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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 10th January, 2025

+ W.P.(C) 14922/2023

TILAK RAJ JAIN AND ANR.

.....Petitioners

Through: Mr. Tarun Gulati, Sr. Adv. with Mr.
Prem Ranjan Kumar & Ms. Shruti,
Advs.

versus

ADDITIONAL DIRECTOR GENERAL, DIRECTORATE OF
REVENUE INTELLIGENCE, DELHI ZONAL UNIT
AND ORS.

.....Respondents

Through: Mr. Harpreet Singh, Senior Standing
Counsel along with Mr. Suhani
Mathur and Shivang Chawla, Advs.
for R-2.

Mr. Ajay Jain (SPC), Ms Bijay
Lakshmi, Mr. Manoj, Mr. Harshit
Batra, Mr Manoj Gautam, Mr. M. N.
Mishra, Mr Krishna Sharma, Ms
Gauranshi, Advs. for R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH
JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

Factual Background

2. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking *inter alia* issuance of an appropriate writ for quashing of the Show Cause Notice bearing No. **DRI F.No. 23/11/2008-DZU/6596** (hereinafter “SCN”) dated 26th December, 2008, issued by the Respondent No. 1 - Additional Director General, Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter “DRI”) and to declare the



proceedings initiated under the SCN by Respondent No. 2 – Principal Commissioner of Customs, ICD Tughlakabad, New Delhi, to be barred by limitation under Section 28(9) of the Customs Act, 1962 (hereinafter, “Act”).

3. The case of the Petitioners is that they were engaged in the trading of indigenous and imported Galvanised Iron wires (hereinafter “GI wires”) through their firm M/s. Ikon Wire (India). According to the Petitioners, the imported GI wires were being procured from one Shri Sandeep Aggarwal who used to import the same through various firms, either owned or operated, being M/s. Shivalik Impex, M/s. Raghav Impex, M/s. Popular Mart and M/s. White Leaf. The DRI suspected undervaluation in the import of GI wires and “Wire Mesh” that was being imported by these four firms. Accordingly, on 25th February, 2008, the DRI conducted certain searches at the premises of the supplier *i.e.*, Mr. Sandeep Aggarwal and his firms, as also the godown of the Petitioners who had purchased the said products from him. It is the case of the Petitioners that they were forced to deposit a sum of Rs. 75,00,000/- in the name of the said importing firms. On 12th June, 2008, the Petitioners sought to resile from the statements made by them and also sought release of the sum deposited, *i.e.*, Rs. 75,00,000/-.

4. The impugned SCN was issued by the DRI, upon completion of its investigation, holding the Petitioners, *inter alia*, jointly and severally liable for payment of differential duty under Section 28(1) of the Customs Act. The allegations against the Petitioners in the impugned SCN are reproduced hereinunder for ease of reference:

“7.7. Shri Mohan Lal Jain and Shri Tilak Raj Jain were aware of the undervaluation being done by Shri Sandeep Aggarwal in the import of GI Wire as they were giving differential amount to Shri Sandeep



Aggarwal in cash. They also actively connived with Shri Sandeep Aggarwal and were also beneficiaries in the fraudulent imports being done by Shri Sandeep Aggarwal.”

[...]

7.25. Shri Tilak Raj Jain, controller of Mis Ikon Wire (India), admittedly had full knowledge about the under-valuation of the goods imported by Shri Sandeep Aggarwal in the firms owned and controlled by him, at the time of their importation. He actively abetted the undervaluation and mis-declaration of goods imported by Shri Sandeep Aggarwal and was the beneficiary of such fraud. He was also involved in the dealing with, keeping of and sale of such fraudulent goods. Thus, Shri Tilak Raj Jain has done various acts of omission & commission, as discussed hereinabove, which have rendered the imported goods liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962. He has also concerned himself with removing, keeping, depositing, selling and dealing with the imported goods for which he knew and had reasons to believe that they are liable for confiscation. Accordingly, Shri Tilak Raj Jain is liable for penalty under Section 112 (a) & (b) and Section 114M of the Customs Act, 1962.

7.26. Shri Mohan Lal Jain, controller of M/s Ikon Wire (India), admittedly had full knowledge about the under-valuation of the goods imported by Shri Sandeep Aggarwal in the firms owned and controlled by him, at the time of their importation. He actively abetted the undervaluation and mis-declaration of goods imported by Shri Sandeep Aggarwal and was the beneficiary of such fraud. He was also involved in the dealing With, keeping of and sale of such fraudulent goods. Thus, Shri Mohan Lal Jain has done various acts of omission & commission, as discussed hereinabove, which have



rendered the imported goods liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962. He has also concerned himself with removing, keeping, depositing, selling and dealing with the imported goods for which he knew and had reasons to believe that they are liable for confiscation. Accordingly, Shri Mohan Lal Jain is liable for penalty under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962.”

5. The Petitioners were made answerable to different jurisdictional Assessing Officers *i.e.*, (i) Commissioner of Customs, JNPT, Nhavasheva, Raigad, (ii) Commissioner of Customs, Kandla, Gujarat, (iii) Commissioner of Customs, ICD, Tughlakabad, New Delhi, (iv) Commissioner of Customs, Rajaji Salai, Chennai. On the basis of the allegations stated in the impugned SCN, the DRI raised various demands including penalty against the persons and firms, including against the Petitioners, alleged to be involved in undervaluation in the import of GI Wires and Wire Mesh.

6. The impugned SCN, however, was not adjudicated for a substantial period of time by the concerned assessing authorities, despite the SCN being made answerable to four separate authorities *i.e.*, Commissioner of Customs at New Delhi, Maharashtra, Chennai and Kandla. In view of the fact that there were multiple adjudicating authorities a common adjudicating authority *i.e.*, Commissioner of Customs, ICD, Tughlakabad, New Delhi was appointed on 23rd December, 2009 to adjudicate the impugned SCN. Communication took place for exchange of ‘Relied Upon Documents’ (hereinafter “RUDs”) and four personal hearings were conducted on 30th December, 2014, 21st May, 2015, 17th September, 2015 and 29th October, 2015. In the meantime, the other parties to the impugned SCN had raised certain challenges before the High Court which were disposed of on the ground that the appellate remedy



against the impugned order therein would lie before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter “CESTAT”). Accordingly, the Petitioners therein preferred an appeal before CESTAT which finally decided the issue in respect of non-supply of RUDs *vide* order dated 14th July, 2016.

7. It is the case of the Department that, in the meantime, the decision of the Coordinate Bench of this Court in ***Mangli Impex Ltd. v. Union of India & Ors. [2016:DHC:3435-DB]*** was rendered due to which the impugned SCN was put in the call book on 29th June, 2016 and again taken out from the call book on 3rd January, 2017. Thereafter, certain instructions were issued by the Central Board of Indirect Taxes & Customs (hereinafter “CBIC”) which resulted in the impugned SCN again being put in the call book on 3rd November, 2017 and taken out from the call book on 3rd May, 2019. As per the Respondents after the judgment of the Supreme Court in ***M/s Canon India Private Limited v. Commissioner of Customs, Civil Appeal No. 1827 Of 2018***, the impugned SCN was again transferred to the call book on 17th March, 2021 and taken out from the call book on 31st March, 2022 in view of the CBIC circular dated 31st February, 2022. Hearings were fixed finally on 20th November, 2023 at which stage, the present writ petition was filed.

Submissions of Parties

8. The case of the Petitioner is that under Section 28(9) of the 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

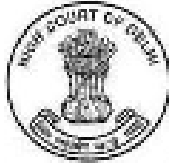


duty or interest under sub-section (8) for the reason that—
(a) an appeal in a similar matter of the same person or any other person is pending before the Appellate Tribunal or the High Court or the Supreme Court; or
b) an interim order of stay has been issued by the Appellate Tribunal or the High Court 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. It is argued on behalf of the Petitioner that substantial delay of almost fifteen 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 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. Ld. Counsel for the Petitioner has also relied upon the following judgments:



- i. ***State of Punjab & Ors. v. Shreyans Industries Ltd., (2016) SCC769***
- ii. ***Shri Ram Agro Chemicals Pvt. Ltd. v. Union of India & Ors., 2019 SCC OnLine P&H 4918***

Analysis and Findings

12. The Court has considered the matter. The issue raised in the petition is no longer *res-integra*. Section 28(9) of the Act, unamended and amended, have been considered in detail by the Coordinate Benches of this Court in ***Swatch Group India Pvt. Ltd. (supra)*** as also ***M/s Vos Technologies India Pvt. Ltd. v. The Principle Additional Director General & Anr., 2024 SCC OnLine Del 8756***. All the issues which have been raised by the Respondents 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.”

**M/s 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.”

13. The record also shows that there are several other orders/judgments have been passed by various authorities 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 call book, for whatever reasons, 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.

14. Coming to the facts of this case, it is clear from the counter affidavit filed by the Respondent No. 2 that the impugned SCN had repeatedly been placed in the call book and removed from the call book. This position is admitted in the counter affidavit:

“11. It is submitted that various Parties filed Writ petitions in the Hon'ble High Court challenging the jurisdiction of DRI officials and Hon'ble High court vide common order dated 03.05.2016 in the case of Mangli Impex vs UOI set aside SCNs issued by DRI officers. Accordingly, impugned SCN was transferred to call book w.e.f. 29.06.2016 in light of the Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 29.06.2016 (A copy of Board's Instruction issued vide F No. 276/



104/2016- CX.8A(Pt.) dated 29.06.2016 is Annexed here as **Annexure R/5**). The SCN was later taken out from the call book in light of the Board's Instruction issued vide F No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017. (A copy of Board's Instruction issued vide F No. 276/104/2016-CX.8A (Pt.) dated 03.01.2017 is annexed here as **Annexure R/6.**). Which has issued pursuant to staying of Operation of Hon'ble High Court Judgement dated 03.05.2016 in the SLP 20453/2016 filed by the Department.

12. That further, impugned SCN was transferred again to call book w.e.f., 03.11.2017 in light of the Board's Instruction issued vide F No. 437/ 143/2009-Cus.IV dated 03.11.2017 (A copy of Board's Instruction issued vide F No. 437/ 143/2009-Cus.IV dated 03.11.2017 is annexed here as **Annexure R/7**) and again taken out from the call book on 03.05.2019 in light of the office Memorandum issued vide F No. 437/ 143/2009-Cus.IV dated 03.05.2019 (A copy of office Memorandum issued vide F No. 437/143/2009-Cus.IV dated 03.05.2019 is Annexed here as **Annexure R/8**).

13. That after the judgement of the Hon'ble Supreme Court in the case of M/s Cannon India Pvt. Ltd., impugned SCN was again transferred to call book w.e.f 17.03.2021 in light of the Board's Instruction No. 04/2021-Customs dated 17.03.2021 (A copy of Board's Instruction No. 04/2021-Customs dated 17.03.2021 is annexed here as Annexure R/9) and taken out from the call book on 31.03.2022 in light of the CBIC Circular No. 07/2022 Customs dated 31.03.2022 (A copy of CBIC Circular No. 07/2022-Customs dated 31.03.2022 is annexed here as Annexure R/ 10).

14. It is further submitted that Personal hearing was granted to all the 11 noticees, and fixed for 10.08.2023, However, none of the notices appeared in the personal Hearing. Thereafter, Personal hearing was fixed on 20.11.2023 and in response to which, it has been informed



that Shri Tilak Raj Jain and Shri Mohan Jain have filed Writ Petition in the subject matter.”

15. A perusal of the above would show that the impugned SCN, which was issued way back in 2008, due to repeated placing in the call book has not been adjudicated for so long. Repeated placing and removing from the call book is not a valid justification for non-adjudication of the impugned SCN for about 15 years. Moreover, the gaps between the said periods is also inexplicable. Hearing notices have been given to the Petitioners but there is no reason for non-adjudication of the impugned SCN for long period. The present case is fully covered by the decisions of the Coordinate Bench of this Court, including the recent decision of this Court in *Shri Balaji Enterprises v. Additional Director General New Delhi & Ors., W.P.(C) 11207/2023 (decided on 19th December, 2024)*.

16. Thus, following the decisions of the Coordinate Benches, the impugned SCN dated 26th December, 2008, deserves to be quashed and is accordingly set aside.

17. Ordered accordingly.

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

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 10, 2025/Rahul/ms
(corrected & released on 21st January, 2025)