



\$~86

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

Date of decision: 22nd May, 2025

+ **W.P.(C) 6222/2025 & CM APPLs. 28435/2025, 28436/2025**
M/S R.S. OVERSEAS

.....Petitioner

Through: Dr. G. K. Sarkar, Malabika Sarkar,
Prashant Srivastava, Advocates.

versus

COMMISSIONER OF CUSTOMS, ICD, TKDRespondent

Through: Mr. Gibran Naushad, Sr. Standing
Counsel with Mr. Harsh Singhal & Mr.
Suraj Shekhar Singh, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Article 226 of the Constitution of India, *inter alia*, challenging the impugned Order-in-Original dated 31st January, 2025 (hereinafter “*impugned order*”), which arises out of the Show Cause Notice dated 14th January, 2021 (hereinafter “*the SCN*”).
3. The submissions raised by the Petitioner is twofold:
 - i) Firstly, that the SCN had been issued after five years and is hence not maintainable;
 - ii) Secondly, that the adjudication has been delayed for a period of five years.
4. Mr. Sarkar, Id. Counsel for the Petitioner relies upon the decision in **W.P. (C) 4831/2021** titled **M/s. VOS Technologies India Pvt. Ltd. vs. The**



Principal Additional Director General & Anr., to argue that the delayed adjudication ought to result in the quashing of the SCN itself.

5. Mr. Naushad, Id. Senior Standing Counsel for the Department, on the other hand submits that in this case, the Petitioner had sought adjournments repeatedly and thereafter, the Adjudicating Authority has passed the impugned order. He further submits that the question of delayed adjudication has already been considered by this Court in ***Rajbir Singh v. Union of India, 2025:DHC:2257-DB***, where the Court clearly observed that there is no period of limitation which has been prescribed under Rule 16 of the Customs Central Excise Duties and Service Tax Drawback Rules, 1995 (hereinafter “*Duty Drawback Rules*”).

6. The Court has considered the matter. At the outset, the Court notices that the aspect of delay would not apply in the present case as, after issuance of the SCN, repeated hearings have been given by the Adjudicating Authority to the parties. The impugned order records the number of hearings which have been granted as under:



Name of the Noticee	Date of P.H.	Person Causing Appearance	Proceedings
M/s R.S.Overseas,	15.12.2022	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.
	16.01.2023	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M/s Lex Malgan vide letter dated 16.01.2023 requested to provide copy of statement recorded on 06.10.2016.
	24.04.2023	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M/s Lex Malgan vide letter dated 24.04.2023 requested to provide copy of statement recorded on 06.10.2016.
	25.05.2023	No One attended the Personal Hearing	The Noticee vide letter dated 25.05.2023 has requested to provide relied upon documents.
	20.09.2023	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M/s Lex Malgan vide letter dated 20.09.2023 requested to provide copy of statement recorded on 06.10.2016.
	21.10.2024	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M/s Lex Malgan vide letter dated 23.10.2024 requested to provide copy of statement recorded on 06.10.2016.
	08.11.2024	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply.



	17.12.2024	No One attended the Personal Hearing	The Noticee vide mail dated 17.12.2024 requested to provide copy of statement recorded on 06.10.2016.
	13.01.2025	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply.
Shri Ankit Kishan Jalan, Proprietor of M s R S Overseas	15.12.2022	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply.
	16.01.2023	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M s Lex Malgan vide letter dated 16.01.2023 requested to provide copy of statement recorded on 06.10.2016.
	24.04.2023	No One attended the Personal Hearing.	The authorized representative of the Noticee, advocate M s Lex Malgan vide letter dated 24.04.2023 requested to provide copy of statement recorded on 06.10.2016.
	25.05.2023	No One attended the Personal Hearing.	The Noticee vide letter dated 25.05.2023 has requested to provide relied upon documents.
	20.09.2023	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M s Lex Malgan vide letter dated 20.09.2023 requested to provide copy of statement recorded on 06.10.2016.
	21.10.2024	No One attended the Personal Hearing	The authorized representative of the Noticee, advocate M s Lex Malgan vide letter dated 23.10.2024 requested to provide copy of statement recorded on 06.10.2016.
	08.11.2024	No One attended the Personal Hearing.	The Noticee neither attended the personal hearing nor submitted any reply.
	17.12.2024	No One attended the Personal Hearing	The Noticee vide mail dated 17.12.2024 has requested to provide copy of statement recorded on 06.10.2016.
	13.01.2025	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply.
M s Vittanath Enterprises	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.
Shri Aashish Jalan, Proprietor of M s Vittanath Enterprises	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply.
Shri Pradeep Kumar Sharma, Director of M s Splendid Sunlight	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023,	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.



Limited	20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024		
Sh. Deepak Sharma, Director of M/s Winsource Inc Ltd	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The Noticee neither attended the personal hearing nor submitted any reply
M/s Purshotam Enterprises	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.
Shri Vicky Chaddha Proprietor of M/s Purshotam Enterprises	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.
Shri Manish Jain	15.12.2022, 16.01.2023, 24.04.2023, 25.05.2023, 20.09.2023, 21.10.2024, 08.11.2024, 17.12.2024	No One attended the Personal Hearing	The letter sent for Personal Hearing was returned back by postal authority.

7. A perusal of the above dates of hearings which were afforded to the Petitioner would show that beginning from 15th December, 2022 till 13th January, 2025, repeated hearings have been held by the Adjudicating Authority. On most of the occasions, the Petitioner did not appear before the Adjudicating Authority, however, repeated letters were sent seeking relied upon documents etc. Further, despite the number of hearings extended, the Petitioner did not choose to file the reply. Under these circumstances, delay



cannot be attributed to the Department in this case.

8. Further, the Court in **Rajbir Singh (supra)** had considered the Rule 16 of the Duty Drawback Rules and the argument of limitation as raised by the Petitioner. The Court had held that there is no specific period of limitation prescribed under Rule 16 of the Duty Drawback Rules. The relevant portion of the said order reads as under:

“14. The Court has considered the matter and heard the Counsels for the parties. Firstly, on the aspect of limitation, the relevant rule, i.e., Rule 16 of the Duty Drawback Rules, 1995 based on which the proceedings against the Petitioner has been initiated, reads as under:

“RULE 16 Repayment of erroneous or excess payment of. drawback and interest. - Where an amount of drawback and interest, if any, has been paid erroneously or the amount so paid is in excess of what the claimant is entitled to, the claimant shall, on demand by a proper officer of Customs repay the amount so paid erroneously or in excess, as the case may be, and where the claimant fails to repay the amount it shall be recovered in the manner laid down in sub-section (1) of section 142 of the Customs Act, 1962 (52 of 1962).”

15. A perusal of the above provision reveals that there is no specific period of limitation prescribed for proceeding against availing of excess duty drawback.”

9. Further, in **Rajbir Singh (supra)** the Court had followed the decision in **Commissioner of Customs v. Sans Frontiers, 2023 SCC OnLine Del 7913**, where in a similar fact situation, the Court had relegated the party to seek the appellate remedy. The relevant portion of the said judgment is set out below:



“22. However, it is relevant to note that this Court vide order dated 10th March, 2025 in **W.P.(C) 3012/2025** has, in fact, relegated the co-noticee to avail the statutory appellate remedy. Further, the Coordinate Bench of this Court in **Commr. of Customs v. Sans Frontiers**, (2023 SCC OnLine Del 7913) where a similar issue of limitation under Rule 16 of the Duty Drawback Rules was raised, the Court had relegated the case on the ground that there was an alternate remedy that remained un-exhausted.

“76. The other issue, which is raised by the firm, is that the initial SCN dated August 24, 2015, which held the firm ineligible for the drawback, was issued belatedly, and was thus time-barred.

77. The learned counsel for the firm contended that the drawback in the present case relates to the years 2008 to 2014, and therefore, any demand in the year 2015, would be hit by limitation.

78. He relies upon the following judgments : *Pratibha Syntex Ltd. v. Union of India* [(2014) 27 GSTR 403 (Guj); 2012 SCC OnLine Guj 6147.], *Padmini Exports v. Union of India* [2012 SCC OnLine Guj 6191.], *State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd.* [(2007) 10 VST 180 (SC); 2007 SCC OnLine SC 1254.], *Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd.* [(2000) 5 SCC 299.] and *Government of India v. Citadel Fine Pharmaceuticals* [(1990) 184 ITR 467 (SC); (1989) 3 SCC 483.]

79. On the other hand, the learned counsel for the Revenue contended that no period of limitation is prescribed under rule 16 of the Drawback Rules, and the demand



was made within a reasonable period from when the Revenue came to know of the fact that the firm had wrongly availed the drawback.

80. We do not consider it apposite to decide in the facts of the present case as to whether that the SCN dated August 24, 2015 was issued belatedly or not since the said issue had been decided in favour of the Revenue by the order passed by the Commissioner (Appeals), and has not been adjudicated upon by the revision authority having jurisdiction under section 129DD of the Customs Act.

81. In the peculiar facts of this case where the Revenue originally had not taken any objection on the appeal being heard by the learned CESTAT, and had also, following the order of the learned CESTAT, sanctioned refund of the drawback, the firm should not be left remediless.

82. We, therefore, grant an opportunity to the firm to prefer a revision, under section 129DD of the Customs Act, against the order dated May 14, 2018 passed by the Commissioner (Appeals).

83. We direct that if such a revision is preferred within a period of two months, the same shall not be dismissed on the ground of limitation and be entertained on merits by the Central Government.

84. It is open for the firm to raise all grounds, including the issue as to whether the SCN dated August 24, 2015 was barred by limitation. Needless to state that if so raised, the same shall be considered by the Central Government, and a speaking order shall be



passed after affording an opportunity of being heard to the firm.

85. The writ petition is disposed of in the aforesaid terms.”

23. *In view of the above decision and considering that the co-noticee has been relegated to the appellate remedy, this Court is of the opinion that, though the exercise of writ jurisdiction in favour of the Petitioner may not be warranted, the Petitioner ought not to be denied the opportunity to avail the statutory remedy on grounds of parity.”*

10. In view of the above, even in this case the documents placed on record by the Department would reveal that repeatedly, the Petitioner has merely sought documents or adjournments on one ground or the other. Under these circumstances, there is no violation of principles of natural justice.

11. The impugned order is an appealable order and therefore the Petitioner is permitted to avail of the appellate remedy under Section 128 of the Customs Act, 1962.

12. The impugned order is of 31st January, 2025. Accordingly, time is granted to the Petitioner to file the appeal by 15th July, 2025. If the same is filed by the said date, then the appeal shall be adjudicated on merits and shall not be dismissed on the ground of being barred by limitation.

13. Petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 22, 2025/Rahul/msh