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

Date of Decision: 10th January, 2025

+ **W.P.(C) 5809/2024**

VIJAY ENTERPRISES & ANR.

.....Petitioners

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

versus

THE PRINCIPAL COMMISSIONER OF CUSTOMS
& ANR.

.....Respondents

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

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WITH

+ **W.P.(C) 15436/2023**

VIJAY ENTERPRISES AND ANR

.....Petitioners

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

versus

ADDITIONAL DIRECTOR GENERAL DIRECTORATE OF
REVENUE INTELLIGENCE AND ORS.

.....Respondents

Through: Mr. Anurag Ojha, SSC along
with Mr. Subham Kumar, Adv.

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 petitions have been filed under Articles 226 and 227 of the Constitution of India seeking *inter alia* issuance of an appropriate writ



for quashing the impugned Order-in-Original **No. 3/2024/VCG/Pr.Commr./ICD-IMP/TKD** dated 31st January, 2024 passed by the Respondent No. 1 – Principal Commissioner of Customs (Import), ICD Tughlakabad, New Delhi, and the impugned Show Cause Notice bearing No. **DRI F.No. 23/118/2005-DZU/VE** (hereinafter “SCN”) dated 23rd May, 2008, issued by the Respondent No. 2 - Additional Director General, Directorate of Revenue Intelligence, Delhi Zonal Unit (hereinafter “DRI”).

3. The impugned Order-in-Original is challenged, *inter alia*, on the ground that validity of the impugned SCN was under consideration before this Court in **W.P.(C) 15436/2023** and the impugned Order-in-Original was passed while the said petition was pending, in violation of the principles of natural justice. The impugned SCN and the proceedings initiated thereunder have been challenged on the ground that the same are barred by limitation in terms of Section 28 of the Customs Act, 1962 (hereinafter, “Act”).

4. The Petitioners are engaged in the business of importing and trading of various types of papers and paper board including newsprint and lightweight coated paper (hereinafter “*subject goods*”). The DRI suspected mis-declaration and undervaluation in the import of subject goods by certain importers, who were alleged to be working with various ‘Registrar of Newspapers in India’ certificate holders (hereinafter “*RNI holders*”). As per the DRI one Mr. Prakash Garg alleged to be the owner/controller of the Petitioners *i.e.*, M/s Vijay Enterprises and M/s Salwan International Paper Pvt. Ltd., as also M/s. Newsprint Trading, was involved in the said mis-declaration and undervaluation. The DRI had also received information that the said importers were violating the user conditions specified under **ITC (HS) & Customs Notification No. 21/2002** dated 1st March, 2002 in respect



of import of 'Newsprint & Light Weight Coated Paper' (hereinafter "LWC"), by diverting the said goods to the local market instead of using the same for printing of newspapers & magazines. Accordingly, on 28th December, 2005, the DRI conducted certain searches at the premises of Mr. Prakash Garg, his firms, including the Petitioners. It is alleged by the Petitioners that during the investigation, the Petitioner No. 2 was forced to submit a Bank Guarantee of Rs. 6,16,941/- towards provisional release of consignment.

5. Thereafter, 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 Act. The allegations against the Petitioners in the impugned SCN *qua* one of the consignments which is alleged to have been undervalued by the Petitioners, are reproduced hereinunder:

"53.1 From the investigation conducted, it transpires that Prakash Garg in his firm M/s Vijay Enterprises and M/s Salwan International Paper Pvt. Ltd had fraudulently imported 115 and 05 consignments of paper respectively.

53.2 Prakash Garg was the master mind behind this fraudulent import of paper. He managed & controlled all the activities of his firms to perpetuate the said fraud including Customs clearance of imported papers on the basis of invoices showing suppressed value and payment of undervalued amounts to the respective foreign suppliers through hawala.

53.3.1 In M/s Vijay Enterprises, Prakash Garg had imported 22 consignments of paper by mis-declaring its actual value from M/s Belsun Corp. USA (Table A- 1). In the import documents submitted before the Indian Customs authority he had declared the price ranging



from USO 210 to USD 250 PMT, whereas, the investigation revealed that the actual price was in the range of USO 350 PMT to USO 600 PMT.

53.3.2 In view of the real transaction value in case of 14 consignments imported by M/s Vijay Enterprises from M/s Belsun Corp., USA obtained during investigation as reflected in table under Para 50 above the unit price as declared in the import documents of consignments of goods imported in M/s Vijay Enterprises from M/s Belsun Corp. USA needs to be rejected under Section 14 of the Customs Act, 1962 read with Rule 4 and 10A of the Customs Valuation (Determination of Prices of the Imported Goods) Rules, 1988 and needs to be enhanced as shown in Table A-1.

53.3.3 From the evidences of actual transaction value as explained in paras herein above in relation to 14 consignments imported by M/s Vijay Enterprises from Belsun Corporation, where the value declared ranged between USD 180 to USD 250 PMT, it can be reasonably concluded that the rest of the eight consignments imported from M/s Belsun Corporation in the name of Vijay Enterprises have also been imported by undervaluing & mis-declaring the value to be USD 180 to USD 250 PMT. Thus their value needs to be re-determined under Rule 6 of the Valuation Rules. As the actual values of the consignments ranged from USD 350 to USD 600 PMT, hence as per Rule 6, the lowest value of USD 350 PMT of the similar goods needs to be taken as the unit price for determining the actual assessable value and duty to be paid.

53.3.4 The total declared assessable value Rs 4075232/- of the goods imported as shown in Table A-1 becomes liable for rejection under Section 14 of the Customs Act, 1962 read with Rule 4 and 10A of the Customs Valuation (Determination of Prices of the Imported Goods) Rules,



1988 and the actual assessable value for determination of duty needs to be enhanced to Rs. 8431668/-, as shown in Table A-1 under Section 14 of the Act & Rule 4 & 6 of the Rules ibid as discussed in the Paras above.

53.3.5 They have knowingly and fraudulently evaded Customs duty on 22 no. of consignments imported amounting to Rs. 11,30,728/- as shown in Table A-1 by suppression and mis-declaration in value, and therefore such amount along with interest becomes payable under Section 28 (1) proviso and 28 AB of the Customs Act, 1962, respectively. As the said have been evaded by taking recourse to willful mis-statement and suppression of fact, they are also liable for penalty under Section 114 A of the Act ibid.”

6. On the basis of the allegations stated in the impugned SCN, the DRI had raised the following demands against the persons and firms, including against the Petitioners, alleged to be involved in undervaluation in the import of the subject goods:

“55. Now, therefore, Salwan International Paper Pvt. Ltd, its Director Ashish Garg & Vijay Garg and its controller Prakash Garg are hereby called upon to show cause to the Commissioner of Customs, ICD, TKD, New Delhi within 30 days from the date of receipt of this show cause notice as to why:

I:(i) The assessable value of 520.623 MTS of imported paper, imported vide 5 bills of entry, as detailed in Table A14, should not be rejected and determined as Rs. 12662638/under Section 14 of the Customs Act, 1962 read with Rule 4 & 6 and 10 A of the Customs Valuation (Determination of prices of the imported goods) Rules 1988 as discussed in paras 47 to 62 above.

(ii) The 520.623 MT of imported paper, as detailed in



Table A- 14 should not be held liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Since the goods are not available for confiscation, fine in lieu of the confiscation should not be imposed upon them.

(iii) The differential duty amounting to Rs. 1255417/- evaded on 520.623 MT of paper covered under bills of entry as detailed in Table A-14, which have been imported and cleared by them, fraudulently, should not be demanded from them under the Proviso to section 28 (1) of the Customs Act, 1962.

(iv) Interest under Section 28 AB should not be demanded from them.

(v) Penalty should not be imposed upon them under Section 112 (a) & (b) and/or 114 A of the Customs Act, 1962.

(vi) The bank guarantee for Rs 616941/- executed by M/s Salwan International Paper Pvt. Ltd for provisional release of consignment imported under bill of entry no. 497335/10.4.06, 497048/7.4.06, 497049/7.4.06, 497336/10.4.06 and 497063 dated 7.4.06 should not be revoked and appropriated and adjusted towards the duty liability.”

7. It is the case of the Petitioners that after issuance of the impugned SCN, the Petitioners had made several request *vide* letters dated 3rd February, 2010 and 5th February, 2010 with the concerned assessing officer to provide all the ‘relied upon documents’ (hereinafter “RUDs”). However, the Petitioners were not provided with all the RUDs. It is stated that between 15th January, 2010 and 17th February, 2012, the Petitioners did not receive any communication from the Department. Thereafter, the Petitioners were granted personal



hearing on 27th February, 2012 as also on 16th March, 2012 and the Petitioners are stated to have reiterated the request to provide all RUDs. It is stated that between 17th August, 2012 and 22nd April, 2014, the Petitioner again did not receive any communication from the concerned assessing officer. A personal hearing was granted to the Petitioners on 13th May, 2014. It is alleged that between October, 2014 to April, 2017 no proceedings were conducted in respect of the impugned SCN. Finally, *vide* letter dated 22nd May, 2017, the concerned assessing officer fixed the date for personal hearing on 2nd June, 2017 on which date the Petitioners are stated to have submitted another letter requesting to provide all RUDs and other documents.

8. It is the case of the Petitioners that that after 22nd May, 2017, there has been no progress in the proceedings under the impugned SCN. Since, the impugned SCN was not adjudicated for about 15 years since its issuance, the Petitioners filed ***W.P.(C) 15436/2023*** seeking quashing of the same.

9. During the pendency of the said writ petition the concerned assessing officer had passed the impugned Order-in-Original dated 31st January 2024, *inter alia* ordering the confiscation of the imported goods and imposing interest and penalty upon the Petitioners. The operative portion of the impugned Order-in-Original is as under:

“13. In view of above discussion and findings, Pass the following order:

ORDER

I. In case of Mis Vijay Enterprises

(i) I reject the declared assessable value of Rs. 3,08,02,847/- for 3308.186 MTS (including 1733.898 MTS of seized goods) imported vide 115 Bills of Entry as detailed in Annexure to Show Cause Notice and re-determine the same as Rs.6,45,72,662/- as discussed in para 9 supra;



(ii) I order for confiscation of goods having re-determined value of **Rs.6,45,72,662/-** under Section 111 (m) of the Customs Act, 1962. Since the goods are not available for confiscation, no redemption fine is imposed;

(iii) I determine the short-paid customs duty **Rs.99,52,308/- (Rupees Ninety Nine Lakh Fifty Two Thousand Three Hundred and Eight)** in respect of imported goods under section 28(2) of Customs Act and order recovery under proviso to Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AB of the Customs Act, 1962 as discussed at para 10 supra;

(iv) I impose penalty of **Rs. 7,00,000/- (Rs. Seven Lacs)** under Section 112(a)(ii) and **Rs.99,52,308/- (Rupees Ninety Nine Lakh Fifty Two Thousand Three Hundred and Eight)** under Section 114A of the Customs Act, 1962 on M/s Vijay Enterprises;

(v) I order to appropriate the amount of **Rs.98,63,154/- (Rs.86,61,722/- + Rs.12,01,432/-)** already paid by noticee during Investigation as discussed at para 10 and order to adjust towards liability against duty, interest and penalty.

I further order to appropriate of Bank Guarantees of **Rs. 49,05,945/- (Rs.48,05,730/- + Rs.1,00,215/-)** submitted by M/s Vijay Enterprises for provisional release during investigation as discussed at para 10 and order to adjust towards liability against duty, interest and penalty. That I order recovery of balance amount of duty, interest and penalty on M/s Vijay Enterprises from M/s Vijay Enterprises (Noticee no 1 / 2) through its prop/ controller Sh Prakash Garg;

(vi) I impose a penalty of **Rs 5,00,000/- (Rs. Five Lacs)** on Shri Utpal Gupta, CHA, under Section 112(a)(ii) of the Act;

(vii) I impose a penalty of **Rs 3,00,000/- (Rs. Three Lacs)** on Shri K.M.R.Nambiar, under Section 112(b)(ii) of the Act;



(viii) *I impose a penalty of **Rs 3,00,000/- (Rs. Three Lacs)** on Shri Shyam R Sundar, under Section 112(b)(ii) of the Act;*

(ix) *I impose a penalty of **Rs 3,00,000/- (Rs. Three Lacs)** on Shri Shri Gopal T Khetan, under Section 112(b)(ii) of the Act;*

II. In case of M/s Salwan International Papers Pvt. Ltd.

(i) *I reject the declared assessable value of Rs. 93,94,801/- for the goods imported by them vide 5 Bills of Entry as detailed in Annexure of Show Cause Notice and re-determine the same as **Rs.1,26,62,638/-** as discussed in para 9 supra;*

(ii) *I order for confiscation of goods having re-determined value of **Rs.1,26,62,638/-** under Section 111 (m) of the Customs Act, 1962. Since the goods are not available for confiscation, no redemption fine is imposed;*

(iii) *I determine the short-paid customs duty **Rs.12,55,417/- (Rupees Twelve lakh Fifty Thousand Four Hundred and Seventeen)** in respect of imported goods under section 28(2) of Customs Act and order recovery under proviso to Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AB of the Customs Act, 1962 as discussed at para 10 supra;*

(iv) *I impose penalty of **Rs.1,00,000/- (Rs one lac)** Under Section 112(a)(ii) and **Rs.12,55,417/- (Rupees Twelve lakh Fifty Thousand Four Hundred and Seventeen)** under Section 114A of the Customs Act, 1962 on M/s Salwan International Papers Pvt. Ltd;*

(v) *I order to appropriate of Bank Guarantee of **Rs. 6,16,941/-** submitted by M/s Salwan International Papers Pvt. Ltd for provisional release during investigation as discussed at para 10 and order to adjust towards liability against duty, interest and penalty. That I order recovery of balance amount of duty, interest and*



penalty on M/s Salwan International Papers Pvt. Ltd from M/s Salwan International Papers Pvt. Ltd (Noticee no 3) through its Director Shri Ashish Garg and controller Sh Prakash Garg;

(vi) I impose a penalty of Rs.1,00,000/- (Rs one lac) on Shri Prakash Garg under Section 112(a)(ii) of the Customs Act, 1962;

(vii) I impose a penalty of Rs. 70,000/- (Rs Seventy thousand) on Shri Ashish Garg under Section 112(a)(ii) of the Customs Act, 1962;

(viii) I impose a penalty of Rs. 50,000/- (Rs Fifty thousand) on Shri Utpal Gupta, CHA, under Section 112(a)(ii) of the Act;

(ix) I impose a penalty of Rs. 20,000/- (Rs Twenty thousand) on Shri K.M.R.Nambiar, under Section 112(b)(ii) of the Act;

(x) I impose a penalty of Rs. 20,000/- (Rs Twenty thousand) on Shri Shyam R Sundar, under Section 112(b)(ii) of the Act;

(xi) I impose a penalty of Rs. 20,000/- (Rs Twenty thousand) on Shri Shri Gopal T Khetan. under Section 112(b)(ii) of the Act.”

10. The Petitioners have filed **W.P.(C) 5809/2024** challenging the impugned Order-in-Original on the ground of violation of principles of natural justice by the concerned assessing officer.

Submissions of Parties:

11. It is the case of the Customs Department that, during the relevant period for adjudication of the impugned SCN, 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. It is also stated by the DRI that the Petitioners were provided with all RUDs and Non-RUDs on 25th June, 2009 and 9th April, 2009 respectively. It is also argued by the DRI that the Petitioners have an alternate efficacious remedy and thus the present writ petition is not maintainable.

12. The case of the Petitioner however 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.]... ”

13. 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***.

14. 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.

15. 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

16. Heard.

17. 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.”

18. 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.

19. It is also noted that in the present case, the impugned Order-in-Original dated 31st January, 2024 has been passed during the pendency of **W.P.(C) 15436/2023** wherein the validity of the impugned SCN is under adjudication by this Court. The passing of the impugned Order-in-Original while the impugned SCN was under challenge before this Court would amount to initiation of parallel proceedings rendering the scrutiny of the Court as infructuous. A similar situation has been dealt by the High Court of Bombay in *Parle International Ltd. v. Union of India, 2020 SCC OnLine Bom 8678*,



wherein the SCN was not adjudicated for over 13 years and after the same was assailed before the High Court, the concerned authority passed the order-in-original. The High Court quashed both the impugned SCN therein and the consequential proceedings resulting in the order-in-original. The relevant paragraphs of the said judgement of the Bombay High Court are reproduced under:

“24. There is one more aspect which we would like to point out. The respondents had not taken any action pursuant to the show-cause notices for long 13 years till issuance of notice for personal hearing on August 13, 2019. After the petitioner approached this court by filing the present writ petition on September 6, 2019 with due intimation to the respondents, respondent No. 3 went ahead and passed the order-in-original dated November 11, 2019. We fail to understand when the respondents could wait for 13 long years after issuance of the show-cause notices, there could not have been any earthly reason to proceed at such great speed and pass the order-in-original before the court could adjudicate on the correctness of the action of the respondents. Is it open to the respondents to materially alter the subject matter of the writ petition pending before the court and then contend that because of such material alteration, the writ petition has become infructuous and that the petitioner should avail the alternative remedy of appeal ?

25. In Harihar Collections v. Union of India [2020] 14 GSTR-OL 294 (Bom), decided on October 15, 2020, this court was confronted with a similar situation when during the pendency of the writ petition, the Commissioner of Customs had passed review order on October 1, 2020 under section 129D(2) of the Customs Act, 1962. This court held as under (page 305 of 14 GSTR-OL) :



"26. When this court had taken cognizance of the grievance made by the petitioner and was in seisin of the matter fixing October 6, 2020 for consideration, it was highly improper on the part of Commissioner of Customs (Import-II) to have passed the order dated October 1, 2020 without any intimation to or taking leave of the court. It needs no reiteration that when the court, that too the High Court, is in seisin of a matter, an administrative or executive authority cannot start a parallel proceeding on the very same subject matter at its own ipse dixit and record a finding. It would amount to interfering with the dispensation of justice by the courts. In the instant case, when the court was set to examine the grievance of the petitioner regarding non-release of the goods despite the order-in-original, what was sought to be done was to present the court with an order passed in the midst of such examination keeping the court totally in the dark saying that the order-in-original suffers from illegality or impropriety directing the subordinate authority to apply to the Commissioner (Appeals) to set aside the order-in-original and then contending that the writ petition should be dismissed because of the subsequent development or that the petitioner should be relegated to the appellate forum to contest the subsequent order. As pointed out above, this amounts to interfering with the administration of justice and is thus not at all acceptable. A view may be taken that such an order should be ignored as it is



contumacious."

*26. The above aspect also requires a serious consideration and, therefore, has been re-stated. **When a matter is brought before the court or the court is examining the matter, respondents cannot initiate or proceed with a parallel proceeding on its own to render the court scrutiny redundant. Such an approach is neither acceptable nor permissible.***

27. In any view of the matter when the commencement of adjudication proceedings after inordinate delay of 13 years post-issuance of show-cause notices and submission of reply is held to be untenable in law, any consequential decision or order based on such delayed adjudication would also be rendered invalid."

20. The above-observations have been referred to by the Co-ordinate Bench of this Court in *Vos Technologies (supra)*, wherein further to the SCN, the order-in-original was also passed in certain writ petitions. Despite this, the Court held that the SCN as also the final order that came to be passed in the corresponding proceedings would be liable to be quashed due to the delay in adjudication of the impugned SCN therein.

21. Considering the aforesaid discussion, the opinion has been unanimous of the Coordinate Benches of this Court as also of other High Courts, that placing of the matter on the call book and taking it up after several years would not be permissible, even if the order-in-original is passed.

22. Coming to the facts of this case, the Show Cause Notice dates back to 23rd May, 2008. The first notice for personal hearing was sent to the Petitioners on 15th January, 2010. Thereafter, communication for providing all the RUDs happened between the Petitioners and the concerned



adjudicating officer. The Petitioners were granted personal hearing on 27th February, 2012, 16th March, 2012 and a personal hearing also scheduled for 13th May, 2014. Despite the repeated personal hearing conducted by the concerned adjudicating officer, the impugned SCN was not adjudicated between 2008 and 2016. Even if the date is reckoned from 13th May, 2014 the ***Mangli Impex*** decision came only on 3rd May, 2016 and the matter has been placed in the callbook on 29 June, 2016. A few months later, it was retrieved on 3rd January, 2017. Thereafter, impugned SCN was again put in the call book on 3rd November, 2017 and taken out from the call book on 3rd May, 2019. Further, in view of the judgment of the Supreme Court in ***M/s Canon India (supra)***, 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.

23. 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)***.

24. Thus, following the decisions of the Coordinate Benches, the impugned SCN dated 25th May, 2008, deserves to be quashed and is accordingly set aside.



25. Considering that the impugned SCN which forms the basis for passing of the impugned Order-in-Original itself has been set aside, the said impugned Order-in-Original cannot be sustained or survive in terms of the settled principles of law. Thus, the impugned Order-in-Original also deserves to be quashed and is accordingly set aside.

26. Ordered accordingly.

27. The present petitions are 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 and released on 21st January, 2025)