



2024:DHC:9889-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 19th December, 2024

+ **W.P.(C) 11207/2023 & CM APPL. 43666/2023**
SHRI BALAJI ENTERPRISESPetitioner

Through: Mr. Shubhankar Jha, Advocate (M:
9999233551)

versus

ADDITIONAL DIRECTOR GENERAL NEW DELHI & ORS.

.....Respondents

Through: Mr. Harpreet Singh, Sr. Standing
Counsel along with Ms. Sonakshi
Monga, Mr. Tanishq Mehta, Ms.
Gusheen Kaur, Ms. Chayya Khosla
and Mr. Sanjam Chaba, Advocates.
Ms. Nidhi Banga, Senior Panel
Counsel with Mr. Nishant Kumar,
Advocate for Respondent No.4.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed under Article 226/227 of the Constitution of India seeking issuance of writ for quashing of show-cause notice *F.No. 23/66/2013-DZU* (hereinafter, “*impugned show cause notice/ SCN*”) dated 17th April. 2015.
3. The case of the Petitioner is that they were engaged in the import and trade of car accessories during the period 2010 to 2013. It is submitted that certain investigations was initiated by the Directorate of Revenue Intelligence (DRI) and the impugned show cause notice was issued demanding duty along



with interest and imposition of penalty and fine in lieu of confiscation of goods. The relevant portion of the show cause notice setting out the amount sought to be recovered against the Petitioner is extracted below:

SI No.	Name of the Importer	No. of Bills of Entry	Declared Assessable value (In Rs.)	Re-determined Assessable value (In Rs.)	Re-determined Value for CVD, wherever RSP is applicable (In Rs.)	Total Duty payable (In Rs.)	Remarks
1	M/s Shri Balaji Enterprises, New Delhi (IEC-0508070473)	9	5702926	3957.7653	49856810	13216623	Annexure-1 ICD, Tughakabad, New Delhi
		1	629397	1131276	1454264	156769	Annexure-1-ICD, Parparganj, New Delhi
	Total	10	6332323	40708928	51311073	13373392	

4. In addition, interest and penalty was also sought to be imposed on the Petitioner.

5 As per the above amounts which are mentioned in the impugned show cause notice, the value of the goods declared was approximately Rs. 63,32,323/-, however, they were re-determined as Rs. 4,07,08,928/-. Thus, the total duty payable was determined at Rs. 1,33,73,392/- for which the show-cause notice was issued.

6. This show-cause notice unfortunately got held up in a complete quagmire between the Customs Department and the DRI. As per the UOI, for



various reasons, including a decision passed by a Coordinate Bench of this Court in *Mangli Impex Ltd. v. Union of India & Ors.* [2016:DHC:3435-DB], the show cause notice was put in the callbook on 21st July, 2016. It was thereafter retrieved from the callbook on 2nd February, 2017. The first hearing on the said notice was held on 15th March, 2017, and the second hearing was held on 10th October, 2017.

7. Again, the notice was put in the callbook on 31st May, 2021 and was finally retrieved and the third hearing was held on 11th July and 18th July, 2023. While the fourth hearing on the show cause notice was fixed on 16th and 23rd August, 2023, the present petition was filed.

8. The case of the Petitioner is that under Section 28(9) of the Customs Act, 1962 (hereinafter, ‘1962 Act’) there is a specific time-period fixed for the purpose of adjudication of show-cause notices and determination of amount of duty or interest. The period specified in the said provision is six months and a maximum period of one year. Section 28(9) of the Act reads as under:

Section 28(9) of the Customs Act, as in force prior to 29th March 2018 read as under:

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

xxx

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):”



Section 28(9) and 9(A) of the Customs Act, 1962 pursuant to amendment reads as under:

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

xxx

xxx

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, [xxx], in respect of case falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, [xxx] 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 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.]

[(9A) Notwithstanding anything contained in sub-section (9), where the proper officer is unable to determine the amount of duty or interest under sub-section (8) for the reason that—

(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or

b) an interim order of stay has been issued by the Appellate Tribunal or the High Court or the Supreme Court; or

(c) the Board has, in a similar matter, issued specific direction or order to keep such matter pending; or

(d) the Settlement Commission has admitted an application made by the person concerned, the proper officer shall inform the person concerned the reason for non-determination of the amount of duty or interest under sub-section (8) and in such case, the time specified in subsection



(9) shall apply not from the date of notice, but from the date when such reason ceases to exist.] ...”

9. The case of the Petitioner is that substantial delay of almost eight years in adjudication of the show-cause notice cannot be justified by relying upon the phrase “*where it is possible to do so*” as contained in Section 28(9) of the 1962 Act. Ld. Counsel for the Petitioner relies upon a number of decisions passed by this Court where the aforesaid provision has been interpreted including the decision in ***Swatch Group India Pvt. Ltd. v. Union of India & Ors. 2023 SCC OnLine Del 4938***, and ***Gala International Pvt. Ltd. v. Additional Director General, Directorate of Revenue Intelligence, Delhi and Ors, 2023 SCC OnLine Del 6073***.

10. Ld. Counsel for the Petitioner submits that this phrase - “*where it is possible to do so*” has been omitted after the amendment and post the omission, the window which existed for delay in adjudication after the issuance of show cause notice does not exist.

11. Mr. Harpreet Singh, Sr. Standing Counsel for the Department submits that the delay in the adjudication was initially due to the decision in ***Mangli Impex Ltd.(supra)***, when the matter was put in the call book and thereafter, due to some issues between the DRI and the Customs Department as to who would be the proper officer to adjudicate the show-cause notice. These were genuine difficulties which existed. Thus, there was complete justification and an impossibility for the Department to adjudicate.

12. Ld. Sr. Standing Counsel further relied upon the decision of the Supreme Court in ***Commissioner, GST and Central Excise, Commissionerate, IT and Ors. v. M/s Swati Menthol and Allied Chemicals Ltd. and Anr. 2023 SCC OnLine SC 1566*** which involved delay in the



adjudication of two show cause notices relating to send back credit. The said decision has also been considered by a Coordinate Bench of this Court in *M/S Vos Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr.*, 2024 SCC OnLine Del 8756.

13. The Court has considered the matter. The issue raised in the petition is no longer res-integra. Section 28(9) of the 1962 Act unamended and amended have been considered in detail by coordinate Benches of this Court in *Swatch Group India Pvt. Ltd.(supra)* as also *M/S Vos Technologies India (supra)*. All the issues which have been raised by the Department now stand adjudicated. The relevant observations in the said judgments are set out below:

Swatch Group India Pvt. Ltd. v. Union of India & Ors. 2023 SCC OnLine Del 4938

“43. We have perused the documents and letters produced by the Department as referred above. It is seen that for a period of almost three years, various letters were exchanged. The matter was fixed for personal hearing on more than five occasions. No reason has been provided as to why the hearings were not concluded on the said dates and the duties payable, if any, were not determined.

44. We have also perused the instruction dated 17.03.2021 issued to the Principal Additional Director General, Directorate General of Intelligence (DRI). In terms thereof, a decision was taken by the Board to keep the show cause notices referred therein pending. It is significant to note that the instruction categorically mentions about a show cause notice dated 19.03.2019 and that in terms of the judgment passed by the Apex Court in *Canon India Private Limited v. Commissioner of Customs (supra)*, the proceedings in the case have become invalid. It was mentioned that since the notice was dated 19.03.2019, it would get barred by limitation



on 18.03.2021 and be kept pending till the decisions is taken by the Board. The said instructions appear to have been issued to extend the period in terms of Section 28(9A) of the Customs Act. In terms thereof, if the proper officer is unable to determine the amount of the duty for the reason of a specific direction being issued by the Board for keeping the matter pending, then the time specified in Sub-section (9) shall apply not from the date of notice but from the date when such reason ceased to exist.

45. It is the case of the Revenue that the amended provision of Section 28 of the Customs Act is not applicable in the present case for the reason that the impugned SCN was issued prior to the Finance Act, 2018, coming into force. Therefore, in our opinion the benefit of extension of limitation as provided under Section 28(9A) of the Customs Act would be applicable only in those cases where the show cause notices have been issued after the enactment of the Finance Act, 2018 since even as per the Revenue the notice issued prior to coming into effect of Finance Act, 2018 would be governed by the unamended provisions.

46. In our view, there is no material to show that it was not possible for the proper Officer to determine the amount of duty within the prescribed period. The mention of the words, "where it is not possible to do so", in our opinion, does not enable the Department to defer the determination of the notices for an indeterminate period of time. The legislature in its wisdom has provided a specific period for the authority to discharge its functions. The indifference of the concerned officer to complete the adjudication within the time period as mandated, cannot be condoned to the detriment of the assessee. Such indifference is not only detrimental to the interest of the taxpayer but also to the exchequer.

47. In the absence of any ground that it was not possible for the officer to determine the amount of duty



within the prescribed period, the impugned SCN has lapsed and cannot be adjudicated.”

**Vos Technologies India Pvt. Ltd. v. The Principal Additional Director
General & Anr., 2024 SCC OnLine Del 8756**

“85. The position which thus emerges from the aforesaid discussion and a review of the legal precedents is that the respondents are bound and obliged in law to endeavour to conclude adjudication with due expedition. Matters which have the potential of casting financial liabilities or penal consequences cannot be kept pending for years and decades together. A statute enabling an authority to conclude proceedings within a stipulated period of time “where it is possible to do so” cannot be countenanced as a license to keep matters unresolved for years. The flexibility which the statute confers is not liable to be construed as sanctioning lethargy or indolence. Ultimately it is incumbent upon the authority to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable speed and dispatch. A statutory authority when faced with such a challenge would be obligated to prove that it was either impracticable to proceed or it was constricted by factors beyond its control which prevented it from moving with reasonable expedition. This principle would apply equally to cases falling either under the Customs Act, the 1994 Act or the CGST Act.”

14. The record also shows that there are several other orders/judgments which have been passed following the same reasoning and rationale including the following decisions:

- ***Nanu Ram Goyal v. Commissioner of CGST and Central Excise, Delhi, [(2023) 6 Centax 148 (Del.)]***



- *Gala International Pvt. Ltd. v. Additional Director General, Directorate of Revenue Intelligence, Delhi and Ors, 2023 SCC OnLine Del 6073*
- *Parle International Limited v. Union of India & Ors. [MANUIMHI196S12020]*
- *Union of India vs. ATA Freight Line (I) Pvt. Ltd. [Supreme Court Order dated 10.02.2023- SLP (Civil) Diary No. 828/2023];*
- *Sushitex Exports India Ltd. And Ors. Vs. The Union of India and Anr. [2022-TIOL-123-HC-MUM-CUS]*
- *Sidhi Vinayak Syntex Pvt. Ltd. v. Union of India [2017 (352) E.L.T. 455 (Guj.)]*
- *Shree Shakambari Silk Mills vs. Union of India [2018 (13) G.S.T.L. 279 (Guj.)]*

In all of these cases, the Court has examined the facts and has also considered as to whether the placing of a matter in the callbook would justify non-adjudication of the notice within a reasonable period. The opinion has been unanimous of the Coordinate Benches of this Court, that placing of the matter on the call book and taking it up after several years would not be permissible.

15. Coming to the facts of this case, the Show Cause Notice dates back to 17th April, 2015. The counter affidavit claims that there was certain re-organisation within the Customs Department and on 12th January, 2016, a Common Adjudication Authority was appointed. Even if the date is reckoned from 12th January, 2016 when the adjudication authority was appointed, the **Mangli Impex** decision came only on 3rd May, 2016 and the matter has been placed in the callbook on 21st July, 2016. A few months later, it was retrieved on 2nd February, 2017 but again from 2017 till 2023, there can be no reason



for not adjudicating the show-cause notice.

16. Four hearing notices have been given during this period. Despite the reply having been filed to the show-cause notice, there has been no adjudication. In the opinion of this Court, there existed no reason for the non-adjudication of the show-cause notice and therefore this Court is of the opinion that the facts do not reveal any glaring impossibility for the Customs Department to deal with the show-cause notice.

17. Thus, following the decisions of the Coordinate Benches, the impugned show-cause notice dated 17th April, 2015 deserves to be quashed and is set aside.

18. Ordered accordingly.

19. The petition is allowed and disposed of in the aforesaid terms. Pending applications, if any, are also disposed of accordingly.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 19, 2024/bsr/bh/pr