



2025:DHC:2805-DB



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

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*Judgment reserved on 01.04.2025**Judgment pronounced on: 22.04.2025*

+ W. P.(C) NO. 4084/2025 & CM APPL. 18965/2025 (INTERIM STAY), CM APPL. 18966/2025 (EXEMPTION), CM APPL. 18967/2025 (EXEMPTION), CM APPL. 18968/2025 (PERMISSION TO FILE LENGTHY SYNOPSIS)

ROOTS EDUCATION PVT LTD ...Petitioner

Through: Mr. Rajat Mittal, Mr. Priyanshu, Mr. Suprateek Neogi, Advocates.

versus

COMMISSIONER OF CENTRAL TAXGST  
DELHI EAST ORS.

...Respondents

Through: Ms. Sushila Narang, Advocate for R-1 to R-3.  
Mr. Atul Tripathi, SSC, CBIC,  
Mr. Gaurav Mani Tripathi and  
Mr. Shubham Mishra,  
Advocates for R-4.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR**

## **J U D G M E N T**

### **HARISH VAIDYANATHAN SHANKAR, J.**

1. The Petitioner herein assails the **Order-In-Appeal**<sup>1</sup> dated 31.01.2025 passed by the Commissioner of Central Tax Appeals-II, New Delhi, and the **Order-In-Original**<sup>2</sup> dated 27.06.2024 passed by the Additional Commissioner, CGST, Delhi (East), confirming the

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<sup>1</sup> OIA

<sup>2</sup> OIO



demands of Service Tax, interest and penalty emanating from five **Show Cause Notices**<sup>3</sup> dated 17.04.2013, 07.05.2014, 20.04.2015, 10.05.2016 and 19.03.2018 issued to the Petitioner for the periods 2007-08 to 2011-12, 2012-13, 2013-14, 2014-15, and 2015-16 to June 2017.

2. The Petitioner seeks quashing of the OIA, OIO and the SCNs, primarily on the ground of inordinate and unexplained delay in their adjudication, contending, *inter alia*, that:

- (a). The impugned OIA, OIO and SCNs are liable to be quashed for being constitutionally untenable and against the Principles of Natural Justice.
- (b). The inordinate delay in adjudication deprived the Petitioner of a fair opportunity to defend its case.
- (c). Although the SCNs were issued between the years 2013 to 2018 and replies were filed at the relevant time, the final adjudication was kept pending for several years, ranging from seven to twelve years.
- (d). The Respondents have violated the mandate of Section 73(4B) of the **Finance Act**<sup>4</sup>, 1994 which provides a specific timeframe for adjudication i.e., six months or one year from the issuance of the SCN.
- (e). In respect of the first four SCNs dated 17.04.2013, 07.05.2014, 20.04.2015 and 10.05.2016, a personal hearing was held on 27.12.2016. Despite that, no final order was passed and the adjudication was kept pending for further eight (8) years. The

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<sup>3</sup> SCN

<sup>4</sup> Finance Act



fifth SCN dated 19.03.2018 was also premised upon identical issues to the previous SCNs.

- (f). The delayed adjudication is wholly attributable to the department.
- (g). The impugned Orders and SCNs are in the teeth of the judgment passed by this Court in *Vos Technologies India (P) Ltd. v. Director General*<sup>5</sup>, *National Building Construction Co. Ltd. v. Union of India*<sup>6</sup> and *Commissioner of GST and Central Excise and Another vs. M/s Shree Baba Exports*<sup>7</sup>.

3. We propose to examine the present petition on the touchstone of the recent judgment of this Court in *Vos Technologies (P) Ltd. (supra)* having formed the vanguard of the attack on the SCNs.

4. At this juncture, it will be apposite to advert to the salient facts leading up to the institution of the present petition.

### **BRIEF FACTS:**

5. The Petitioner, being engaged in the business of imparting coaching, was registered with the Service Tax Department for providing taxable services such as “Commercial Coaching or Training Service” and “Franchisee Service” falling under Section 65 and Section 65(105) respectively of the Finance Act.

6. It appears that based on information gathered regarding the Petitioner allegedly not discharging its service tax liability, the Respondent issued an SCN dated 17.04.2013 for the period of 2007-08 to 2011-12, proposing to impose a demand of INR 85,16,334/- along with penalties on the ground that the Petitioner was not paying

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<sup>5</sup> SCC OnLine Del 12137

<sup>6</sup> 2018 SCC OnLine Del 12397

<sup>7</sup> 2022 SCC OnLine P&H 4270



service tax on the value of study material supplied by it, by considering it as standard textbooks in terms of Circular No. 59/8/2003 dated 20.06.2003.

7. On 20.03.2013, the Petitioner filed a Reply to the said SCN.

8. Analogous to the aforementioned SCN, four (4) more SCNs came to be issued to the Petitioner for the subsequent periods.

9. For the sake of brevity, the details germane to the proceedings pertaining to the Impugned SCNs are summarized herein below:

Financial Year	Date of the SCN	Responses to the SCN	Personal Hearing	Final adjudication
2007-08 to 2011-12	17.04.2013	<ul style="list-style-type: none"><li>• Reply dated 20.05.2013.</li><li>• Common Written Submission dated 30.12.2016 pursuant to hearing dated 27.12.2016.</li><li>• Common Additional Submissions dated 26.03.2024.</li></ul>		
2012-13	07.05.2014	<ul style="list-style-type: none"><li>• Reply 12.06.2014.</li><li>• Common Written Submission dated 30.12.2016 pursuant to hearing dated 27.12.2016.</li><li>• Common Additional Submissions dated 26.03.2024.</li></ul>	<ul style="list-style-type: none"><li>• 27.12.2016</li><li>• 15.03.2024</li></ul>	Common order dated 27.06.2024
2013-14	20.04.2015	<ul style="list-style-type: none"><li>• Reply 15.05.2015.</li><li>• Common Written Submission dated 30.12.2016 pursuant to</li></ul>		



		hearing dated 27.12.2016. • Common Additional Submissions dated 26.03.2024.		
2014-15	10.05.2016	• Common Written Submission dated 30.12.2016 pursuant to hearing dated 27.12.2016. • Common Additional Submissions dated 26.03.2024.		
2015-16 to 2017-18 (upto June 2017)	19.03.2018	• Reply dated 04.04.2018. • Common Additional Submissions dated 26.03.2024.	15.03.2024	

10. *Vide* a common OIO dated 27.06.2024, the Additional Commissioner, CGST, Delhi (East), summarily dismissed the contentions of the Petitioner on the issue of delayed adjudication and confirmed the demands proposed in the SCNs.

11. Being aggrieved by OIO dated 27.06.2024, the Petitioner preferred five (5) appeals. On 31.01.2025, *vide* a common Order, the Additional Commissioner, CGST, Delhi (East) confirmed all demands imposed against the Petitioner. Hence the present Petition.

### **ANALYSIS:**

12. Irrefutably, the impugned SCNs were issued on 17.04.2013, 07.05.2014, 20.08.2015, 10.05.2018 and 19.03.2018, and which came to be finally decided *vide* the impugned OIO dated 27.06.2024. As is



apparent, the Respondent kept the adjudication of the impugned SCNs pending for a period of 6 to 11 years.

13. For the sake of convenience, we set hereinbelow a tabular statement of the timelines followed by the Respondent in the adjudication of the impugned SCNs:

<b>Financial Year</b>	<b>Date of SCN</b>	<b>Date of adjudication</b>	<b>The time period between the date of SCN &amp; the adjudication</b>
2007-08 to 2011-12	17.04.2013	27.06.2024	11 years, 2 months and 10 days
2012-13	07.05.2014	27.06.2024	10 years, 1 month & 20 days
2013-14	20.04.2015	27.06.2024	9 years, 2 months & 7 days
2014-15	10.05.2016	27.06.2024	8 years, 1 month & 17 days
2015-16 upto June 2017	19.03.2018	27.06.2024	6 years, 3 months & 8 days

14. The Petitioner herein raised the issue of delayed adjudication before the Ld. Appellate Authority. The same came to be rejected in the impugned OIA in the following manner:

“7.1 The appellant has also raised the issue of non-sustainability of original order on the grounds of delayed adjudication. In their additional written submission filed on 20.11.2024, the appellant argued that the first show cause notice was issued in 2013 and adjudication was completed in 2024 with no actual reasons known to the appellant and argued that the whole adjudication process fails to stand before the legal provisions and also relied upon a few case laws in their support. I understand the concern of the appellant but it must be appreciated that delay is caused due to more extensive examination by keeping in mind the nuanced nature of tax compliance and adjudication process. I firmly opine that adherence to protect the larger public interest, the department is bound to ensure for the expeditious and timely culmination of proceedings especially when in this case the circumstances and facts of the case clearly demonstrate that there was no litigation pending on any procedural aspect concerning the subject matter. I, however, refrain from quashing the matter on the ground of delay as during the intervening period, the Corona related guidelines leading to complete lockdown were at place and further the



suomoto cognizance of the problems arising on account of the epidemic by the Hon'ble Supreme Court for not considering a certain period for reckoning the limitation period. Besides, at the given point of time, there was no rigidity or inflexibility under any given provision of the Finance Act, 1994 stipulating any time limit for completion of adjudication proceedings. I have also carefully gone through the Section 73(4B) of the Finance Act, 1994 which is reproduced as under:

*Section 73-Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded*

*(4B) The Central Excise Officer shall determine the amount of service tax due under sub-section (2)-*

*within six months from the date of notice where it is possible to do so, in respect of cases falling under sub-section (1);*

*within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A)]*

I find that the above provisions include the phrase “where it is possible to do so”, indicating that the tax department is not mandated to complete proceedings within a specified timeframe. On the contrary, this language allows flexibility in managing the adjudication process to the department thereby exhorting that 'wherever it is possible to do so', efforts should be made to complete the adjudication proceeding within the given time frame. I find that the appellant has relied upon a few case laws in their support, but a careful perusal of the said citations makes it abundantly clear that the said judgment has been given in respect of party specific/circumstances specific cases whereas in this case, as is evident from the fact narrated in the impugned order-in-original, a common adjudicating authority has to adjudicate the case. Besides, at the relevant point of time, the mandatory clauses are unequivocally imposed where the intention of the legislation is not to give any discretionary powers to the adjudicating authority as is the case with Customs Act, 1962 wherein under Section 28(9), the rigid stipulation is underlined:

*Section 28(9) The proper officer shall determine the amount of duty or interest undersub-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.*

When the above provisions are compared, the basic difference that emerges is about the mandatory and discretionary powers of the adjudicating authority and it becomes explicitly obvious that the intention of the legislation in providing the flexibility in adjudication under Section 73(4B) of the Finance Act, 1994 was nothing but a recognition of the complex process involving scrutiny of records etc. which can take a longer time. In the impugned context, I note that Demand cum Show Cause Notice was issued on the basis of investigation conducted by the Anti-Evasion branch, which were well within the knowledge of the appellant and the same are to be decided, after taking into account their written submission and submissions tendered during personal hearing, by issuing an appealable Order. Needless to mention that the Demand cum show cause notices and subsequent order is a part of principle of natural justice. Thus, notice issued for personal hearing before passing on adjudication order is a part of principle of natural justice given to the appellants. The Hon'ble Supreme Court in the case of CCE, New Delhi Vs M/s Bhagsons Paint Industry (India), reported in 2003 (158) ELT 129 (SC) 2003-TIOL-21-SC-CX, has held that there is no statutory bar to adjudicate the matter even after lapse of nine years after the issue of show cause notice and the adjudication pertains only to the actual levy of the duty which is due to the department and not to any levy of interest and penalty. Further, the Hon'ble Supreme Court in Commissioner, GST and Central Excise Commissionerate II & Ors. vs. M/s. Swati Menthol and Allied Chemicals Lid. & Ant. in SLP(C) No. 20072 of 2021 dated 10 July, 2023, on a similar plea being raised by the assessee, the Hon'ble Supreme Court had permitted adjudication of the show cause notice. Thus, in view of the foregoing, I do not find any merits in the contentions raised by the appellant on the said issue.”

15. This Court in *Vos Technologies (P) Ltd. (supra)* and further Judgments in *Paras Products v. Commr. (CGST)*<sup>8</sup> and *M/s Shyam Indus Power Solutions (P) Ltd. v. Commr. (CGST)*<sup>9</sup> had occasion to deal with the issue of delay on behalf of the authorities in concluding the proceedings within a reasonable time (arising out of the Customs

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<sup>8</sup> 2025 SCC OnLine Del 1784

<sup>9</sup> 2025 SCC OnLine Del 1845



Act, 1962, the Finance Act, 1994, the Central Goods and Services Act, 2017 and the Central Excise Act, 1944).

16. After a detailed analysis of the relevant provisions and previous judgments of the Hon'ble Supreme Court and High Courts, this Court, in *Vos Technologies (P) Ltd. (supra)*, while highlighting the fact that the authorities are legally obligated to conclude the adjudication with due expedition, held that, an inordinate and unexplained delay on behalf of the authorities to act within a reasonable period would constitute sufficient grounds to quash the proceedings. The relevant portions of the judgment are reproduced hereinbelow:

“.....

2. The principal ground of attack is the inordinate delay in the finalisation of the adjudication proceedings with the writ petitioners contending that the failure on the part of the respondents to conclude adjudication within a reasonable period of time and inordinately delaying the same for decades together would constitute a sufficient ground to annul those proceedings. They would contend that the principles of a 'reasonable period' which courts have propounded in connection with an adjudicatory function conferred upon an authority would apply and the impugned SCNs' and orders are liable to be quashed on this short score alone.

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18. This provision flows along lines similar to those appearing in the Customs Act and creates two separate streams dependent on whether the allegation be plainly of short-levy, non-levy or erroneous refund as contrasted with cases where that may have occurred by reason of fraud, collusion, wilful misstatement or suppression of facts. However, and of significance is sub-section (4-B), and which continues to employ the phrase “where it is possible to do so” as opposed to the amendments which came to be made in Section 28 of the Customs Act.

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20. We have chosen to extract those provisions for the sake of completeness and notwithstanding the petitioners asserting that by virtue of Section 174(2) of the CGST Act, and which constitutes the 'Repeal and Saving' clause, it would be the provisions of the 1994 Act which would govern.

21. In terms of Section 73(1) of the CGST Act, which is principally concerned with cases other than where allegations of fraud, wilful misstatement or suppression of facts are made, and pertains to tax



incorrectly computed, erroneously refunded or benefits wrongly availed, sets out terminal points within which action referable to that provision would have to be commenced and concluded. A final order on the culmination of adjudication is liable to be framed by the proper officer in terms contemplated under Section 73(9) of the CGST Act. By virtue of sub-section (10) thereof, the proper officer is bound to frame such an order within three years from the due date for furnishing of an annual return. A notice commencing proceedings referable to Section 73 must be issued at least three months prior to the time limit as specified in sub-section (10) coming to an end. It is relevant to observe that Section 73(10) of the CGST Act uses the words “shall issue” and does not adopt the “where it is possible to do so” phraseology as employed by the Customs Act and 1994 Act. Similar is the position that obtains in cases where fraud, wilful misstatement or suppression of facts may be alleged, and in which eventuality it is the provisions of Section 74 of the CGST Act which would govern.

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74. The meaning to be ascribed to the phrase “where it is possible to do so” was lucidly explained in *Swatch Group*. As the Court observed on that occasion, while the aforesaid expression did allow a degree of flexibility, it would have to be understood as being concerned with situations where the proper officer may have found it impracticable or impossible to conclude proceedings. *Swatch Group* had explained that expression to be applicable only where the proper officer were faced with “insurmountable exigencies” and further recourse being rendered “impracticable or not possible”. It thus held that the leeway provided by the statute when it employed the phrase “where it is possible to do so”, could not be equated with lethargy or an abject failure to act despite there being no insurmountable factor operating as a fetter upon the power of the proper officer to proceed further with adjudication. It was these aspects which came to be further amplified by the Court in *Gala International*.

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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.

**86.** When we revert to the facts that obtain in this batch, we find that the respondents have clearly failed to establish the existence of an insurmountable constraint which operated and which could be acknowledged in law as impeding their power to conclude pending adjudications. In fact, and to the contrary, the frequent placement of matters in the call book, the retrieval of matters therefrom and transfer all over again not only defies logic it is also demonstrative of due application of mind quite apart from the said procedure having been found by us to be contrary to the procedure contemplated by Section 28. The respondents have, in this regard, failed to abide by the directives of the Board itself which had contemplated affected parties being placed on notice, a periodic review being undertaken and the proceedings having been lingered unnecessarily with no plausible explanation. The inaction and the state of inertia which prevailed thus leads us to the inevitable conclusion that the respondents clearly failed to discharge their obligation within a reasonable time. The issuance of innumerable notices would also not absolve the respondents of their statutory obligation to proceed with promptitude bearing in mind the overarching obligation of ensuring that disputes are resolved in a timely manner and not permitted to fester. Insofar as the assertion of the assessee's seeking repeated adjournments or failing to cooperate in the proceedings, it may only be noted that nothing prevented the respondents from proceeding ex parte or refusing to reject such requests if considered lacking in bona fides.

**87.** We are further constrained to observe that the respondents also failed to act in accord with the legislative interventions which were intended to empower them to pursue further proceedings and take the adjudicatory process to its logical conclusion. We have in the preceding paragraphs of this decision taken note of the various statutory amendments which were introduced in Section 28 and were clearly intended to ratify and reinforce the jurisdiction which the Legislature recognised as inhering in them. The above observations are, of course, confined to those cases to which the Second Proviso placed in Section 28(9) would not apply. The Second Proviso where applicable would in any case deprive the respondents of the right to continue a pending adjudication or frame a final order once the terminal point constructed by statute came into effect.”

*(emphasis supplied)*

17. The aforementioned Judgement of this Court emphasizes the need for matters pertaining to financial liabilities or penal consequences,



not to be kept pending for a prolonged period of time. This Court also held that the phrase “*where it is possible to do so*” cannot be used as an excuse to not adjudicate matters in a time-bound manner. The discretionary latitude conferred by the legislation is not intended to be exploited or interpreted as an endorsement of inaction. The statutory provisions affording such flexibility must not be invoked arbitrarily over an extended period, absent sufficient cause or reasonable justification.

18. Ultimately it is incumbent upon the authorities to establish that it was genuinely hindered and impeded in resolving the dispute with reasonable dispatch. A statutory authority, when faced with such a challenge, would be obligated to prove that it was either impracticable to proceed with or was constrained by factors beyond its control which prevented it from moving with reasonable expedition. The authority does not, in fact, assert as such in the present case.

19. The Petitioner has also rightly drawn our attention to the judgments of *M/s Shree Baba Exports (supra)* and *National Building Construction Co. Ltd.(supra)* which categorically held that the statutory time frame for adjudication must be adhered to and that delayed adjudication will be barred.

20. The contents of Para 7.1 of the impugned OIA, extracted hereinabove, seeking to explain the delay in adjudication, do not inspire the confidence of the Court. The reasoning offered therein does not satisfy the requirement of the existence of conditions that are insurmountable or such that render the adjudicatory process by the department impossible.

21. The situation is also exacerbated by the fact that, for the first four impugned SCNs, a personal hearing had been held as far back as



on 27.12.2016, and subsequent thereto, a clarificatory written response was also submitted by the Petitioner on 30.12.2016. In spite of that, no final order was passed by the Respondent, and the adjudicatory process remained in limbo for a further 7.5 years. There appears no justification for the same.

22. As far as the reliance by the Ld. Appellate Authority upon the decisions of the Hon'ble Supreme Court in *Commissioner, GST and Central Excise Commissionerate- II and Ors. v. M/s Swati Menthol*<sup>10</sup> and *CCE v. Bhagsons Paint Industry (India)*<sup>11</sup> are concerned, this Court has already considered them in *Vos Technologies (P) Ltd.(supra)*.

23. In view of the discussion above, we have no hesitation in holding that the rationale put forth in *Vos Technologies (P) Ltd. (supra)*, *Paras Products (supra)* and *M/s Shyam Indus Power Solutions (P) Ltd. (supra)*, would apply squarely to the facts and circumstances of the present case.

24. Resultantly, the present petition is allowed and the impugned OIA dated 31.01.2025, OIO dated 27.06.2024 and SCNs dated 17.04.2013, 07.05.2014, 20.04.2015, 10.05.2016 and 19.03.2018, are quashed and set aside.

25. The present petition and all pending applications are disposed of in the above terms.

**SUBRAMONIUM PRASAD, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**APRIL 22, 2025/sm/va**

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<sup>10</sup> 2023 SCC Online SC 1566

<sup>11</sup>(2003) 158 ELT 129 (SC)