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

Date of decision: 10th January, 2025

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W.P.(C) 15195/2023

**POLYGLASS ACRYLIC MANUFACTURING CO
PVT LTD**

.....Petitioner

Through: Mr. Tarun Gulati, Senior Advocate
with Prem Ranjan Kumar and Ms.
Shruti, Advocates

versus

**THE ADDITIONAL DIRECTOR GENERAL THROUGH THE
DIRECTOR DIRECTORATE OF REVENUE INTELLIGENCE &
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. **F.No. DRI/AZU/INV-**



17/2012 (hereinafter “SCN”) dated 20th March, 2014, issued by the Respondent No. 1 - Additional Director General, Directorate of Revenue Intelligence, Ahmedabad Zonal Unit (hereinafter “DRI”) and to declare the proceedings pending under the SCN before Respondent No. 2 – Principal Commissioner of Customs, ICD Patparganj, New Delhi, to be abated in terms of Section 28(9) of the Customs Act, 1962 (hereinafter, “Act”).

3. The case of the Petitioner Company is that it was engaged in the business of importing and trading of various goods including parts of water purifier such as RO Membrane, Booster Pump, Carbon Filter, Sediment Filter etc. (hereinafter “subject goods”). According to the Petitioner Company, the subject goods were being imported through various ports including CFS Mulund Maharashtra, JNCH Nhava Sheva Maharashtra, Kandla Port Gujarat, ICD Ballabgarh Faridabad, Haryana, ICD Patparganj and ICD Tughlakabad, New Delhi. The DRI suspected mis-declaration and undervaluation in the import of the subject goods that were being imported allegedly by one Mr. Ashok Singhla, in the name of various name-sake “Import Export Code Holders” (hereinafter “IEC holder”) such as the Petitioner Company. Accordingly, on 16th April, 2012, the DRI conducted certain searches at the premises of the Petitioner Company as also the premises of the other name-sake IEC holders who were alleged to be controlled by Mr. Ashok Singhla *i.e.*, Ms. MKY Enterprises Pvt. Ltd. and Ms. KY Enterprises.

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:



“19.1 From the facts discussed in the foregoing paras and material evidences available on records, it appears that Mis. PAMCPL and Shri Ashok Singhla, de-facto owner of the imported goods, had imported various types of water purifier parts through their overseas suppliers by mis-declaring the actual l' , transaction value and also willfully suppressing its complete description before the Customs, Kandla with an intention to evade payment of appropriate Customs duty. The value declared by them before the Customs Authority for clearance of the said imported goods was only a part amount paid for the imported consignment. The fact of undervaluation in the import of said consignment has been categorically admitted by Shri Kapil Dev Aggarwal and Shri Ashok Singhla in their statements, as discussed above. Thus, the value of Rs. 15,06,62,426/(assessable value) (as detailed in the Annexures-A1,B1,C1,D1,E1 AND G1 to the SCN) declared by M/s. PAMCPL before Indian Customs, as mentioned in the invoice and the import documents does not merit to be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act, 1962, read with Rule 3 of the Customs Valuation (Determination of Price of the Imported Goods) Rules, 2007 (hereinafter referred to as Customs Valuation Rules, 2007) and the same is liable for rejection in terms of Rule 12 of the Customs Valuation Rules, 2007 and actual transaction value requires to be re-determined in terms of Section 14 of the Customs Act 1962 read Rule 3 of the Customs Valuation Rules, 2007.

19.2 Section 14 (1) of the Customs Act, 1962 provides that "for the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price



actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for at the time and place of exportation, where the buyer and seller of the are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf'. Further, Rule 3 of the Custom Valuation Rules, 2007 provides that subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. It appears that in the instant case Shri Ashok Singhla has explained all the material evidences available on record in the form of proforma invoices, e-mail communication etc. produced two Annexures showing actual price of respective consignments as shown in said Annexures and also confessed average actual the basis of available evidence on record in his statement. Therefore, it appears that the value confessed by Shri Ashok Singhla can be treated as transaction Therefore, it appears that after the rejection of the declared value, the assessable value for the types of water purifier parts needs to be re-determined on the basis of value confessed by Shri Asbok Singhla in his statements by taking recourse to the provisions of Section 14 of Customs Act, 1962 read with Rule 3 (1) and Rule 10 of the Customs Valuation Rules, 2007. Further, as per Rule 3(4) of the Customs Valuation Rules, 2007 if the value cannot be determined in terms of Rule 3(1) of Customs Valuation Rules, 2007, the value shall be determined by proceeding sequentially through Rule 4 to 9. In the instant case Rule 5 of Customs Valuation Rules, 2007 read with Rule 3 ibid is applied where the actual price of similar goods are available. Accordingly, the correct assessable value is worked out to be Rs. 52.64,80,439/- (re-determined value) (as detailed in the Annexures-A2,B2,C2,D2,E2 & F2 to the SCN) for the purpose of assessment of duty.



19.3 The mis-declaration of the value was done with a willful intent to evade the payment of appropriate customs duty leviable thereon. All these acts on the part of M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods, have also rendered the goods liable to confiscation under the provisions of the Section 111(m) of the Customs Act, 1962, in as much as, they misdeclared/ caused to mis-declare the true value of the goods while filing the bills of entry under Section 46 of the Customs Act 1962 in which they were required to declare the true value of the machines. Since, the said acts of omission and commission on the part of M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods, have rendered the goods liable to confiscation under Section 111(m) of the Customs Act 1962, on account of undervaluation M/s. PAMCPL and Shri Ashok Singhla are liable to penalty under Section 112(a) of the Act ibid.

19.4. It also appears that M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods, had declared the value of Rs. 15,06,62,426/- only at the time of seeking clearance of water purifier parts from various Customs authority (as detailed in the Annexures-A1,B1,C1,D1,E1 & F1 to the SCN) instead of re-determined assessable value of Rs. 52,64,80,439/- (as detailed in the Annexures-A2,B2,C2,D2.E2 & FZ to the SCN) thereby suppressing the value to the tune of Rs. 37,58,58,013/-. By declaring such suppressed value, Customs duty amounting to 8.81.92,681/- (as detailed in the AnnexuresA2, B2,CZ,D2,EZ & F2 to the SCN) was short paid by M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods. It also appears that M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods, have adopted the modus operandi of deliberate and willful suppression of actual value in contravention of various provisions of Customs Act and Rules made thereunder, with an intent to evade payment of Customs duty of Rs. 8,81,92,681/- (as detailed in the



Annexures-A2,B2,C2.D2.E2 & F2 to the SCN). Hence, Section 28 (4) [erstwhile proviso to Section 28(1)] of the Customs Act, 1962, for invoking the extended period for demand of duty is applicable in the instant case. Therefore, the differential Customs duty amounting to Rs. 8,81,92,681/- (as detailed in the Annexures-AZ,BZ,C2,D2,E2 & F2 to the SCN) is liable to be recovered jointly and severally from M/s. PAMCPL and 'Shri Ashok Singhla, de-facto owner of imported goods, under Section 28 (4) [erstwhile proviso to Section 28(1)] of the Customs Act, 1962, along with applicable interest under Section 28 AA [erstwhile Section AB] of the Customs Act 1962.

19.5 Further, the said acts of willful mis-statement, collusion and suppression of facts by M/s. PAMCPL and Shri Ashok Singhla, de-facto owner of imported goods, have resulted in short levy of the appropriate custom duty of Rs. 8,81,92,681/- (Rs. Eight Crore Eighty One Lacs Ninety Two Thousand Six Hundred Eighty One only) (as detailed in the Annexures-A2.B2,C2,D2,E2 & F2 to the SCN). Hence, PAMCPL and Shri Ashok Singhla, have rendered themselves liable for penal action under the provisions of Section 114A.

19.6 Further, M/s. PAMCPL have intentionally made declaration and used invoices that were false and incorrect in respect of actual transaction value whereas Shri Ashok Singhla, de-facto owner of imported goods knowingly caused M/s, PAMCPL to make declaration and use invoices that were false and incorrect in respect of actual transaction value declaration, Therefore, M/s, PAMCPL and Shri Ashok Singhla have rendered themselves liable for penal action under the provisions of Section 114AA of the Customs Act, 1962 also.

19.7 Further, Shri .Kapil Dev Aggarwal, Director of M/s. PAMCPL, appears to be the person who was all



along aware and had in collusion with Shri Ashok SinghJa, de-facto owner of the imported goods, adopted the modus of under valuation of the said goods imported by them and appeared to be actively involved in evading the actual Customs duty payable thereon and pocketing the same for enrichment of the company. He managed in obtaining commercial invoices of low value from Shri Ashok Singhla and presented the said invoices before Indian Customs at the time of seeking clearance of imported goods, Thus, Shri Kapil Dev Aggarwal appears to have knowingly and deliberately indulged in mis-declaration of value of the imported water purifier parts in collusion of Shri Ashok Singhla, with malafide intention to evade payment of Customs duties amounting to Rs. 8,81,92,681/- Eight Crore Eighty One Lacs Ninety Two Thousand Six Hundred Eighty One only) (as detailed in the Annexures A2, B2,C2,D2,E2 & F2 to the SCN). Further, the omission and commission of the said acts on the part of Shri Kapil Dev Aggarwal have rendered the goods under the question liable for confiscation under Section 111(m) of the Customs Act, 1962 and therefore, Shri Kapil Dev Aggarwal have rendered himself liable for penal action under the provisions of Section 112(a) and 114M of the Customs Act, 1962.”

5. The Petitioner Company was made answerable to six different jurisdictional Assessing Officers i.e., (i) Commissioner of Customs (Mulund CFS 85 General), (ii) Additional/Joint Commissioner of Customs (Import), JNCH, Nava Sheva, (iii) Additional/Joint Commissioner of Customs, Kandla, (iv) Commissioner of Central Excise, Delhi - IV (Faridabad), (v) Additional/Joint Commissioner of Customs, Inland Container Depot, Patparganj and (vi) Commissioner of Customs, Inland Container Depot, Tughlakabad. On the basis of the allegations stated in the impugned SCN, the DRI raised various demands against the Petitioner Company and Mr. Ashok



Singhla. In addition, interest and penalty was also sought to be imposed on the Petitioner Company and Mr. Ashok Singhla.

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 six separate authorities. In view of the fact that there were multiple adjudicating authorities a common adjudicating authority *i.e.*, Commissioner of Central Excise, Delhi was appointed on 5th June, 2014 by the Central Board of Excise and Customs (hereinafter “*CBEC*”) to adjudicate the impugned SCN. Thereafter, on 7th June, 2016, the CBEC appointed the Commissioner of Customs, ICD, Patparganj, Delhi as the common adjudicating authority. Communication took place for exchange of ‘Relied Upon Documents’ (hereinafter “*RUDs*”) and as per the Respondent four personal hearings are stated to have been conducted on 24th May, 2017, 4th March, 2021, 11th March, 2021 and 18th March, 2021. In the meantime, the Petitioner Company is stated to have requested the concerned adjudicating authority to provide all the ‘Relied Upon Documents’ (hereinafter “*RUDs*”), which, as per the Petitioner Company, were provided only on 5th March, 2021. The Petitioner Company had filed its detailed reply to the SCN on 18th March, 2021.

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 on 30th May, 2017, due to which the impugned SCN was put in the call book and the same was taken out from the call book sometime in November, 2017. It is stated that the Department had already provided the Petitioner Company with all the RUDs through speed post on 20th March, 2014, however, the Petitioner Company continued



to request for all RUDs and non-relied upon documents to delay the proceedings. Thereafter, as per the Department there was a halt on the adjudication proceedings during the 2019-2020 period due to the Covid-19 pandemic. 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 sometime in March, 2021. The Petitioner Company was informed by the Department *vide* letter dated 14th February, 2022 that in light of the decision in *Canon India (supra)* and the instructions issued by the Central Board of Indirect Taxes and Customs (hereinafter “CBIC”) *vide* instruction 4/2021-Customs dated 17th March, 2021, the adjudication of the Petitioner Company’s case was kept in abeyance.

8. Thereafter, since the impugned SCN was not adjudicated by the concerned adjudicating authority for over 9 years since its issuance, the Petitioner Company filed the present petition challenging the same.

Submissions of the Parties

9. 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.]...”

10. It is argued on behalf of the Petitioner that substantial delay of almost nine 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.

11. 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.

12. 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

13. 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.”

14. 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.

15. 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:

“10. [...]

d. That the adjudicating proceedings of the impugned SCN was also affected by the judgement of this Hon'ble High Court in the matter of M/ s Mangli Impex Ltd., against which an SLP is pending before the Hon'ble Supreme Court. Therefore, the respondents were under constraint to transfer present case to Call Book on 16.12.2016.

e. That the present case was subsequently taken out from the Call Book on 03.01.2017 on Instructions issued by the CBEC vide F. No. 276/104/2016- CX.8A(Pt.) dated 03.01.2017 for adjudication and accordingly, the Petitioner was issued letter dated 04.05.2017 to file its reply and was also afforded an opportunity of personal hearing. The said Instruction Order dated 03.01.2017 and letter dated 04.05.2017 are annexed herewith as Annexure — R/ 5 and Annexure - R/ 6 respectively.

[...]

j. That, in the meantime, M / s R“Anil Kumar had filed a Writ Petition vide no. 5016/2017 before this Hon'ble Court in the mater of M / s Mangli Impex Ltd., wherein this Hon'ble Court had passed an order dated 30.05.2017 and directed the Department to transfer the case to Call Book and keep the adjudication proceedings in abeyance. That the copy of said order dated 30.05.2017 is annexed herewith as Annexure — R/10. Thus, the Department/ Respondents were constrained to take a decision to transfer all such cases including the impugned SCN to Call Book which were affected by the said Order.

k. That the impugned SCN was taken out from the Call Book in November, 2019 following the instructions of



the Office of Chief Commissioner of Customs (Delhi Zone) vide no. C. "No. "CCCU (DZ) Cus/Legal/76/2017 dated 16.05.2019 on receipt of the CBIC instructions vide OM no. F.No. 437/ 143/2009-Cus IV dated May, 2019. That the said instructions letters are annexed herewith as Annexure — R/ 1 1 (Colly.).

[...]

o. That the Adjudicating Proceeding was likely to be completed, however, the Department was under constraint to put the case again in Call Book in March, 2021 in view of the decision of Hon'ble Supreme Court in the matter of Canon India Pvt. Ltd."

16. A perusal of the above would show that the impugned SCN, which was issued way back in 2014, 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 9 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).***

17. Thus, following the decisions of the Coordinate Benches, the impugned SCN dated 20th March, 2014, deserves to be quashed and is accordingly set aside.

18. Ordered accordingly.

19. The petition is allowed and disposed of in the aforesaid terms.



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Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

JANUARY 10, 2025

Rahul/ms

(corrected and released on 21st January, 2025)

Signature Not Verified

Digitally Signed
By: RAHUL
Signing Date: 22.01.2025
11:32

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