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

Date of Decision: 12th December, 2025

Uploaded on: 16th December, 2025

\+ **W.P.(C) 14733/2024 & CM APPL. 61875/2024**

PRANIJ HEIGHTS INDIA PVT LTD .....Petitioner
Through: Mr. Prem Ranjan Kumar, Adv.

versus

THE JOINT COMMISSIONER OF CUSTOMS .....Respondent
Through: Mr. Gibran Naushad, SSC with Mr. Harsh Singhal & Mr. Suraj Shekhar Singh, Advs.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner under Articles 226 and 227 of the Constitution of India, *inter alia*, assailing the Show Cause Notice (hereinafter, *'SCN'*) dated 7th July, 2023 issued by the Office of the Principal Commissioner of Customs (Import). *Vide* the present petition, the Petitioner has challenged the delayed adjudication of the SCN dated 07th July, 2023.

3. The brief background of the present case is that the Petitioner had imported Aluminium foil and had availed of exemption benefit of preferential rate of duty by submitting Certificates of Origin (hereinafter, *'COO'*) from Malaysia and Thailand under the ASEAN–India Free Trade Agreement, in

terms of ***Notification No. 46/2011-Cus*** dated 01st June, 2011.

4. The Directorate of Revenue Intelligence (hereinafter, *'DRI'*) had issued an Alert circular being ***Circular No. 02/2021*** dated 10th September, 2021 in respect of the import of steel products from Malaysia and Thailand on the basis that the COOs were not authentic. The COOs of the Petitioner were verified and the Ministry of International Trade and Industry (hereinafter, *'MITI'*) *vide* email dated 07th December, 2021 had stated that the COOs are not authentic and that they had never received the applications for issuance of COOs from the 2 entities, *i.e.,* M/s Ezy Metal Enterprise and MH Megah Maju Enterprise, who were the suppliers to the Petitioner.

5. The Petitioner had obtained supplies from 06th July, 2018 to 06th March, 2020. The SCN was then issued to the Petitioner on 07th July, 2023 that the exemption benefits deserve to be rejected and the demands ought to be paid by the Petitioner. Penalty was also proposed to be imposed upon the Petitioner.

6. After the issuance of the SCN, some RUDs were claimed by the Petitioner, which the Petitioner alleged that were not provided. According to the ld. Counsel for Petitioner, the SCN did not proceed for one year and notice for personal hearing was finally received on 10th October, 2024 which, according to the Petitioner, was beyond the prescribed period of one year under Section 28(9) of the Customs Act, 1962. Hence, the challenge in this petition is on the ground that the extension, if any, granted has not been intimated to the Petitioner, and, therefore, the SCN cannot be adjudicated.

7. In the present petition, the following order was passed by this Court on 21st October, 2024:

"3. The petitioner seeks to impugn the further proceedings initiated pursuant to show cause notice dated 07.07.2023 (hereafter the impugned SCN) on the ground that the time for passing an order under Section 28 of the Customs Act, 1962 has since expired.
4. Mr. Harpreet Singh, learned counsel appearing for the respondent seeks time to obtain instructions and if necessary, to file a counter affidavit.
5. Let the same be filed within a period of three weeks from date.
6. It is clarified that if any order is passed pursuant to the impugned SCN, the same shall be subject to the final outcome of the aforesaid challenge.
7. List on 20.11.2024."

8. The counter affidavit has been filed by the Respondent, which completely shows a different chronology of events. The chronology of events, as per the counter affidavit is as under:

Date	***Event***
01.03.2023 20.03.2023 31.03.2023 20.04.2023	Summons issued to the Petitioner to tender a statement and submit relevant documents during the course of investigation. However, neither the Petitioner nor its authorized representative appeared to tender a statement or submit documents.
07.07.2023	The Impugned SCN was issued by the Assistant Commissioner of Customs.
07.08.2023	Time to file a reply to the Impugned SCN expired, and no reply was filed by the Petitioner to the Impugned SCN.

29.01.2024	Letter issued requesting the Petitioner to file a reply to the Impugned SCN. Additionally, Petitioner was given the opportunity of a personal hearing to be scheduled on 05.02.2024, 09.02.2024, or 16.02.2024. However, the Petitioner neither filed a reply nor appeared for the hearing. Copy of the letter dated 29.01.2024 is annexed herewith as Annexure R-1
29.04.2024	Another letter issued requesting a reply to the Impugned SCN and appearance before the adjudicating authority on 07.05.2024. However, the Petitioner neither filed reply nor appeared before the authority. Copy of the letter dated 29.04.2024 is annexed herewith as Annexure R-2
01.07.2024	Extension of one year to complete adjudication of the Impugned SCN was granted under Section 28(9) by the Act by the Principal Commissioner of Customs, ICD, TKD (Import). Copy of the notesheet for extension is annexed herewith as Annexure R-3
10.10.2024	Change in adjudicating authority due to annual general transfer posting. Letter was issued to the Petitioner to file a reply to the Impugned SCN and the Petitioner was granted a personal hearing on 24.10.2024.

17.10.2024	The Petitioner, instead of participating in the proceedings, has filed the present Writ Petition.

9. In terms of the above table, it can be seen that repeated notices were issued to the Petitioner to file a reply to the SCN and to attend the personal hearing, which the Petitioner has failed to do. It is only after a lapse of the one year period, that the Petitioner challenged the SCN on the ground that no extension notice/order was communicated to the Petitioner. Ld. SSC for the Respondent submits that the Petitioner failed to disclose before this Court all the notices which were issued for filing of reply and for personal hearing.

10. The counter affidavit filed by the Respondent also annexes the extension which was granted in the following terms, which has been signed by the Commissioner of Customs :

ANNEXURE R-3

C.No. VIII/ICD/TKD/6/Adj./Imp/Addl/Jt. Commr/112/2023

On perusal of the file **M/s Pranij Heights India Pvt. Ltd.** it has been observed that the Show Cause Notice to the party was issued on **07.07.2023** vide **C. No.VIII/ICD/TKD/6AG/Gr.IV/Pranij/187/2023** under section 28(4) of the Customs Act, 1962.

Consequent to the amendment in section 28(9) of the Customs Act, 1962, prescribing the time limit for adjudication, the adjudication proceedings has to be completed within one year from the date of issue of Show Cause Notice, which will be over on 06.07.2024.

In the instant case, due to transfer of Sh. Prateek Bhatia, Joint Commissioner (adjudicating authority), the adjudication proceedings could not be finalized at this juncture with in stipulated time period.

Therefore, in view of the above, it is requested that an extension for one year may be granted under Section 28(9) of the Customs Act, 1962 for adjudication of the subject SCN.

Submitted for kind perusal and further order please.

18/6/24

Supdt. (Adj)

— ADC –

27/06/24

PC/8/24
01/7/24

Pr. Commr

01/07/24

01/7/24

AC/Supdt

11. As can be seen from the above, the Customs Department gave repeated notices to the Petitioner for filing of the reply to the SCN and for personal hearing, neither of which were responded to by the Petitioner.

12. The Petitioner clearly had notice of the impugned SCN which was issued by the Respondent. However, he did not contest the notice and the allegations on merits. Even after the order was passed by this Court on 21st October, 2024, the Petitioner was issued repeated notices, as is clear from the Order-in-Original dated 18th March, 2025, which has now been passed. In the said Order-in-Original, it is recorded as under:

> *"2.7. **To complete the adjudication proceedings, a letter dated 05.12.2024 requesting them to file the reply against the Show Cause Notice and also personal hearing in this case was fixed on 19.12.2024. The Noticee did not file any reply against the above said Show Cause Notice, however Shri Rishik Harikant, Advocate appeared for personal hearing and requested for two week's time to submit a written reply in the matter**.*
>
> *2.8. S**ince, no reply was received from them within two weeks, the Noticee was once again issued a letter dated 17.01.2025 requesting them to file the reply against the Show Cause Notice and also personal hearing in this case was fixed on 29.01.2025**. Shri Prem Ranjan Kumar, Advocate appeared for personal hearing in virtual mode on 29.01.2025. He reiterated the submissions made vide letter dated 23.01.2025 and insisted for supply of two documents namely (i) The copy of Office letter F.No. 456/520/2021-Cus-V dated 07.02.2022 and (ii) Email dated 08.12.2021 from High Commission of India, Kuala Lumpur & Email dated 07.12.2021 from Ministry of International Trade and Industry (MITI), Malaysia. He also submitted that after supply of above said documents, they will file reply in respect of Show Cause Notice within a week of receipt of the above said documents. He further requested to hold the*

adjudication proceedings in this case till the outcome of Writ Petition filed by them in High Court of Delhi. He further relied upon the judgment of case of M/s Parle International.

2.9. Further against the above said Personal Hearing letter dated 17.01.2025, the Noticee submitted a letter dated 23.01.2025 received in this office on 24.01.2025, wherein they submitted that;

They referred to the Writ Petition filed against the continued adjudication despite lapse of the mandatory period of one year as provided under Section 28(9) of the Customs Act, 1962 wherein the Hon'ble High Court has been pleased to issue notice and ordered for the outcome of the adjudication subject to the outcome of the writ petition.

Although, there is no complete stay from adjudication by the Hon'ble High Court, it would be duplicity of adjudication on the issue of jurisdiction to adjudicate the Show Cause Notice as the Hon'ble High Court is seized with the issue of jurisdiction and therefore the Adjudicating Authority cannot decide the same issue which is pending before the Hon'ble High Court. Hence, till the matter is decided by the Hon'ble High Court on jurisdiction, the adjudication proceeding be kept in abeyance.

However, If the Adjudicating Authority is of the view that it can proceed and decide the show cause then in that eventuality, the Noticee is required to be provided with the following relied upon documents as the same have not been provided alongwith the Show Cause Notice:

> *1. The Copy of Office letter F.No.456/520/2021-Cus.V dated 07.02.2022 vide which three certificates of origin said to be issued in Malaysia under ASEAN-India FTA pertaining to imports of Aluminium Foils for causing retroactive verification as referred in para2.1 of SCN as copy enclosed but not supplied to the Noticee.*

2. E-mail dated 08.12.2021 from the High Commission of India, Kuala Lumpur and E-mail dated 07.12.2021 from the Ministry of International Trade and Industry (MITI), Malaysia stating that the COOs are not authentic and that they have never received a CoO application from Ezy Metal Enterprise and MH Megah Maju Enterprise referred in para 2.1 as copy enclosed but not supplied to the Noticee.

3. Copies of all COO mentioned in para 7.1 in respect of all14 Bills of Entry as the same are not available with the importer having submitted before the Customs at the time of clearance of goods.

*2.10. **<u>In response to the above said letter dated 24.01.2025, reply was sent to Shri Prem Ranjan Kumar, Advocate and Noticee on 06.02.2025 as unde</u>**r;*

They were informed that they have sought following three documents from this office;

i. The Copy of Office Letter No. 456/520/2021-Cus.V dated 07.02.2022;
ii. Email dated 08.12.2021 from High Commission of India, Kuala Lumpur and Email dated 07.12.2021 for Ministry of International Trade and Industry;
iii. Copies of all COO mentioned in Para 7.1 of the Show Cause Notice in respect of 14 Bills of Entry.

2. Their request for providing above said documents has been examined. The documents mentioned in Para 7.1. of the Show Cause Notice are copies of COOs, which is integral part of import documents and must be available with the importer. Since, the importer has filed these Bills of Entry claiming the benefit on the basis COO certificate; the importer must be in possession of these COOs. Thus, these documents are also not required to be supplied.

3. Further, the documents sought by them at Sr. No. i and Sr. No. ii above are merely internal inter-departmental/ Inter-ministerial correspondences. Further, these documents have not been made RUDs in the Show Cause Notice.

4. In view of the above, as informed by them during the course of personal hearing on 29.01.2025, they were requested to file the reply of the Show Cause Notice within a week of receipt of this letter. In case, they fail to file any reply against the Show Cause Notice, it shall be assumed that they have nothing to say in the matter and the case shall be decided on merits on the basis of available documents and records.

2.11. The Noticee did not file any reply against the above said Show Cause Notice. However, vide their letter dated 15.02.2025 sought another 15 days to file reply against the above said Show Cause Notice. The adjudication proceedings in this case was held till date i.e. 10.03.2025, but still no reply received from their end."

13. Thus, though this Court permitted the adjudication of the SCN, apart from filing the request for supply of RUDs, which has also been dealt with in the Order-in-Original, no reply on merits has been filed by the Petitioner to the SCN. In fact, there ought to have been a reply refuting the email received by MITI by the Petitioner if the Petitioner's contention is that the COOs are valid and genuine, which the Petitioner did not even file.

14. The main ground which is raised by Mr. Prem Ranjan Kumar, ld. Counsel for the Petitioner is that the extension order was not communicated to the Petitioner and in support of the said plea, a decision of the Division Bench of the Punjab and Haryana High Court has been relied upon being ***Shri Ram Agro Chemical Pvt. Ltd. through its Director Shri Amit Jain Vs. Union of India & Ors., 2019 SCC OnLine P&H 4918***, where it has been observed

as under:

> *"15. From the perusal of the above noting, it is evident that Commissioner has proposed extension but there is no order on the part of Chief Commissioner leaving aside application of mind and reasoned order. Commissioner of Customs in his affidavit dated 30.9.2019 has used word 'noting' which itself shows that no order of extension was passed and it is just a noting on the file on the part of authorities other than Chief Commissioner. As no order of extension, as otherwise vehemently pleaded by Mr. Bindlish, has been passed, contention on behalf of the respondents that Chief Commissioner has granted extension of one year to adjudicate impugned show cause notice is ill founded.*
> *XXXX*
> *23. From the reading of sub-section (9) and (9A) of Section 28 of 1962 Act with judgment of this Court in the case of A.B. Sugar Ltd. v. State of Punjab, 2009 SCC OnLine P&H 7874, Aabhas Spinners Pvt. Ltd. v. UOI, (2010) 260 ELT 554 (P&H) and Assistant Collector of Customs v. Charan Das Malhotra, we can easily cull out that authorities are bound to;*
> *(i) divulge circumstances under which Proper Officer was prevented from passing order [28(9)] or record reasons [28(9A)]*
> *(ii) afford opportunity of hearing prior to passing order of extension and*
> *(iii) communicate copy of extension order passed either under sub-section (9) or (9A) of Section 28 of the 1962 Act."*

15. Mr. Gibran Naushad, ld. SSC at this stage submits that a Special Leave Petition against the said decision in ***Shri Ram Agro Chemical Pvt. Ltd. through its Director Shri Amit Jain (Supra)*** is pending before the Supreme Court in ***Petition for Special Leave to Appeal (C) No. 12063/2020*** titled ***'Commissioner of Customs Ludhiana & Anr. v. Dee Kay Exports***.

16. The Court has considered the matter. The Punjab & Haryana High Court has drawn a parallel between Section 110 and Section 28 of the Customs Act. In the opinion of this Court, there is a difference in the scheme of the Act in Section 110 of the Customs Act, 1962 and Section 28 of the Customs Act, 1962. Under Section 28(9) of the Customs Act, 1962, an extension can be granted, however, there is no stipulation that the same extension order ought to be communicated. Whereas, under Section 110(2) of the Customs Act, 1962, the stipulation is that the person, from whom the goods were seized, has to be informed before the expiry of the period, if a further extension is to be given. Thus, these two provisions are not identical in nature. The relevant provisions read as under:

Section 28(9) of the Customs Act, 1962

> *"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, *** in respect of cases falling under clause (a) of sub-section (1);*
> *(b) within one year from the date of notice, *** 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;]"*

Section 110(2) of the Customs Act, 1962

> *"(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:*
> *[Provided that the Principal Commissioner of Customs or Commissioner of Customs may, for reasons to be recorded in writing,* ***extend such period to a further period not exceeding six months and inform the person from whom such goods were seized before the expiry of the period so specified****:*
> *Provided further that where any order for provisional release of the seized goods has been passed under section 110A, the specified period of six months shall not apply.]"*

17. Further, this Court is of the opinion that usually, the Customs Department ought to intimate any extension which is granted, to the parties concerned. But this would not be a fatal error in the present case as the communication of the same is not mandated in the provision, *i.e.*, Section 28 of the Customs Act, 1962.

18. Under these circumstances, the Petitioner has failed to make out any case for interference. The Order-in-Original dated 18th March, 2025 is an appealable order. Since an interim order was passed by this Court, the Petitioner is permitted to file an appeal within a period of one month from today, before the Commissioner of Customs (Appeals).

19. If the same is filed within one month from today, the same shall not be held to be barred by limitation and shall be adjudicated on merits.

20. All rights and contention of the parties are left open.

21. The petition is disposed of in these terms. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

DECEMBER 12, 2025/*pd/ck*