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

Date of Decision: 18th February, 2025

+ **W.P.(C) 2079/2025 & CM APPL. 9742/2025, CM APPL. 9743/2025**

UMESH GULHAR

.....Petitioner

Through: Ms. Shikha Sapra, Ms. Reena Rawat &
Mr. Dhruv Sharma, Advs. (M:
9818055059)

versus

PRINCIPAL COMMISSIONER OF CUSTOM (IMPORT)

.....Respondent

Through: Mr. Harpreet Singh, Sr. SC along with
Mr. Suhani Mathur & Mr. Jai Ahuja,
Advs. (M:9811253531)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE DHARMESH SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present writ petition has been filed by the Petitioner - Umesh Gulhar under Article 226 of the Constitution of India seeking to quash the impugned Order In Original dated 15th January 2024.
3. The Petitioner-Mr. Umesh Gulhar was a Director in a China based company – M/s. Tessuti (HK) Ltd. The said company is said to have exported few consignments consisting of ‘Narrow Woven Fabrics’ between October, 2010 and November, 2010 to an importer company in India being, J.R. International (hereinafter ‘*Importer*’). Certain bills of entry *qua* the said consignments were also filed in the this regard.
4. According to the Respondent-Department, the said consignments were



mis-declared and, accordingly, a show cause notice was issued on 7th November, 2013 was sent to the Importer with Petitioner company as a co-noticee, demanding differential duty from the importer along with interest and penalty.

5. The said show cause notice was challenged by M/s J.R. International before this High Court in **W.P.(C)6714/2024** titled **M/s J.R. International v. Principal Commissioner of Customs & Anr.** The matter was thereafter tagged along with a batch of Petitions wherein the lead matter was **W.P.(C) 4831/2021** titled “**M/s Vos Technologies India Pvt. Ltd. v. The Principal Additional Director General & Anr.**” The coordinate bench of this Court *vide* its judgment dated 10th December, 2024 in the batch matters, also quashed the show cause notice dated 7th November, 2013. The operative portion of the said judgment reads as under:

“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*

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X. OPERATIVE DIRECTIONS

88. Accordingly, and for all the aforesaid reasons, we allow the present writ petitions and quash the SCNs¹ as well as any final orders² that may have come to be passed and which stand impugned in this batch of writ petitions.

6. As can be seen from the above judgment, the question that was considered by the Court was whether there was undue delay in adjudication of the show cause notice in terms of Section 128 of the Act. The Court observed that there was no justification for the enormous delay that occurred in the adjudication and had, accordingly, quashed the show cause notices. The details of –

- a. the said show cause notice dated 7th November, 2013 and
- b. the various dates on which the show cause notice was transferred and was taken out the call book and
- c. number of adjournments passed

are set out in the said judgment in the form of a chart at pages 38 and 39.

7. The said chart is also reproduced below:

CHART ON MATTER-WISE DETAILS IN RE: TIMELINE FOR ADJUDICATION PROCEEDINGS

S. No.	Matter Details	Date of Show Cause Notice	Date of Adjudication Order	Details of Call Book Placement/Board Instructions	Details of Personal Hearings	Adjournments and other related details	Impact of the Amendment Act of 2018 (Act No. 13) [Pre/Post]
xxx	xxx	xxx	xxx	xxx	xxx	xxx	xxx
38.	M/s J.R. International	07.11.2013	15.01.2024	<ul style="list-style-type: none">• Impugned SCN was transferred	28.12.2023	<ul style="list-style-type: none">• 14.08.2014 – Nobody appeared on the given	Pre

¹ Including show cause notice dated 07th November, 2013

² Including Order In Original dated 15th January 2024



<p>v. Principal Commissioner Customs and Anr. WP(C) 6714/2024</p>			<p>to the call book w.e.f. 29.06.2016 in view of Board's instruction issued vide F.No.276/104/2016-CX.8A(Pt.) dated 29.06.2016.</p> <ul style="list-style-type: none">• Impugned SCN was taken out from the call book on 03.01.2017 in view of Board's instruction issued vide F.No. 276/104/2016-CX.8A(Pt.) dated 03.01.2017.• Impugned SCN was transferred to the call book w.e.f. 03.11.2017 in view of Board's instruction issued vide F.No. 437/143/2009-Cus.IV dated 03.11.2017.• Impugned SCN was taken out from the call book on 03.05.2019 in view of the Office Memorandum issued vide F.No.		<p>date and time.</p> <ul style="list-style-type: none">• 03.12.2014 - Nobody appeared on given date and time. Advocate on behalf of Noticee No. 3 requested for another date of personal hearing.• 23.02.2015 – The AR of the Petitioner appeared and sought adjournment in the matter.• 31.03.2015 – Nobody appeared on the given date and time.• 18.09.2015 – The ARs appeared and sought more time to file the reply.• 13.10.2015 - AR of the Petitioner stated that the Petitioner is in the process of challenging the SCN before the Delhi High Court in respect of the powers of the DRI to issue the said SCN, and accordingly the proceedings could not continue due to the said reason.• 02.11.2015 - The AR of the Petitioner stated that the Petitioner had filed a writ before the Delhi High Court and therefore the matter may be kept in	
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				<p>437/143/2009-Cus.IV dated 03.05.2019.</p> <ul style="list-style-type: none">• Impugned SCN was transferred to the call book on 17.03.2021 in light of the ruling of the Supreme Court in Canon India Private Limited v. Commissioner of Customs and Board's Instruction No. 04/2021 – Customs dated 17.03.2021.• The impugned SCN was taken out of the call book on 01.04.2022 in view of the validation owing to Section 97 of the Finance Act, 2022.		<p>abeyance.</p> <ul style="list-style-type: none">• 18.11.2015 - The Noticees were requested to file their replies as promised by them in the personal hearing held earlier. The Noticees were also requested to provide stay order of Hon'ble High Court of Delhi in order to keep the matter in abeyance as requested by them. However, no reply or any stay order was received. Also, nobody appeared on given date and time.• 16.12.2015: The Noticees were specifically conveyed that this was the last personal hearing. They were reminded that they had not submitted their replies in the impugned matter and the matter was getting delayed because of that. They were also requested to provide the stay order; if any, passed by Hon'ble High Court of Delhi in the Writ filed by them. Advocate appeared on behalf of Noticee No. 1 and he too requested for additional time of thirty days. He was also asked to submit his reply by 15.01.2016 failing	
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						<p>with case will be decided based on available records.</p> <ul style="list-style-type: none">• 02.03.2017 - Advocate appeared on behalf of the Petitioner along with the Proprietor. He stated that the Petitioner had moved the Hon'ble Delhi High Court on the jurisdiction of DRI to issue the said SCN and that the Hon'ble Delhi High Court has passed an order (a combined order in case of Mangli Impex) in their favour and that the matter is pending in the Hon'ble Supreme Court. He argued that as the matter is sub-judice, no order should be passed till the final disposal of the case by the Hon'ble Supreme Court. He also informed that all such cases are not being entertained in CESTAT. He also requested that he should be given opportunity to make final submissions on merit and another chance of personal hearing to argue the case in detail. <p>05.10.2017 – None of the noticees attended the PH.</p>	
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8. The present petition has been filed by the Director who was one of the co-noticees against whom the Order In Original dated 15th January, 2024 has been passed, pursuant to the said show cause notice dated 7th November, 2013.

9. Since, both the show cause notice and the final order that arise from the said show cause notice have already been quashed by the Court *qua* the main company i.e., M/s J.R. International, the Order In Original *qua* the Petitioner would also be liable to be quashed. In fact, this Court has recently in *W.P.(C) 11207/ 2023* titled *Shri Balaji Enterprises v. Additional Director General New Delhi & Ors.* also followed a similar rationale as the Coordinate Bench of this Court.

10. Accordingly, the show cause notice dated 7th November, 2023 along with Order In Original dated 15th January 2024 emanating therefrom are quashed. Ordered accordingly.

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

PRATHIBA M. SINGH
JUDGE

DHARMESH SHARMA
JUDGE

FEBRUARY 18, 2025/dj/Am