipt of this show cause notice as to why:

i. The total differential duty of Rs.4,56,00,374/- (Rupees Four Crore Fifty Six Lakh Three Hundred and Seventy Four Only) leviable on the goods imported vide container No. TEMU 6929879 including Anti-Dumping Duty, should not be demanded under Section 28(4) of the Customs Act, 1962 read with Section 46(4)ibid.

ii. Interest leviable on the total differential duty should not be demanded under Section 28AA of

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the Customs Act, 1962.

iii. Penalty should not be imposed on them under Section 114A of the Customs Act, 1962 for short levy of duty."

4.Paragraph No.28 of the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017, issued under Sections 124 and 28 of the Customs Act, 1962 reads as under:

> "28.As the smuggling under reference had been attempted in the name and IEC of M/s.R.M. Enterprises as importer on record with Shri Saloman Selvaraj as the beneficiary by virtue of his effective control over the imported goods and Shri Vishal as the actual owner of the goods; M/s. R.M. Enterprises, Shri. Vishal and Shri. Saloman Selvaraj are all appear to be importers for the purpose of this smuggling attempt read with Section 2(26) of the Customs Act, 1962."

5.The petitioner has given a reply on 15.10.2018 and thereafter, additional submission on 09.08.2019 and on 10.09.2020.

6.The learned counsel for the petitioner has challenged the impugned Order-in-Original No.76206/2020 dated 28.09.2020 being contrary to Section 28 (9) (b) of the Customs Act, 1962.

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7.It is submitted that in case of Show Cause Notice issued under Section 28 (4) of the Customs Act, 1962, the proper officer has to determine the amount of duty or interest under Sub-Section (8) to Section 28 of the Customs Act, 1962, within a period of one year from the date of Show Cause Notice or within further period of one year as per the Proviso to Section 28 (9) (b) of the Customs Act, 1962.

8.It is submitted that as per second Proviso to Section 28 (9) of the Customs Act, 1962, where the proper officer fails to determine the amount of duty within such extended period, such proceedings shall be deemed to have been concluded as if no notice had been issued.

9.It is submitted that one year period would have expired on 17.06.2019. It is submitted that even if there was an extension of time, the period would have at best expired on 16.06.2020. However, the impugned Order-in-Original No.76206/2020 has been passed on 28.09.2020 by taking advantage of Section 6 of the Taxation and other Laws (Relaxation of Certain Provisions), Ordinance, 2020, which is impermissible.

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10.It is therefore submitted that the impugned Order-in-Original No.76206/2020 dated 28.09.2020 is non-est in law apart from the fact that the impugned order also suffers from gross violation of principles of natural justice as none of the relied upon documents in the Show Cause Notice were furnished to the petitioner by the respondent.

11.The learned counsel for the petitioner has also placed reliance on the following decisions:

(i) **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624;

(ii) **Vijay Chauhan Vs. Commissioner of Customs (Export)**, 2019 (365) E.L.T. 864 (Del.);

(iii) **Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.** in C.A.Nos.3007, 3008 of 2020 and

(iv) **Gautam Spinners Vs. Commissioner of Customs (Import), New Delhi**, (2023) 9 Centax 115 (Del.)

12.The learned Junior Standing Counsel for the respondent on the other hand submitted that the present Writ Petition is devoid of any merits and therefore the present Writ Petition deserves to be dismissed in

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limine. It is submitted that the Writ Petition also does not disclose all of the relevant facts of the case. For better appreciation of facts, the following background facts are stated.

13.It is submitted that based on specific intelligence, the Directorate of Revenue Intelligence, Chennai Zonal Unit had conducted a preliminary investigation and found that an importer namely one M/s.R.M.Enterprises, Nellore (IEC No.0915015056), Rep. by its Proprietor Ramesh Menon had concealed and imported "Steel Measuring Tapes" and "Sewing Machine Needles" along with declared goods viz., “gas stoves” and “spare parts for gas stoves” from China vide Bill of Entry No.4228874 dated 01.12.2017 the container bearing number TEMU6929879. This was done with an intention to evade payment of high anti-dumping duty and customs duties.

14.It is submitted that upon conducting detailed investigation and examination on 22.12.2017, it was found that there were a total of 1,01,12,000 pieces of sewing needles of various sizes which were not declared in any of the documents (including invoice and packing list) submitted before the Customs for clearance of the goods. Since the

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importer namely M/s.R.M.Enterprises had concealed goods with an intention to evade duty, a seizure memorandum dated 29.12.2017 was issued under Section 110 of the Customs Act, 1962 after provisional valuation of goods. The seizure memorandum was sent to the office address of the importer as well as the personal address of the proprietor. However, the same was undelivered and returned back and it was ascertained that the Ramesh Menon and the firm R.M.Enterprises were fictitious with bogus address.

15.It is submitted that in the meantime, two letters dated 20.12.2017 were received by DRI from an unknown person representing himself to be the authorized signatory of importer M/s.R.M. Enterprises stating that he is admitted in hospital and that he will meet the DRI Officer after discharge from the hospital. It is pertinent to state that though the letter head had a reference to the registered Nellore Address of the importer at Nellore, the address on the postal envelope of the sender was mentioned as 42, Anna Street, Chennai. The said address was once again verified by DRI and was found to be bogus. All efforts to trace the importer Ramesh Menon did not yield any results.

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16.It is submitted that since Ramesh Menon could not be traced, M/s. Asian Shipping Agencies who was the Customs Broker on record for the Bill of Entry No. 4228874 dated 01.12.2017 was called upon to give their statement under Section 108 of the Customs Act. The partner of M/s. Asian Shipping Agencies namely Mr. Prem Kumar had appeared on 09.01.2018 and gave his voluntary statement under section 108 of the Customs Act. In the said statement, Mr. Prem Kumar had revealed that

a. All relevant documents of the consignment were handed over to his staff Mr. K Faizullah for clearance by a freight forwarder namely the Mr. Solomon, the Petitioner herein.

b. the Petitioner had negotiated and paid Rs. 2000 for filing the Bill of Entry on his behalf and that all the payments for customs duty and clearance of goods were also paid by the Petitioner

c. he was not aware of M/s RM Enterprises or their business activities and that after detention of consignment by DRI he had tried tracing the Petitioner but to no avail.

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17.It is submitted that after recording the statement of Mr. Prem Kumar, his clerk namely Mr. K Faizullah was called upon to give his voluntary statement under Section 108 of the Customs Act. In his statement, Mr. K Faizullah inter alia stated that

a. The Petitioner had approached him and promised to give 10 to 20 consignments per month and had negotiated to pay Rs.2000 per consignment.
b. The check list for filing Bill of Entry was sent by him to the Petitioner and a confirmation was received from one Ms. Lizzy from the same email id.
c. The Petitioner had got the Self-Assessment verified in the concerned Assessment Groups and had used his employee Mr.Chandrakumar at the time of examination of subject goods.
d. The Petitioner had informed him that he would take care of the activities such as duty payment, examination, getting delivery order, transportation, etc.

18.It is submitted that based on the statement of Mr.Prem Kumar,

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intelligence was gathered about the Petitioner. It was found that the Petitioner was a proprietor of M/s. Sea Shipping Forwarders and was earlier remanded by DRI, Chennai in 2016 for smuggling 70,00,000 Sticks of foreign origin Djarum Black Cigarettes valued at Rs.7 Crores in the consignment imported in the name of his company M/s. Thivya Agencies

19.It is submitted that the Petitioner was summoned to appear to record statement under Section 108 of the Customs Act. In his voluntary statement, the Petitioner had stated that

a. After his arrest in 2016, he started doing customs clearance work for various importers of commercial goods/ consignments with weight difference/quantity mis-match
b. That one Mr Vishal from China had called on his mobile and told that he was sending some import documents in respect of importer M/s RM Enterprises through one Mr. Manikandan for customs clearance
c. On receipt of documents, he had submitted the same to M/s.Asian Shipping Agencies for filing Bill of Entry
d. That one Mr. Manikandan had given a sum of

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Rs. 10,00,000 for meeting all the expenses for clearing the consignment and that he neither knew Manikandan's address and phone numbers

e. That he had orgainsed two consignments for M/s RM Enterprises, Amar Exports and Sidhu Naturals for all of which he had received the import documents from the said Vishal

20.It is pertinent to state that when asked about the details of Mr Vishal and Mr. Manikandan, the Petitioner did not co operate during investigation and did not reveal any details about them. The petitioner had paid the customs duty and abetted the smuggling of undeclared goods by following up all activities of clearance of goods. He was arrested on 11.01.2018 by DRI and remanded to judicial custody.

21.It is submitted that thereafter one Mr. R Chandra kumar an employee of the Petitioner was called upon to give his voluntary statement. In his statement Mr. Chandra kumar had stated that

a. His job was to assist the Petitioner in his daily

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routine work and that he had frequently visited the CFS without any ID card on instructions of the Petitioner.

b. He had gone to the CFS for the examination of the consignment pertaining to the importer RM Enterprises

22.It is submitted that since the payment of customs duty was made from the account of the Petitioner's firm M/s. Sea Shipping Forwarders, a request for obtaining the bank account statement of the firm was made to the bankers M/s. IDBI Bank, Parrys Branch.

23.On scrutiny of the statement, it was found that a sum of Rs.5,00,000/- was credited to the account of the Petitioner firm by one Mr. Sunil Saran of M/s. Saran Enterprises who had an account in the same branch. Thereafter, verifications were made with respect to the declared address of M/s.Saran Enterprises as per bank records and it was found that the premises were already vacated. It is further submitted that summons were also sent to Mr Sunil Saran as per the address proof in the bank records and the same was undelivered with the remark "Not Known".

24.It is submitted that since the packages of sewing machines

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needles which were found concealed in the consignment had a mention of one M/s. Sunny International, with address in Kolkata, investigations were also initiated against them by the Officers of DRI, Kolkata Zonal Unit on 17.03.2018. However, no incriminating documents were found.

25.It is submitted that a perusal of the aforementioned facts clearly demonstrate the role of the Petitioner in relation to the smuggled goods. Hence, the contention of the Petitioner that he was left in the lurch to face authorities in relation to the import made by M/s.R.M. Enterprises/Vishal without even having knowledge about who were all involved in the smuggling network does not hold any substance and the same are denied as false and baseless.

26.It is submitted that the averments in para 6, 7, 8 and 9 of the affidavit pertains to the statement of facts and as such does not warrant any response.

27.It is submitted that the contention of the Petitioner that there was no response to his letter dated 09.08.2019 and no further investigation were carried on to trace the importer connected with the

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import is false and misleading.

28.It is submitted that all efforts to trace the persons named by the Petitioner were undertaken by the investigating authority but the same proved to be an exercise in futility.

29.It is further submitted that a detailed investigation was also carried by the DRI and the Respondent and based on the same the Petitioner's role in relation to the smuggled goods came into light.

30.It is submitted that the submission of the petitioner that a period of 2 years had lapsed from the date of Show Cause Notice and as such the time period to pass the adjudication order had expired in terms of Section 28(8) and 28(9)(b) is legally unsustainable.

31.It is submitted that in the present instance, the Show Cause Notice demanding duty under Section 28 (4) of the Customs Act, 1962 was issued to the Petitioner on 18.06.2018. Since there were no proper replies received from the various noticees and due to their non appearance for the personal hearing, the adjudication process could not

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be completed within a period of one year as envisaged under Section 28(4) of the Customs Act.

32.It is pertinent to state that since the adjudication process could not be completed within the period stipulated under Section 28 (4) of the Customs Act, 1962, the Principal Chief Commissioner of Customs had invoked the provisions of Section 28 (9) of the Customs Act, 1962 and had extended the time limit by one more year for passing the adjudication order. It is submitted that in view of the extension in terms of Section 28(9), the time limit to pass the adjudication order was extended for a period of two years.

33.It is submitted that thereafter due to COVID-19 pandemic, the time limit for completion of proceedings and issuance of order, notice,intimation, etc., came to be extended upto 30.09.2020 in terms of Section 6 of the Taxation and other laws (Relaxation of Certain Provisions) Ordinance, 2020. Subsequent to relaxations announced by the Ministry of Home Affairs, an opportunity for personal hearing was given to all the notices on 10.09.2020 and thereafter an order was passed on 28.09.2020. In view of aforesaid development, the limitation period

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stood further extended and within such extended period, the impugned order was issued by the Respondent. Hence, the impugned order issued is perfectly sustainable under law.

34.It is submitted that the argument that impugned order has imposed insurmountable amount of duty and penalty on the petitioner and therefore, even the appellate remedy under Section 129-A of the Customs Act, 1962 has become illusory is irrelevant.

35.The learned Junior Standing Counsel for the respondent would further submit that there is no scope for bye-passing an appeal remedy merely because the amount involved is huge. It is submitted that the petitioner cannot plead financial hardship and therefore, the petitioner should be directed to file statutory appeal against the impugned order if the petitioner desires so. In this connection, the learned Junior Standing Counsel for the respondent has relied on the decision of this Court dated 09.01.2018 in **Sunmac Enterprises Vs. The Commissioner of Central Excise**, in W.P.No.285 of 2018, wherein it has been held as follows:

"4. .... The inability to pay the mandatory

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pre-deposit cannot be a ground to entertain a writ petition. Secondly, with regard to the decision in Enam Service Private Limited, prima facie, the Hon'ble Supreme Court was satisfied that question of law was involved and therefore, special leave petitions were entertained and were converted into civil appeals. Thirdly, in the assessee's own case, the Tribunal recently rendered a decision, which, according to the petitioner, granted a partial relief. However, the order was not placed before the Commissioner. In any event, this can be done by the petitioner by filing an appeal as against the impugned order."

36.By way of written submissions, learned counsel for the petitioner submitted that the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 has lapsed as the impugned Order-in-Original No.76206/2020 dated 28.09.2020 was passed beyond the prescribed period and extended time limit as per Section 28(9)(b) of the Customs Act, 1962.

37.It is further submitted that the extension granted under Section 6 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 is applicable only to the time limit specified under the ordinance and not to the extended time limit.

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38.It is submitted that in terms of second proviso to Section 28(9) of the Customs Act, 1962, the proceedings shall be deemed to have concluded as if no notice had been issued, where the adjudication order has not been passed within the stipulated time limit.

39.It is submitted that the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 was issued without completing investigations. The materials relied on by the Department are insufficient for filing a *prima facie* case against the petitioner.

40.It is submitted that in the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017, it has been admitted that the investigations are incomplete by reserving its right to issue a supplementary notice after investigating afresh the petitioner, Shri.Vishal, Shri.Manikandan and Shri.Sunil Saran.

41.It is further submitted that the impugned Order-in-Original No.76206/2020 dated 28.09.2020 has confirmed that the Customs Duty Demand was solely on the petitioner by treating him as "beneficial

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owner" on one hand and as an abettor on the other hand without giving any reasons for not having confirming the liability on the importer and Shri.Vishal and among others on whom the duty demand was proposed.

42.It is submitted that charge levelled against the petitioner cannot co-exist with the finding that the petitioner is the only person solely responsible for the alleged smuggling.

43.It is submitted that there is violation of principles of natural justice and therefore, the petitioner cannot be forced to avail the alternate remedy and prayed for allowing the Writ Petition.

44.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Junior Standing Counsel for the respondent.

45.I shall first deal with the preliminary objection of the petitioner that the impugned Order-in-Original No.76206/2020 dated 28.09.2020 was *non-est* in law and is time barred in view of Section 28(9) of the Customs Act, 1962.

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46.The petitioner was issued with the Show Cause Notice bearing reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 was issued by the Additional Director General, Directorate of Revenue Intelligence on 18.06.2018 in respect of goods attempted to be smuggled along with the goods declared in the Bill of Entry No.4228874 dated 01.12.2017.

47.Section 28(4) of the Customs Act, 1962 was invoked in the said Show Cause Notice read with Section 46(4) of the Customs Act, 1962. It was ostensibly issued based on the voluntary statement of the petitioner. The show cause notice has invoked Sections 28(4) of the Customs Act, 1962.

48.The said Show Cause Notice itself calls upon the petitioner and other co-notices to answer to the Show Cause Notice to the Commissioner of Customs, Commissionerate-II, Custom House, No.60, Rajaji Salai, Chennai – 600 001, who is the proper officer to pass the order within the extended period. The petitioner has given an interim reply on 15.10.2018.

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49.The Commissioner of Customs, Commissionerate-II was thus the "proper officer" who was required to pass the order within the extended period of limitation prescribed under first proviso to Section 28(9)(b) of the Customs Act, 1962.

50.Section 28 of the Customs Act, 1962 was amended vide Finance Act, 2018. On the date of issuance of Show Cause Notice, the amended Section 28(9) of the Customs Act, 1962 was in force. Prior to amendment and after amendment Section 28(9) of the Customs Act, 1962, reads as under:-

Before amendment	After amendment
Section 28(9) - The proper officer shall determine the amount of duty or interest under sub-section (8), - a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1); (b) within one year from the date of notice in respect of cases falling under sub-section (4).	Section 28(9) - The proper officer shall determine the amount of duty or interest under sub-section (8), - a) within six months from the date of notice in respect of cases falling under clause (a) of sub-section (1); (b) within one year from the date of notice in respect of cases falling under sub-section (4). Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under

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Before amendment	After amendment
	which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year: Provided further that where the proper officer fails to determine within such extended period, such proceeding shall be deemed to have concluded as if no notice had been issued.

51.In the Show Cause Notice dated 18.06.2018, the petitioner has been treated as a “beneficial owner”.

52.As per Section 28(9)(a) of the Customs Act, 1962, wherever a show cause notice is issued without invoking the ingredients of Section 28(4) of the Customs Act, 1994, the proper officer has to determine the amount of duty or interest under Sub-Section (8)of the Customs Act, 1962, within a period of six months from the date of notice.

53.On the other hand, in respect of cases filing under Section 28(9)(4) of the Customs Act, 1962, the proper officer has to determine the amount of duty or interest under Sub-Section (8)of the Customs Act,

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1962, within a period of one year from the date of the notice.

54.Ordinarily, the said Show Cause Notice bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 dated 18.06.2018 ought to have adjudicated by the proper officer on or before 17.06.2019 in terms of Section 28(9)(b) of the Customs Act, 1962.

55.Under proviso to Section 28(9) of the Customs Act, 1962 after amendment, any officer senior in rank to the "proper officer" may extend the period specified in clause (a) by a further period of six months and the period specified in clause (b) by a further period of one year having regard to the circumstances under which the "proper officer" was prevented from determining the amount of duty or interest under Sub-Section (8) to Section 28 of the Customs Act, 1962.

56.If the proper officer fails to determine the amount or interest Sub-Section (8) to Section 28 of the Customs Act, 1962, within such extended period, the show cause proceeding issue shall be deemed to have concluded as if no notice had been issued.

57.Thus, the period specified in Section 28(9)(a) or (b) of the

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Customs Act, 1962 as the case may be could be extended by a senior officer in rank to the proper officer for a period of six months or one year as the case may be, if the “proper officer” was prevented from determining the amount, duty or interest within the period specified therein.

58.To decide whether the period was extended for completing the show cause for determining the duty within the limitation prescribed under Section 28(9) of the Customs Act, 1962, the originals of the files were called for and examined.

59.Facts on record indicates that the relied upon documents were sought by the petitioner vide letter dated 15.10.2018. The relied upon documents were sent to the petitioner after obtaining permission of the Commissioner-VIII along with notice dated 19.11.2018.

60.Although, in the original file, the said date has been mentioned as 19.11.2011, it is evident that the said dated viz., 19.11.2011 was on account of human error and a mistake. This is also evident from the previous and the subsequent signature of the Commissioner. The notices

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sent had however remained unserved. After the documents were furnished to the petitioner, the case was listed for personal hearing.

61.As far as the petitioner is concerned, the petitioner has replied on 15.10.2018, 07.02.2019, 09.08.2019 and 10.09.2020. Last two mentioned letters / replies of the petitioner itself were after the expiry of the one year period of limitation which expired on 17.06.2019.

62.The petitioner appears to have requested for adjournment by letter dated 07.02.2019. The approval for passing order beyond the period of one year under Section 28(9) of the Customs Act, 1962 was accorded on 26.06.2020 by the Chief Commissioner. It was pursuant to a note put up for a fresh notice of hearing to the petitioner.

63.In the preliminary reply the petitioner had also requested for furnishing all the Relied Upon Documents (RUD) which forms the basis of the Show Cause Notice bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 dated 18.06.2018, issued under Sections 124 and 28 of the Customs Act, 1962.

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64.The petitioner appears to have given additional reply on 09.08.2019. This was after 17.06.2019, being one year from the date of Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017, issued under Sections 124 and 28 of the Customs Act, 1962.

65.The petitioner has clearly stated that the petitioner is a poor person and is not even having an Income Tax Assessee and has been wrongly assessed as customs duty and penalty and if the real culprits are arrested and made to reply, the duty was to be recovered from them and not from the petitioner.

66.The petitioner has given a further reply on 10.09.2020, wherein the petitioner has stated that he was not aware of the contents of the container, as that he was unaware of the fact that the imported container contained needles and measuring tapes, attracting huge customs duty and anti-dumping duty. The petitioner specifically stated that the petitioner is not the “beneficial owner” of Section 2(26) of the Customs Act, 1962 as alleged in paragraph No.28 of the Show Cause Notice.

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67.In the said interim reply, the petitioner has stated that the imposition of penalty proposed under Section 114AA of the Customs Act, 1962 cannot be countenanced as the petitioner merely forwarded the documents received 'as such' from Shri.Vishal, Shri.Manikandan, Shri.Sunil Saran and Shri.Ramesh Menon.R.

68.The initial period of one year would have expired for passing the impugned Order-in-Original No.76206/2020 dated 28.09.2020, expired on 17.06.2019. The extended period under proviso to Section 28(9) of the Customs Act, 1962 expired on 16.06.2020.

69.Meanwhile, lockdown was imposed from 24.03.2020 due to outbreak of Covid-19 pandemic. It is during the interregnum, the Principal Commissioner of Customs has given the approval for passing the order on 26.06.2020 by 30.09.2020.

70.The reason given in the file was that Show Cause proceedings could not be adjudicated within a period of one year from the date of issuance of the notice. The permission to pass order within the further period of one year was issued to the proper officer by the Principal

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Commissioner of Customs. Thus, the respondent has passed the impugned Order-in-Original No.76206/2020 dated 28.09.2020.

71.Thus, there is no case to conclude that the respondent had no jurisdiction to decide the issue and pass orders after expiry of one year after issuance of Show Cause Notice bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 dated 18.06.2018 as petitioner himself was asking for time.

72.The impugned Order-in-Original No.76206/2020 has been passed on 28.09.2020 well before 30.09.2020. There is a saving of limitation under Chapter-V of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020.

73.The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020, was issued by the President of India in exercise of power under Article 123(1) of the Constitution of India on 31.03.2020 in the wake of outbreak of Covid-19 pandemic to save limitation.

74.The said ordinance was later replaced by The Taxation and

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Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 under the Scheme of Constitution.

75.That apart, Notification No.G.S.R.418(E) [R.No.CBEC-20/06/08/2020-GST] was issued under Section 6 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020.

76.Section 6 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 reads as follows:-

> *"6. Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41 , 41A, 46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act,1994, as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1 51 day of July,2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as-*
>
> *(a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever*

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name called; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of June, 2020 or such other date after the 30th day of June, 2020 as the Central Government may, by notification, specify in this behalf:
Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b)."

77.The time limit specified in or prescribed or notified under the Acts viz., Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41 , 41A, 46 and 47), the Customs Tariff Act, 1975 and Chapter V of the Finance Act, 1994, which fell during the period between 20.03.2020 and 29.06.2020 or such other date after 29.06.2020 stood extended upto 30.06.2020.

78.The Central Government by a notification, could also extend the period for the completion or compliance of such action to such other date after 30.06.2020.

79.Thus, the period was initially extended upto 30.06.2020. By a

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Notification such date could be extended after 30.06.2020 as the Central Government may in the Notification specify in that behalf as is required.

80.Section 6 of Chapter-V of the ordinance was extended for the period upto 30.09.2020 by Section 6 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, with effect from 29.09.2020. Section 6 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 reads as under:-

> *"6. Notwithstanding anything contained in the Central Excise Act, 1944, the Customs Act, 1962 (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 or Chapter V of the Finance Act,1994, as it stood prior to its omission vide section 173 of the Central Goods and Service Tax Act, 2017 with effect from the 1st day of July, 2017, the time limit specified in, or prescribed or notified under, the said Acts which falls during the period from the 20th day of March, 2020 to the 29th day of September, 2020 or such other date after the 29th day of September, 2020 as the Central Government may, by notification, specify, for the completion or compliance of such action as—*
>
> *(a) completion of any proceeding or issuance of any order, notice, intimation, notification or sanction or approval, by whatever name called, by any authority, commission, tribunal, by whatever name called; or*
>
> *(b) filing of any appeal, reply or*

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application or furnishing of any report, document, return or statement, by whatever name called,

shall, notwithstanding that completion or compliance of such action has not been made within such time, stand extended to the 30th day of September, 2020 or such other date after 30th day of September, 2020 as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions under clause (a) or clause (b).”

81.That apart, Notification No.G.S.R.418(E) [R.No.CBEC-20/06/08/2020-GST] was issued under Section 6 of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020, it has been clarified as under:-

“*In exercise of the powers conferred by section 6 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (2 of 2020), the Central Government hereby specifies that, -*

(i) the 29th day of September, 2020 shall be the end date of the period during which ***the time limit specified in, or prescribed or notified under****, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) (except sections 30, 30A, 41, 41A, 46 and 47), the Customs Tariff Act, 1975 (51 of 1975) or Chapter V of the Finance Act,*

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1994 (32 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and

(ii) the 30th day of September, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended."

82.Thus, there was a special dispersion under the Ordinance, Act and the above Notification. The decision of the Hon'ble Supreme Court in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624, rendered in the context of proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 cannot be imported in the context of orders to be passed under Customs Act, 1962 or Central Excise Act, 1944 or Finance Act, 1994 or any of the Act specified in the said Ordinance and Act.

83.The Hon'ble Supreme Court in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624 had interpreted Sections 4 and 2(j) of the Limitation Act, 1963 and Section 10 of the General Clauses Act, 1897 in the context of proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996.

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84.Section 4 of the Limitation Act, 1963 prescribes the period when the Courts are closed. Section 10 of the General Clauses Act, 1897 prescribes the method for computation of limitation. Section 2(j) of the Limitation Act, 1963 defines the expression "period of limitation". They read as under:-

Limitation Act, 1963	
2. Definitions -	**4. Expiry of prescribed period when court is closed.—**
(j) "period of limitation" means the period of limitation prescribed for any suit, appeal or application by the Schedule, and "prescribed period" means the period of limitation computed in accordance with the provisions of this Act	Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court re-opens. Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day
General Clauses Act, 1897	
10. Computation of time	(1) Where, by any 1 [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: Provided that nothing in this section shall apply to any act or proceeding to which the 6 Indian Limitation Act, 1877 (15 of 1877), applies.

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Limitation Act, 1963	
	(2) This section applies also to all 2 [Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

85.Proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 was interpreted by the Hon'ble Supreme Court in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624. It was held as under:-

"*14.Section 2(j) of the 1963 Act defines:*

> *"2.(j).'period of limitation' which means the period of limitation* ***prescribed*** *for any suit, appeal or application by the Schedule, and 'prescribed period'* ***means the period of limitation computed in accordance with the provisions of this Act****."*

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed

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period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.

15.Seen thus, the applications made by the appellants on January 2, 2004, for setting aside the arbitral award dated August 26, 2003 were liable to be dismissed and have rightly been dismissed by the District Judge, Kamrup, Guwahati, as time barred."

86.This view was followed by a Larger Bench of the Hon'ble Supreme Court in **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others**, (2021) 2 SCC 317.

87.There, the Hon'ble Supreme Court was concerned with the Limitation prescribed for filing the appeal before the National Company Law Appellate Tribunal (hereinafter referred to as 'NCLAT') under Section 421 of the Companies Act, 2013.

88.Sub-Section (3) to Section 421 of the Companies Act, 2013 prescribes the period of limitation for filing the appeal before the Appellate Tribunal within a period of 45 days from the date on which the copy of the order of the Tribunal is made available.

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89.In terms of proviso to Sub-Section (3) to Section 421 of the Companies Act, 2013, the Appellate Tribunal (i.e.,) NCLAT may entertain the appeal after the expiry of the said period of 45 days, but within a further period not exceeding 45 days, if it is specified that the appellant was prevented by sufficient cause from filing the appeal within that period.

90.In the said case, the appellant had failed to file the appeal within the period of 45 days from the date of communication of the order of the Tribunal on 19.12.2019. The normal period of limitation of 45 days expired on 02.02.2020 from 19.12.2019. The extended period of 45 days limitation from 02.02.2020 expired on 18.03.2020. The appeal was however filed before NCLAT only on 20.07.2020.

91.Therefore, the appeal ought to have been filed latest by 18.03.2020 by giving proper and sufficient reasons to condone the delay. Instead, the appeal itself was filed only on 20.07.2020, after lockdown was imposed with effect from 24.03.2020 due to outbreak of Covid-19 pandemic.

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92.To get over the limitation, the appellant therein relied upon the decision of the Hon'ble Supreme Court in **Cognizance For Extension of Limitation, IN RE**, rendered dated 23.03.2020. By the aforesaid order, the Hon'ble Supreme Court had extended period of limitation with effect from 15.03.2020. The said order was passed in the exercise of power under Article 142 read with 141 of the Constitution of India.

93.The Hon'ble Supreme Court in in **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others**, (2021) 2 SCC 317concluded that the appellant therein could not take advantage of the aforesaid order dated 23.03.2020, as the extended period of limitation had already expired on 02.02.2020.

94.The Hon'ble Supreme Court followed its earlier views in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624, referred to *supra*. In paragraph Nos.22 & 23 of **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others**, (2021) 2 SCC 317, the Larger Bench of the Hon'ble Supreme Court held as under:-

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"22.The words "prescribed period" appear in several Sections of the Limitation Act, 1963. Though these words "prescribed period" are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

*(i) Section 3(1) makes every proceeding filed after the **prescribed period**, liable to be dismissed, subject however to the provisions in Sections 4 to 24.*

*(ii) Section 5 enables the admission of any appeal of application after the **prescribed period**.*

*(iii) Section 6 uses the expression **prescribed period** in relation to proceedings to be initiated by persons under legal disability.*

*23.Therefore, the expression "prescribed period" appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the **prescribed period**, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be "prescribed period".*

95.A reading of the above decision of the Hon'ble Supreme Court in **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others**, (2021) 2 SCC 317, clearly indicates that the extension granted by the Hon'ble Supreme Court in its decision rendered on 18.09.2020 was in the wake of the outbreak of Covid 19 pandemic. It was of no relevance to the facts of the case in **Sagufa**

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Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others, (2021) 2 SCC 317, as the extended period of limitation to file an appeal had already expired on 18.03.2020 i.e. before the lock down was imposed with effect from 24.03.2020.

96.The said decision was not rendered in the context of The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 and The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the Notification referred to *supra*. As far as specified union Tax laws were concerned, there was a special dispensation. There was a special saving of limitation.

97.In my view, the decision of the Delhi High Court in **Gautam Spinners Vs. Commissioner of Customs (Import)**, New Delhi, (2023) 9 Centax 115 (Del.) is also of no relevance to the facts of this case.

98.In the said case, the Show Cause Notice itself came to be issued on 05.08.2021 under Section 28(4) of the Customs Act, 1962. The Court

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there concluded that the proceedings initiated against the petitioner therein cannot be said to be covered by the letters of the Directors of the Board dated 17.03.2021 and 16.04.2021.

99.In the light of the above, the arguments of the learned Counsel for the petitioner that the impugned Order-in-Original No.76206/2020 dated 28.09.2020 is *non-est* and is liable to be declared as a nullity under Section 28(9) of the Customs Act, 1962 cannot be countenanced and is therefore liable to be rejected.

100.Therefore, the preliminary issue regarding the jurisdiction of the respondent to pass the impugned order in the light of the decision of the Hon'ble Supreme Court in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects and Marketing Limited**, (2012) 2 SCC 624 and **Sagufa Ahmed and others Vs. Upper Assam Polywood Products Private Limited and others**, (2021) 2 SCC 317 are answered in the negative and therefore against the petitioner. I shall therefore now deal with the other contentions raised by the learned counsel for the petitioner and the learned Junior Standing Counsel for respondent.

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101.The petitioner has been treated as a "beneficial owner" of the imported goods in view of Section 2(26) read with 2(3A) of the Customs Act, 1962.

102.It has been concluded that the petitioner Shri.C.Solomon Selvaraj, Proprietor of M/s. The Sea Shipping Forwarders is the "beneficial owner" as Shri.RameshMenon.R, Proprietor of M/s.R.M.Enterprises and other persons namely Shri.Vishal, Shri.Manikandan, Shri.Sunil Saran of M/s. Saran Enterprises were untraceable. No doubt that the petitioner acted in collusion with these persons, declared and suppressed facts about the undeclared goods and attempted to smuggle the goods in violation of legal provisions under the Customs Act, 1962 and Customs Tariff Act, 1975, it cannot be however concluded that the petitioner is the "beneficial owner" of the imported consignment of smuggled goods.

103.The expression 'importer' and 'beneficial owner' are defined in Sections 2(26) and 2(3A) of the Customs Act, 1962. They read as under:-

Section 2(26)	**Section 2(3A)**
"importer", in relation to any goods at	beneficial owner means any person on

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Section 2(26)	Section 2(3A)
any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer;	whose behalf the goods are being imported or exported or who exercises effective control over the goods being imported or exported;

104.This Court would normally not enter into the disputed question of facts as such disputed question of facts are best left to be distilled and finally determined by the Tribunal as the ultimate fact finding Authority. Article 226 of the Constitution of India cannot be invoked to decide the issue based on disputed question of fact.

105.However, a reading of the Show Cause Notice dated 18.06.2018 and impugned Order-in-Original No.76206/2020 dated 28.09.2020, indicates that the Department has treated the petitioner as a "beneficial owner" within the meaning of Section 2(3A) of the Customs Act, 1962, on account of its inability to trace out and locate the importer in whose name the Bill of Entry was filed.

106.The order itself concludes that the said Mr.Sunil Saran of M/s.Saran Enterprises was untraceable and was not found.

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107.The petitioner appears to have acted as an agent who facilitated the smuggling of the consignments of Steel Measuring Tapes and Sewing Machine Needles along with the declared consignment of 3B Glass Top Gas Stove (unbranded / unpopular brand), spare parts for three burner gas stove. Attempt was made to evade the payment of customs duty and anti-dumping duty and to have the goods cleared from the premises of the Container Station at Kattupalli Port without payment of such duty.

108.The petitioner has acted as a conduit for Shri Vishal and one Shri Sunil Saran and perhaps Shri.RameshMenon.R, the Proprietor of M/s.R.M.Enterprises. The petitioner had merely engaged services of the Customs Broker viz., M/s.Asian Shipping Agencies through one K.Faizullah, the clerk of the said Customs Broker for filing Bill of Entry No.4228874 dated 01.12.2017 for clearance of the container based on the documents that were furnished by the petitioner. Role of the Customs Broker M/s.Asian Shipping Agencies is also required to be probed and if there was any complexity, appropriate penalty has to be imposed on it.

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109.The petitioner appears to have admitted that he had undertaken to clear the goods under reference on lump sum basis including transportation charges despite knowing that the container under reference had sewing machine needles and measuring tapes concealed inside and further admitted that he undertaken this work at the behest of Shri.Vishal whose whereabouts were not known to him.

110.The petitioner also has an history of indulging in smuggling and was earlier arrested. Perhaps, for the same reason, service of the petitioner was engaged for ensuring clearance of the imported consignment while the real culprits remain elusive.

111.Whether the petitioner was indeed aware of the smuggling of 2,01,13,000 pieces of sewing machine needles of various sizes of Brand “Organ” and “Flying Tiger” and 70,200 pieces of “measuring tapes” of various sizes, were with the knowledge of the petitioner or not as a matter is required to be decided by the authorities under the Customs Act, 1962. In case there was culpability, the person is liable to be prosecuted and imposed with fine / penalty.

112.There are however no records available to infer that the

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petitioner exercised effective control over the smuggled goods viz., needles and measuring tapes which were attempted to be smuggled along the goods declared in Bill of Entry No.4228874 dated 01.12.2017. Thus, the impugned order seeking to fasten the duty liability and penalty under various provisions on the petitioner is arbitrary.

113.Show Cause Notice dated 18.06.2018 and impugned Order-in-Original No.76206/2020 dated 28.09.2020 also reveals that the petitioner has merely received a sum of Rs.5,00,000/- from one Mr.Sunil Saran of M/s.Saran Enterprises. Out of Rs.5,00,000/- received from the said Mr.Sunil Saran of M/s.Saran Enterprises, a sum of Rs.4,26,188/- was used for paying the customs duty on the declared goods viz., gas stove imported for which the Bill of Entry No.4228874 dated 01.12.2017 was filed.

114.The conclusion that the petitioner is a “beneficial owner” of the smuggled goods only because Shri. Sunil Saran of M/s. Saran Enterprises, who credited a sum of Rs.5,00,000/- into the petitioner in the petitioner's account viz., M/s. The Sea Shipping Forwarders for payment of customs duty of Rs.4,26,188/- was untraceable. Shri.Vishal,

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Shri.Manikandan and Shri.RameshMenon.R are also untraceable in the absence of any information. Shri.RameshMenon.R, Proprietor of M/s.R.M.Enterprises is the ICE holder.

115.The attempt of the Department as to fasten liability on the petitioner is only on account of the inability of the Department to locate Shri.Vishal, Shri.Manikandan, Shri.Sunil Saran of M/s.Saran Enterprises and Shri.RameshMenon.R, the Proprietor of M/s.R.M.Enterprises & I.E.Code holder whose I.E.Code was used in the Bill of Entry to smuggle the goods along with the declared goods in Bill of Entry No.4228874 dated 01.12.2017.

116.Consignment of needles and measuring tapes were attempted to be smuggled. A reading of the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017 and the impugned Order-in-Original No.76206/2020 dated 28.09.2020 indicates that the petitioner played a small role in the attempt of the importer to smuggle the consignments of needles by filing Bill of Entry using the name and Import Export Code of the importer viz., M/s.R.M.Enterprises.

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117.A further reading of the impugned Order-in-Original No.76206/2020 dated 28.09.2020 and the Show Cause Notice dated 18.06.2018 bearing Reference F.No.DRI/CZU/VIII/48/ENQ-1/INT-50/2017, indicates that the petitioner is a petty offender who facilitated the above mentioned persons who remain behind the shrouds for clearance and smuggling of undeclared goods viz., needles and measuring tapes with a view to evade customs duty and anti-dumping duty, etc,.

118.In the Bill of Lading, names of other parties would have been there. Strangely, the respondents have failed to name them and implicate them in the Show Cause Notice dated 18.06.2018. That apart, Import Export Code is not granted by the Director General of Foreign Trade as a matter of routine under Foreign Trade (Development and Regulation) Act, 1992. It is granted by the Director General of Foreign Trade based on definite information that are furnished by a person seeking such code.

119.The Department's inability to trace out the real importer named in said Bill of Entry No.4228874 dated 01.12.2017 and others involved cannot be the basis to impose duty liability and penalty on the

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petitioner. Therefore, the petitioner cannot be treated as a "beneficial owner" of the smuggled goods. The impugned Order-in-Original No.76206/2020 dated 28.09.2020 which imposes the customs duty and anti-dumping duty on the petitioner by holding that the petitioner as the "beneficial owner" is unsustainable.

120.The imposition of customs duty and penalty under Section 114-A of the Customs Act, 1962 for a sum of Rs.4,56,00,374/- and further penalty on the petitioner under Section 114-A of the Customs Act, 1962 for a sum of Rs.50 lakhs and another sum of Rs.5 lakhs on the petitioner is disproportionate to the alleged role played by the petitioner. This would require re-consideration considering the role played by the petitioner as facilitator in the smuggling of the goods. The case therefore requires to be remanded back to the respondent to pass a fresh order denovo.

121.Therefore, the impugned Order-in-Original No.76206/2020 dated 28.09.2020 imposing penalty under Section 114-A of the Customs Act, 1962 and a further penalty under Section 114-AA of the Customs Act, 1962 on the petitioner for filing of documents for clearance of the

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imported consignments on the aforesaid Bill of Entry No.4228874 dated 01.12.2017 cannot be sustained.

122.The Customs Department is not handicapped. It is open to the Customs Department to trace the location from where the payment of the amount was made and the person who made such payment to the petitioner.

123.It appears that there is either an attempt to shield the persons who were actually involved in the smuggling of the imported consignment of 2,01,13,000 pieces of sewing machine needles of various sizes of Brand “Organ” and “Flying Tiger” and 70,200 pieces of “measuring tapes” of various sizes or there is no will to trace out such a person. Therefore, the impugned order is unsustainable.

124.Further, there are no direct materials to infer that the petitioner was marketing or dealing in the smuggled goods. Therefore, the petitioner cannot be declared as the “beneficial owner” of the smuggled goods within the meaning of Section 2(3A) of the Customs Act, 1962. Unless, the petitioner himself imported the goods and exercised effective

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control over the smuggled imported goods, the petitioner cannot be called as the “beneficial owner”.

125.Therefore, while it cannot be construed that the impugned Order-in-Original No.76206/2020 dated 28.09.2020 was passed without a proper authorization from an officer senior in rank to the officer who has passed the impugned Order-in-Original No.76206/2020 dated 28.09.2020, the petitioner cannot be treated as a “beneficial owner” of the smuggled goods.

126.In view of the above discussion, the impugned Order-in-Original No.76206/2020 dated 28.09.2020 is liable to be set aside and the case is remitted back to the respondent to re-do the exercise for imposing penalty on the petitioner in proportion with the role played by the petitioner in the alleged attempt to smuggle 2,01,13,000 pieces of sewing machine needles of various sizes of Brand “Organ” and “Flying Tiger” and 70,200 pieces of “measuring tapes” of various sizes. This exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order.

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127.The Writ Petition is disposed of with the above observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

13.10.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

Principal Commissioner of Customs,
Chennai VIII,
Customs House,
No.60, Rajaji Salai,
Chennai – 600 001.

C.SARAVANAN, J.

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W.P.No.1738 of 2021

13.10.2023