



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.09.2023

+ **W.P.(C) 7292/2023 & CM APPL. 28343/2023 & CM
APPL. 44029/2023**

GALA INTERNATIONAL PVT. LTD. Petitioner

versus

**ADDITIONAL DIRECTOR GENERAL, DIRECTORATE
OF REVENUE INTELLIGENCE, DELHI & ORS.....** Respondents

AND

+ **W.P.(C) 7316/2023 & CM APPL. 28459/2023**

GANESH OVERSEAS PVT LTD. Petitioner

versus

**ADDITIONAL DIRECTOR GENERAL
AND ORS.** Respondents

AND

+ **W.P.(C) 7350/2023 & CM APPL. 28609/2023**

SHIRDI EXIM PVT LTD. Petitioner

versus

**ADDITIONAL DIRECTOR GENERAL
AND ORS.** Respondents

Advocates who appeared in these cases:

For the Petitioner : Ms. Kavita Jha & Mr. Shammi Kapoor &
Ms. Swati Agarwal, Advs.

For the Respondents : Mr. Harpreet Singh, Ms. Suhani Mathur &
Mr. Jatin Kumar Gaur, Advs.
Mr. Anurag Ojha, Adv. for R-2



Mr. Ruchir Mishra, Mr. S.K. Saxena, Mr. Mukesh Kr. Tiwari, Ms. Reba Jena Mishra & Mr. Vipul Pathak, Advs. for UOI.
Ms. Reema Khorana & Mr. Vikash Kumar, Advs. for R-4.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed their respective petitions impugning a common show cause notice dated 30.04.2009 (hereafter '**the impugned show cause notice**') issued by respondent no.1 (hereafter '**the ADG, DRI**'). The impugned show cause notice has not been adjudicated as yet. The petitioners also impugn the common letters dated 20.01.2023 and 06.03.2023 (hereafter '**the impugned letters**') issued by respondent no.2 [hereafter '**the Commissioner (Adjudication)**'] calling upon the petitioners to appear for hearing in respect of the impugned show cause notice.

2. It is contended by the petitioners that the adjudication of the impugned show cause notice is barred by limitation as the same has not been adjudicated for almost fourteen years. The petitioners have also challenged the constitutional validity of Section 97 of the Finance Act, 2022 (hereafter '**the Finance Act**') as violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The petitioners claim



that the said provision authorising an officer of the Directorate of Revenue Intelligence (hereafter ‘**the DRI**’) to act as a proper officer under the Customs Act, 1962 (hereafter ‘**the Customs Act**’) cannot have any retrospective operation. The petitioners also claim that the assessee whose cases were decided prior to enactment of the Finance Act would be granted the benefit of the decision of the Supreme Court in *M/s Canon India Pvt. Ltd. v. Commissioner of Customs*¹ but those assessee such as the petitioners, whose cases have not been decided would be covered under the retrospective amendment as introduced by the Finance Act.

3. However, Ms. Jha, learned counsel appearing for the petitioners has confined the challenge in the present petitions to the impugned show cause notice and the impugned letters on the ground of delay while reserving the rights to challenge the constitutional validity of Section 97 of the Finance Act, 2022 at a later stage, if necessary.

4. Mr. Harpreet Singh, learned counsel appearing for the respondents had countered the submission that the delay in adjudication of the impugned show cause notice was fatal to the proceedings. He contended that the impugned show cause notice involved complicated issues and it was not practicable to complete the adjudication within the period of one year as contemplated under Section 28(9) of the Customs Act. He contended that Section 28(9) of the Customs Act, as in force prior to 29.03.2018, required the

¹ 2021 SCC OnLine SC 200



concerned authority to determine the amount of duty or interest within a period of six months or one year as the case may be, if it is possible to do so. He submitted that the expression ‘possible’ as used in Section 28(9) of the Customs Act must be interpreted liberally. Thus, in cases where the adjudication of a show cause notice requires additional time, the provisions of Section 28(9) of the Customs Act would not preclude the same. Next, he contended that the issue whether the officers of the DRI had the jurisdiction to issue the show cause notice or adjudicate the same was being debated before the High Courts’ as well as before the Supreme Court. He submitted that in the given circumstances, the impugned show cause notice had been placed in the Call Book on 21.07.2016 and therefore was not adjudicated. The said notice was retrieved from the Call Book on 20.01.2023 and therefore, the resumption of adjudication proceedings could not be faulted.

5. In view of the rival contentions, the limited question to be addressed is whether the time period for adjudicating the show cause notices in terms of Section 28(9) of the Customs Act, as in force prior to 29.03.2018, has lapsed. And, whether it is permissible for the Commissioner (Adjudicating) to now resume adjudication of the impugned show cause notice.

Factual Context

6. During the years 2000 to 2005, the petitioners were engaged in the business of exporting readymade garments and leather goods to



buyers in Russia under the Rupee-Rouble Scheme, as well as to other overseas buyers under the Drawback Scheme. The impugned show cause notice indicates that the officers of the Delhi Zonal Unit of the DRI received intelligence that certain Indian companies had made fraudulent exports of readymade garments, leather goods and fabrics to certain Russian entities with the sole intent to avail various export incentives including drawback under the Duty Entitled Pass Book Scheme (hereafter '**the DEPB**'). It was alleged that the Russian companies had not imported any goods from the exporters in question and the same were diverted to other countries. The concerned officers also claimed that the intelligence received also suggested that the Indian exporters were inflating their invoices to avail higher amount of export incentives. According to them, the petitioners as well as sole proprietorship concern of Sh. Vivek Wadhwa (M/s Bright International) were involved in the aforesaid activities.

7. In view of the intelligence received, the concerned officers of the DRI conducted searches in various premises on 27.10.2006 in the belief that the goods liable for confiscation and / or any documents or things relevant to any proceedings under the Customs Act were secreted at those premises. The office premises of the petitioners as well as the residential premises of Sh. V.P. Aggarwal, one of the Directors of the petitioners' companies, were amongst the premises searched on 27.10.2006.



8. It is stated that, thereafter, the investigation continued and summons were issued under Section 108 of the Customs Act to various persons including Sh. Sudhir Gulati and Sh. Vishnu Prasad Aggarwal. It is stated that Sh. Sudhir Gulati was the Director of M/s Gala International Pvt. Ltd. and M/s Ganesh Overseas Pvt. Ltd. [Petitioners in W.P.(C) No.7292/2023 and W.P.(C) No.7316/2023] and Sh. Vishnu Prasad Aggarwal, at the material time, was the Director of the petitioner companies.

9. It is stated in the impugned show cause notice that during the investigation proceedings, Sh. V.P. Aggarwal voluntarily deposited ₹35,00,000/- (₹15,00,000/- in respect of M/s Gala International Pvt. Ltd.; ₹10,00,000/- in respect of M/s Shirdi Exim Pvt. Ltd.; and, ₹10,00,000/- in respect of M/s Ganesh Overseas Pvt. Ltd.) towards the duty drawback on exports to Russian companies under the Rupee-Rouble Scheme and / or DEPB Scheme.

10. Thereafter on 30.04.2009, the ADG, DRI issued the impugned show cause notice proposing to raise a demand of duty along with interest, penalty and fine in lieu of confiscation of goods.

11. The ADG, DRI and the Commissioner (Adjudication) filed a counter affidavit as well as the additional affidavit in W.P.(C) No.7292/2023. Although, the ADG, DRI and the Commissioner (Adjudication) have not filed the counter affidavit in other two petitions [W.P.(C) Nos.7316/2023 & 7350/2023], however, the learned counsel appearing for the ADG, DRI and the Commissioner



(Adjudication) submitted that the counter affidavit filed in W.P.(C) No.7292/2023 may be read in response to the other two petitions as well.

12. In W.P.(C) No.7292/2023, the petitioner also filed an application placing on record the list of dates and events. It is relevant to refer to the proceedings conducted by the respondents after the issuance of the impugned show cause notice as set out in the affidavits filed by the ADG, DRI and the Commissioner (Adjudication), as well as the list of dates as furnished by the petitioners.

Period from 30.04.2009 to 21.07.2016

13. Admittedly, the impugned show cause notice was received by the petitioners and they requested for copies of the relied upon documents (hereafter '**the RUDs**'), as referred in Annexure-B to the impugned show cause notice. They specifically demanded the authenticated copy of the entire record seized and also sought cross-examination of the First Secretary (Trade Embassy of India) whose letters were relied upon in the impugned show cause notice. There is no serious dispute that the said documents were not immediately provided to the petitioners. The petitioners claim that they continued to send letters with effect from 02.06.2009 seeking copies of the RUDs to enable them to respond to the impugned show cause notice but were not provided copies of the RUDs' as sought by them. Even according to the respondents, no further proceedings were conducted at the material time.



14. The respondents state that on 09.08.2010, the Commissioner of Central Excise (Adjudication)-I was appointed as the common adjudicating authority for the said case by an Order F.No.437/39/2010-Cus-IV issued by the Central Board of Excise and Customs (hereafter '**the CBEC**'). Admittedly, for almost sixteen months, the petitioners were neither provided the documents as sought by them nor any hearings were held. In the counter affidavit, the ADG, DRI and the Commissioner (Adjudication) accept that on 13.09.2010, the petitioners had requested the Commissioner of Central Excise (Adjudication)-I to arrange for the supply of the RUDs.

15. The respondents state that on 28.09.2010, a notice fixing the personal hearing on 07.10.2010 was issued to the petitioners. It is material to note that even at that stage the RUDs as sought by the petitioners were not provided to them. The counter affidavit indicates that on 04.10.2010, a letter was issued requesting the ADG, DRI to supply the copies of the RUDs to the petitioners.

16. The respondents state that thereafter, on 12.10.2010, notices were issued to some other noticees (M/s Gomati International and M/s Mahindra Traders) to appear before the Commissioner (Adjudication). However, it was conceded that no notices were issued to the petitioners. It is stated that, thereafter, a hearing was fixed on 20.10.2010. The advocate of M/s Gala International Pvt. Ltd. had appeared before the Adjudicating Authority on the said date but no hearing could take place as the Adjudicating Authority was on leave.



17. The petitioners claim that on 10.12.2010, the Commissioner (Adjudication) had directed the ADG, DRI to supply documents to the petitioners. However, despite the same the ADG, DRI failed to provide the same. The respondents state that on 02.12.2010, the Commissioner (Adjudication) had sent a letter to the ADG, DRI with a request to supply the RUDs to the noticees.

18. Apparently, some RUDs were provided to M/s Gala International Pvt. Ltd. but the complete RUDs were not provided to it. Accordingly, M/s Gala International Pvt. Ltd. sent a letter dated 20.12.2010 requesting for the balance RUDs as well as legible copies of some of the RUDs provided to it. This is also acknowledged by the respondents in their counter affidavit.

19. According to the respondents, during the period 02.12.2010 to 23.03.2011, the Commissioner (Adjudication) sent letters to the ADG, DRI for the supply of the RUDs and one set of the RUDs was forwarded to the Commissioner (Adjudication) on 24.03.2011. However, the list of dates and events as relied upon by the parties, does not indicate that the said documents were provided to the petitioners.

20. The petitioners sent reminder letters dated 01.05.2011 and 14.05.2011 requesting for the RUDs. It is apparent that the RUDs were not provided to the petitioners. This is evident from the list of dates and events provided by the respondents, which indicate that on 24.02.2012, the Commissioner (Adjudication) had informed the Chief



Commissioner of Customs, Delhi that despite several reminders, the DRI had not provided the RUDs as requested by the petitioners. The Commissioner (Adjudication) called upon the Chief Commissioner to take up the matter with the Director General, DRI.

21. The petitioners state that they continued to write letters from 15.12.2010 to 24.07.2013 requesting for copies of the RUDs. It is clear from the counter affidavit that the RUDs as sought for by the petitioners were not provided to them. The counter affidavit indicates that on 23.08.2013, the Commissioner (Adjudication) had made a further request to the Chief Commissioner to take up the matter with the Director General, DRI regarding non furnishing of RUDs to the petitioners. The petitioners claim that by an order dated 26.09.2013, the Commissioner (Adjudication) directed that the documents be collected within a week from the ADG, DRI and pursuant to the said order, some documents were provided to the petitioners, however, the complete record as sought for was still not provided to the petitioners.

22. On 26.11.2013, the ADG, DRI issued a letter to the petitioners informing the petitioners that records were required to be segregated and the petitioners could come to the office and segregate the same. The letter dated 26.11.2013 is not disputed. It is thus clear that the records for the case were not properly segregated at that stage. It is obvious that the concerned officers had not taken any steps to do so and therefore, called upon the petitioners to come to the office and segregate the records.



23. It is the petitioners' case that its representatives reached the office of the ADG, DRI on 02.12.2013 and found that documents of various companies were mixed up and were required to be segregated. It is contended on behalf of the petitioners that the records were in such a state that it was not possible to segregate or sort out the records and documents in a single visit. It is also the petitioners' case that the state of the records indicated that the ADG, DRI could not have looked into the complete documents for issuing the impugned show cause notice.

24. Mr. Harpreet Singh, learned counsel appearing for the respondents is unable to dispute that the records were mixed up and required to be segregated. However, he contends that the records of the petitioner companies were not mixed up with the records of other companies and in fact, it is the records of the petitioner companies that had got mixed up. However, the said contention is without any basis. The respondents were given an opportunity to traverse the said allegation. The letter calling upon the petitioners to segregate the documents is not disputed and Mr. Harpreet Singh fairly states that the letter dated 26.11.2013 was issued by the concerned officers of the respondents. In the additional affidavit filed by the respondents, the respondents had attempted to obfuscate the issue by stating that there is no supportive document to show that the representatives of the petitioners had visited the DRI office for segregation of the documents during the period 02.12.2013 to 06.12.2013. The respondents have not categorically denied that the representatives of the petitioners had



visited the office of the DRI on 02.12.2013 and had attempted to segregate the documents as claimed.

25. The list of dates and events as mentioned by the respondents in their counter affidavit indicate that certain communications were exchanged during the period continuing up to 08.05.2015. The petitioners continued to make request for the RUDs, some of which were supplied. They also filed their interim reply to the impugned show cause notice. The respondents also state that in October, 2013, a personal hearing was afforded by the Commissioner (Adjudication) to various noticees. Apart from mentioning that certain communications were exchanged, nothing else took place during the said period. Thus, for all intents and purposes, the proceedings in relation to the impugned show cause notice did not progress.

26. The respondents state that on 08.05.2015, the office of the Commissioner of Central Excise (Adjudication)-I was abolished pursuant to cadre restructuring and the files were returned to the Jurisdictional Commissionerate. Thereafter, for a period of one year, that is, till 04.05.2016, the respondents did not take up the proceedings. On 04.05.2016, the case of the petitioners was delegated to the ADJ, DRI for adjudication by the Board. However, no proceedings took place thereafter as well.

27. It is clear from the above that during the prolonged period of 03.04.2009 to 21.07.2016, no effective steps were taken for adjudication of the impugned show cause notice. It is not disputed



that during this period there was no impediment for the concerned officers to proceed with the adjudication. The fact that various communications were sent by the Adjudicating Authority to the concerned officers of the DRI for supply of the RUDs is clearly no ground to justify that it was not possible to adjudicate the impugned show cause notice during the said period. In view of the above, we are unable to accept that it was not feasible or possible for the Adjudicating Authority to adjudicate the impugned show cause notice till 06.02.2017.

Period from 06.02.2017 to 06.03.2023

28. The respondents state that by the Instruction dated 29.06.2016, the Board directed the transfer of the DRI cases where the show cause notices had been issued prior to 06.07.2011 to the Call Book and accordingly, the adjudication of the impugned show cause notice was transferred to the Call Book till 06.02.2017.

29. It is affirmed by the respondents that the impugned show cause notice was retrieved from the Call Book on 20.01.2023 and on the same date a notice was issued to the petitioners fixing the date of hearing relating to the impugned show cause notice. In response to the said notice, the petitioners once again submitted a letter requesting that the RUDs be provided to them. By a subsequent letter dated 06.03.2023, the concerned officer had scheduled the personal hearing on 20.03.2023.



30. It is contended on behalf of Mr. Singh that in *Commissioner of Customs v. Sayed Ali & Anr.*², the Supreme Court held that Custom Preventive Officers were not the proper officers to issue the show cause notice under Section 28 of the Customs Act. He submitted that in view of the said decision the adjudication of the impugned show cause notice could not proceed after the decision was rendered. He submitted that the decision of the Supreme Court necessitated an amendment to Section 28(11) of the Customs Act and by a Notification No.44/2011-Customs (N.T.) dated 06.07.2011, the Board assigned the functions of a proper officer to the officers of DGDRI, DGCEI and Custom (Preventive). The Customs Act was amended retrospectively and thus, the impugned show cause notice could not be adjudicated prior to the aforesaid amendment to the Customs Act. He states that, thereafter, this Court in *Mangali Implex & Ors. v. Union of India & Ors.*³ had held that the department could not seek to rely on the amended Section 28(11) of the Customs Act as authorising the officers of Customs, DRI/DGCEI to exercise powers in relation to non levy, short levy or erroneous refund for the period pertaining prior to 08.04.2011.

31. It is alleged that the impugned show cause notice could not be adjudicated after the decision in the case of *Mangali Implex & Ors. v. Union of India*³. However, the said decision was subsequently stayed by the Supreme Court. He submitted that in the meanwhile the Board

² (2011) 3 SCC 537

³ 2016 (335) ELT 605



issued instructions on 21.07.2016 for placing the show cause notices issued prior to 2011 in the Call Book and accordingly, on 21.07.2016, the impugned show cause notice was placed in the Call Book.

32. It is stated that the impugned show cause notice was retrieved from the Call Book on 06.02.2017 in view of the instructions dated 06.01.2017. However, the Board opined that it was not feasible to adjudicate the notices issued prior to 08.07.2011 and therefore the said impugned show cause notice was not adjudicated. It is stated that it was re-entered in the Call Book and was retrieved from the Call Book on 23.01.2023.

33. Admittedly, the petitioners were not informed that the impugned show cause notice was put in the Call Book.

34. In the given facts, we are inclined to accept the petitioners' contention that the present petitions are covered by the ratio of the decision of this Court in *Nanu Ram Goyal v. Commissioner of CGST and Central Excise, Delhi & Ors.*⁴ and that deferring the adjudication of the impugned show cause notice on account of the Call Book procedure was not justified. However, without going into the question as to the validity of the action of the respondents in placing the impugned show cause notice in a Call Book, it is also apparent that the impugned show cause notice was not adjudicated for a period of over

⁴ Neutral Citation: 2023:DHC:2596-DB



eight years (30.04.2009 to 21.07.2016) even though there was no impediment in adjudicating the same.

35. Section 28(9) of the Customs Act, as in force at the material time, reads as under:

“28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded.

xxxx xxxx xxxx xxxx

(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, [where it is possible to do so], in respect of case falling under clause (a) of sub- section (1);*

(b) *within one year from the date of notice, [where it is possible to do so] in respect of cases falling under sub-section (4):”*

36. It is at once clear that the period within which the impugned show cause notice was required to be adjudicated has long since elapsed. The controversy raised is squarely covered by the recent decision of this Court in ***Swatch Group India Pvt. Ltd. & Ors. v. Union of India & Ors.***⁵. In view of the above, it is no longer open for the respondents to proceed with the adjudication of the impugned show cause notice. Accordingly, the impugned letters recommending the adjudication proceedings are set aside. Since the period for adjudication of the impugned show cause notice has elapsed, the same cannot be adjudicated.

⁵ Neutral Citation: 2023:DHC:5764-DB



37. The petitions are allowed in the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 26, 2023
'gsr'